

STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

AUG 17 2017

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

**The Honorable Perry H. Gravely, Circuit Court Judge**

Civil Action No. 2014-CP-32-4479

Glenn Edwin Vanover, ..... Petitioner,

v.

State of South Carolina ..... Respondent.

**CONSENT SUPPLEMENTAL APPENDIX**

**VOLUME III**

Jonathan M. Milling  
MILLING LAW FIRM, LLC  
2910 Devine Street  
Columbia, South Carolina 29205  
(803) 451-7700  
ATTORNEY FOR PETITIONER

Other Counsel of Record:  
Jessica E. Kinard  
Attorney General's Office  
Post-Conviction Relief Section  
Office of the Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Tel.: 803.734.9603  
ATTORNEY FOR RESPONDENT

**INDEX**

VOLUME I

Transcript of the Trial .....1  
Application for Post-Conviction Relief .....289  
Supplement to Application for Post-Conviction Relief .....297  
Return to the Application.....305

VOLUME II

Transcript of the Post-Conviction Relief Hearing .....310  
Order of Dismissal .....478  
Motion to Reconsider.....486  
Return to Motion to Reconsider.....498  
Order .....507  
Clerk of Court Records (Warrants, Indictments, Sentencing Sheets).....510

VOLUME III

Order of Dismissal (including pages unintentionally omitted from Volume II).....518

**ORIGINAL**

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
2016 JUN 22 AM 11:06  
BETH A. MILLING  
CLERK OF COURT  
LEXINGTON, SC

Glenn E. Vanover, S.C.D.C. No. 352164

C.A. No. 2014-CP-32-04479

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 10, 2014. Respondent made its return and motion to dismiss on or about March 20, 2015. An evidentiary hearing was held on April 19, 2016, at the Lexington County Courthouse. Applicant was present and represented by Jonathan M. Milling, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant; Applicant's sister, Caroline Lindler; Applicant's brother, Gary Vanover; Applicant's son, Brandon Vanover; Applicant's trial counsel, Theo Williams, Esquire; and Kenneth Pace, a former teacher to the victim in the underlying case, testified at the hearing. The Court had before it Applicant's trial transcript, the Lexington County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the Return.

**PROCEDURAL HISTORY**

Applicant is presently confined in the Department of Corrections pursuant to orders from the Lexington County Clerk of Court. Applicant was indicted for two counts of criminal sexual conduct with a minor under the age of eleven (CSC), first-degree (2011-GS-32-2356; -2357) at

the August 2011 term of the Lexington County Grand Jury. He was represented by Theo Williams, Esquire. On August 28, 2012, the State called its case to trial before the Honorable Perry Buckner. The jury found Applicant guilty as indicted on both offenses. Applicant was sentenced to two terms of twenty-six (26) years imprisonment. The sentences were to be served concurrently.

A notice of appeal was filed on Applicant's behalf and perfected by Katherine C. Goode, Esquire. The Court of Appeals affirmed Applicant's sentences and convictions in an unpublished opinion. State v. Glenn Edwin Vanover, (2013-UP-481, filed December 23, 2013). The Remittitur was issued on January 8, 2014.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCP 71.1(e)).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under

*PK*

prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) (“[T]he defendant must show that counsel’s representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant’s case.”). Further, to show prejudice, Applicant “must show that, but for counsel’s errors, there is a reasonable probability the result of the trial would have been different.” McLaughlin v. State, 352 S.C. 476, 483, 575 S.E.2d 841, 844 (2003) (citing Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Id. (internal citations omitted).

In response, trial counsel can present “a valid reason for consciously deciding” to take some action, or fail to take some action, at trial. McLaughlin, 352 S.C. at 483, 575 S.E.2d at 845 (holding counsel was not deficient for failing to ask specific questions allowed by the trial court where counsel gave a valid reason for “consciously deciding not to ask those questions”). The burden to show that the result of the trial would have been different is a very difficult burden for Applicant, and this Court does not feel that this burden has been met.

*P. H.*

This Court will now address each allegation of ineffective assistance of counsel:

*I. Failure to object and preserve issue regarding prior bad acts*

Applicant alleges his attorney failed to object to the victim's testimony about Applicant's alleged abuse of victim's mother and failed to preserve the issue for appeal.

Trial counsel noted he did object to the victim's testimony.

