ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Honorable John C. Hayes, Circuit Court Judge

Appellate Case No. 2017-000268

Trico Ladson, ...Petitioner,

v.

State of South Carolina, ...Respondent.

SUPPLEMENTAL APPENDIX

WILLIAM G. YARBOROUGH, III
S.C. Bar # 10271

522 North Church Street
Greenville SC 29601
(864) 331-1612

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
S.C. Bar # 101813
Post Office Box 11549
Columbia SC 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Honorable John C. Hayes, Circuit Court Judge

Appellate Case No. 2017-000268

Trico Ladson, ... Petitioner,

v.

State of South Carolina, ... Respondent.

SUPPLEMENTAL APPENDIX

WILLIAM G. YARBOROUGH, III
S.C. Bar # 10271

522 North Church Street
Greenville SC 29601
(864) 331-1612

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
S.C. Bar # 101813
Post Office Box 11549
Columbia SC 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
)	C.A. No.: 2016-CP-23-2039
Trico Ladson,)	
SCDC No. 365992,)	
)	
Applicant,)	
)	
vs.)	ORDER
)	
State of South Carolina,)	
)	
Respondent.)	

Applicant filed this application for Post-Conviction Relief March 28, 2016. This matter was heard December 8, 2016. Applicant was represented by William G. Yarborough, III, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the May 2015 term of the Greenville County Grand Jury for one count of Criminal Conspiracy nonviolent (2015-GS-23-3556), one count of Attempted Armed Robbery (2015-GS-23-3557), and one count of Attempted Murder (2015-GS-23-3555).

Applicant pleaded not guilty and was represented by Kenneth C. Gibson, Esquire. At trial, Applicant was convicted of conspiracy and attempted robbery. On November 4, 2015, the Honorable R. Scott Sprouse sentenced Applicant to five years for conspiracy, and ten years for attempted robbery with the sentences to run concurrently. These sentences were suspended upon the service of two years active time and five years probation. Applicant received credit for 19 days served. Applicant did not appeal his plea or sentence.

In his initial application for post-conviction relief, the Applicant alleged ineffective assistance of counsel. In his amended application, filed May 31, 2016, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
    a. Counsel denied Constitutional right to testify in his own defense.
    b. Counsel failed to remedy severe factual inconsistencies in the victim's testimony.
    c. Counsel's failure to use the victim's police statement to impeach him.
    d. Counsel's failure to investigate and call witnesses.
2. Failure to file timely notice of appeal.

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. *See Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant alleges ineffective assistance of counsel as a ground for relief. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on has having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v.*

State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052).

First, Applicant's allegation regarding trial counsel's failure to file a direct appeal is without merit. Counsel has a constitutionally imposed duty to consult a defendant about an appeal only when there is reason to think either that a rational defendant would want to appeal or that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 480,120 S. Ct. 1029, 1036 (2000). One highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potential appealable issues and may indicate that the defendant seeks an end to judicial proceedings. *Id.*

Applicant's trial counsel testified that while he usually files a notice of intent to appeal after a jury trial, he did not in this case for several reasons. One reason was the leniency of the sentence imposed on Applicant. This reason was explained to Applicant and Applicant was, according to trial counsel's testimony, advised about the possible adverse consequences which could follow from a successful appeal, i.e. a retrial where the judge might not be so lenient in sentencing.

An additional reason, and perhaps a solely dispositive reason for trial counsel not filing a notice of intent to appeal was Applicant's choice to not pursue an appeal. Trial counsel testified

that after Applicant was given the above set forth advice, Applicant told trial counsel "not to worry about it" and that he would just do his two years.

Additionally, while not dispositive of the appeal, is that trial counsel, a seasoned criminal litigator, testified that the trial was "clean," which the court interprets as being error-free.

Applicant, in an unusual bout of candor, for most post-conviction relief hearings, testified that after being told by trial counsel that he could receive a harsher upon retrial, he told trial counsel he did not want an appeal. Applicant testified that he "just wanted to serve" his "time."