[Victim:] I seen [sic] the way he treated my mom and how he hit her.

Mr. Williams: Objection, Your Honor.

The Court: Grounds?

Mr. Williams: It's prejudicial and it has nothing to do with the charge.

(Tr. p. 118).

Applicant has not shown whether a different objection would have resulted in a different ruling or whether this actually prejudiced Applicant. To further object could have brought more attention to the statement when there had only been a passing reference to the statement in front of the jury thus far. The Court finds Applicant has not proved any prejudice.

*II. Failure to investigate victim's school and medical records*

Applicant alleged his attorney failed to investigate the victim's school and medical records, which Applicant alleges would have shown the victim was not being honest about her absences from school. Applicant admitted portions of the victim's school records as an exhibit.

As trial counsel noted, during the trial he did cross-examine the victim on her school records (Tr. pp. 136-141) and did elicit testimony from Applicant (Tr. pp. 211-213) and his wife (Tr. pp. 184, 189-191) regarding victim's school behavior. Further, as explained by trial counsel, not using the actual records in trial was an intentional strategic decision in order to be able to argue that the State's failure to introduce the school records meant the State may be hiding

*PHB*

something from the jury (pp. 239-40), which was seen as more valuable a point than introducing records that could have been interpreted in different, and perhaps harmful, ways by the jurors.

Applicant has failed to show that had the records been introduced at trial, the records would have led to a different result and has therefore failed to show any prejudice to Applicant.

*III. Failure to interview and call Applicant's son, Brandon Vanover, as a witness*

Applicant alleges trial counsel failed to interview and call his son, Brandon Vanover, as a witness. Applicant testified he expected his son to be called to testify and was surprised to arrive at trial and not have his son called as a witness. Brandon Vanover testified at the PCR hearing that, had he been called to testify, his testimony would have consisted of statements made to him by a former boyfriend of the victim,<sup>1</sup> claims that there were additional televisions in the home than victim claimed, that he had never observed unusual sounds or seen his father exit the room sweating, that the victim was not truthful because she had made up "sibling stuff" such as claiming he hit her when he did not, that he had seen the victim at home during school hours, that he recalled the victim leaving to stay with a friend for several days after hearing she had accused their father of sexually abusing her, and that Applicant had back pain from an injury. Brandon Vanover testified that he did want to testify at the trial. He also testified that at the time of the trial he was about seventeen to eighteen years old and still living with Applicant, that he did not tell defense counsel he wanted to testify or tell him about any of the above stated things, that he did not send any letters or try to call defense counsel, and that it would have been hard to meet with defense counsel because he was in jail prior to Applicant's trial due to some speeding

---

<sup>1</sup> Brandon Vanover was allowed to testify to these statements through a proffer after the Court sustained the State's hearsay objection.

PHK

tickets.

Trial counsel explained he spoke with Applicant and Applicant's wife prior to the trial and both indicated it would not be a good idea to call Brandon Vanover as a witness. In addition, trial counsel noted he did not believe Brandon Vanover would be a good witness because Brandon Vanover was having trouble with medication at the time and there was no indication Brandon had anything to add factually to the case because none of the allegations involved Brandon being present when the assaults occurred.

Based on the testimony presented at the PCR hearing, there was no credible evidence that Brandon Vanover's testimony at trial would have changed the result or that the failure to call Brandon Vanover resulted in any prejudice to Applicant.

*IV. Failure to properly cross-examine the victim on prior statements*

Applicant alleges the victim made favorable statements about him and that his trial counsel did not properly highlight these statements to the jury. However, the victim admitted on cross-examination before the jury that she "probably did" write poems about Applicant and talk about how great a dad he was because she "wanted everyone at school to think that [she] had a good life. [She] didn't want anyone to know." (Tr. p. 150)

Any prejudice to Applicant would be speculative. Applicant has failed to show that further cross-examination would have resulted in a different result.

*V. Allowing trial to proceed and Applicant to testify while under the influence of prescription medications*

Applicant claims he was on prescription medicine and in a fog during the trial and when he testified. Applicant entered some medical records as an exhibit during his testimony.

*PH*

Applicant's brother and sister testified at the PCR hearing that Applicant was on serious medication and that during trial they observed his speech pattern was slower and that he did not seem to be showing appropriate emotions. Applicant did not offer any expert testimony about the effect of any medications he was taking or about how that medication would affect his capacity to stand trial. Further, trial counsel testified that based on his observations and discussions with Applicant, he did not feel Applicant suffered from any issues regarding his capacity to stand trial and was fully capable of assisting with the trial and testifying.

Applicant failed to offer any evidence that he did not have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and offered no evidence of "whether he [lacked] . . . a rational, as well as a factual, understanding of the proceedings against him." McLaughlin, 352 S.C. at 481, 575 S.E.2d at 843 (citing State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998)).

*VI. Failure to object to testimony about victim's mother's attempted suicide*

Little evidence was presented on this issue during the PCR hearing. The Court finds Applicant failed to meet his burden to establish trial counsel was deficient on this issue.

*VII. Failure to investigate and provide evidence of prior recanted allegations by the victim*

Applicant alleges trial counsel was deficient in failing to interview a teacher whom, Applicant alleges, the victim accused of making sexually harassing statements that were later recanted. During the PCR hearing, Kenneth Pace, the victim's former teacher, testified that Applicant and Applicant's wife called him and stated the victim had claimed he made comments about the color of her underwear. Mr. Pace testified he had not said these things to the victim.

*PNR*

Mr. Pace testified he never heard directly from the victim about this allegation and did not speak with the victim again after receiving that phone call from Applicant.

Applicant states the witness should have been used at trial to show the character of the victim and previous false statements. However, this Court finds Applicant did not establish the testimony would have been admissible. Further, this Court finds Applicant failed to show that the failure to introduce this testimony prejudiced Applicant.

**VIII. Failure in calling State's witness as last defense witness in Applicant's trial**

Applicant claims trial counsel was deficient for calling one of the State's witnesses as his last witness. Trial counsel testified he made a strategic decision to call this witness last because of his position that the prosecution was hiding something by not presenting the school records.

Applicant has failed to show that not calling this witness would have resulted in a different ruling or that this action actually prejudiced Applicant.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Applicant was not prejudiced by counsel's representation; therefore, this PCR application must be denied and dismissed with prejudice.

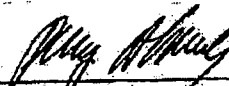
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203 and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

DHB

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 17<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Perry H. Gravelly  
Presiding Judge  
Eleventh Judicial Circuit

Gravelly, South Carolina.

FILED  
2016 JUN 22 A 11:06  
BETTY A. DANFLOTT  
CLERK OF COURT  
LEWISBURG, SC

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF LEXINGTON  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2014CP3204479

|                 |                         |
|-----------------|-------------------------|
| Glenn E Vanover | State of South Carolina |
|-----------------|-------------------------|

|                     |   |
|---------------------|---|
| <b>PLAINTIFF(S)</b> | <b>DEFENDANT(S)</b>   |
| Submitted by:       | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> Self-Represented Litigant |

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:  
**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

|                     |            |                 |
|---------------------|------------|-----------------|
| Circuit Court Judge | Judge Code | Date: 6/27/2016 |
|---------------------|------------|-----------------|

**For Clerk of Court Office Use Only**

This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on June 27, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan McKey Milling 1614 Taylor St., Ste. C Columbia,  
SC 29201

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

Johanna Catalina Valenzuela PO Box 11549 Columbia, SC  
29211-1549

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Beth A. Carrigg/kpk

**Court Reporter**

Beth A. Carrigg - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

---

---

---

---

---

---

---

---

STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Presiding 11th Circuit Judge

---

Civil Action No. 2014-CP-32-4479

---

Glenn Edwin Vanover, ..... Appellants,

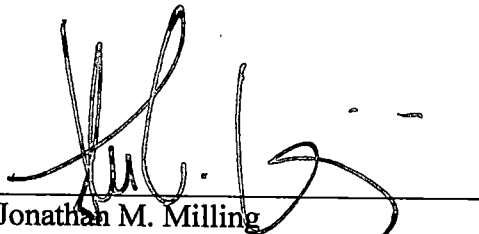
v.

State of South Carolina ..... Respondent.

---

**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below he personally served the Attorney General's Office with a copy of the Reply in Support of Petition for a Writ of Certiorari and the Consent Supplemental Appendix at 1000 Assembly Street, Columbia, South Carolina 29201.

  
Jonathan M. Milling

August 17, 2017