Based on the above, the Court finds trial counsel was not ineffective for not filing a notice of intent to appeal in Applicant's case. Applicant is not entitled to belated appeal under *White v. State.*[1]

Applicant called as a witness James Childress. Mr. Childress had been the foreman of the jury which convicted Applicant. While counsel and the Court had some difficulty is keeping Mr. Childress's testimony within the rubric of Rule 606 SCRE, his testimony focused on his post-trial concerns that Applicant had received a fair trial based on his individual investigation. In a nutshell, Mr. Childress's testimony was that trial counsel was ineffective (which is solely a legal matter for the court) in his representation of Applicant. Additionally, Mr. Childress testified to his opinion that there were flaws in the evidence and trial counsel's examination of witnesses was inadequate and not "grammatically sound.[2]"

While the Court applauds Mr. Childress for his genuine concerns, hard word, and attempt to right what he believes to be wrong, his testimony is not relevant to the issue before the Court.

---

[1] *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).
[2] The court must agree with this assertion.

A juror's remorse, which here is truly sincere, is an insufficient reason to set aside a unanimous jury verdict. A juror, no matter how sincere and diligent cannot offer guidance to the court in its analysis of trial counsel's representation under the *Strickland* and *Cherry* standard.

The testimony offered by Mr. Childress is of no merit as to Applicant's claim and therefore is not factored into the Court's rulings herein.

Applicant asserts he was denied his right to testify. This claim is without merit. After the State rested, the trial judge advised Applicant that he had a right to testify and that the decision to exercise that right was solely Applicant's. (Trial Record p. 155, ll. 12-16). After the trial judge explained to Applicant his right to remain silent and his right to testify, the court recessed for lunch. After the lunch break, the trial judge inquired of Applicant as to his decision as to whether he would or would not testify. At this point trial counsel advised the court that Applicant would exercise his right to remain silent and this was confirmed by Applicant, under oath. (Trial Record p. 155, l. 13 through p. 156, l. 5).

Applicant is not entitled to post-conviction relief based on his allegations that he was denied his right to testify at his trial.

As to Applicant's general ground regarding counsel's alleged failure to bring out inconsistencies in the victim's testimony, Applicant has not presented any evidence to support this ground and, therefore, it is unproven.

Applicant alleges trial counsel was ineffective for failing to use the victim's police statement to impeach the victim. The only evidence presented on this issue was presented through the testimony of Mr. Childress. As set forth above, the Court cannot rely on Mr. Childress's

JW #5

assessment of an attorney's competence. Applicant has failed to carry his burden of proof on this issue.

Applicant's final ground for post-conviction relief is that trial counsel failed to investigate and call witnesses.

Trial counsel testified that he met with Applicant at least three times prior to trial. Trial counsel testified that he relayed a possible Youthful Offender Act sentence offer, which Applicant rejected. Trial counsel testified that Applicant's confidence in prevailing at trial was based on his belief that the victim, a "numbers runner[3]" would not show for trial.

Without reciting it in total, trial counsel testified extensively to what he learned about the evidence and possible witnesses. While trial counsel testified he did not visit the crime scene, he did review a Google map of the scene.

Trial counsel talked with Applicant's father, Larry Ladson, and Applicant's uncle, Michael Ladson. Neither were present at the scene. Both testified at the post-conviction relief hearing. Applicant's father testified that he was talking with Applicant when the robbery was taking place, stating "I heard somebody trying to rob Leroy.[4]" Applicant's uncle testified that Applicant came into his house asking to borrow twenty dollars, which he lent Applicant. Applicant's uncle testified after Applicant was given the twenty dollars, Applicant went outside and that he, Michael, heard an altercation.

Both Applicant's father and uncle were present at his trial and wanted to testify. Trial counsel testified he talked to both the father and the uncle. Trial counsel, after talking with the

[3] A "numbers runner," in this case, is one who is a sort of wholesaler of a gambling device generally referred to as a "ball ticket."
[4] Leroy was the victim.

two, determined as witnesses at trial they "would do more harm than good." Trial counsel testified both had significant records which would "rub off" on Applicant.

Where counsel articulates valid reasons for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992); *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). Where counsel articulates a strategy, it is measured under an objective standard of reasonableness. *Ingle v. State*, 348 S.C. 467, 506 S.E.2d 401 (2002).

I find trial counsel's strategy as to not putting Applicant's father and uncle on the stand to be an acceptable trial strategy.

Trial counsel testified he did not get any phone records to confirm Applicant's claim that he had called the numbers runner and talked with his father before and during the incident. Whether such records would or would not have been helpful is unknown, as Applicant did not place them into evidence at the post-conviction relief hearing. The Court cannot determine that trial counsel was ineffective for not procuring phone records absent an opportunity to review them. As to this issue, Applicant has failed to carry his burden of proof.

While the record reflects Applicant made his own decision not to testify, as noted above, trial counsel testified he did not think Applicant should testify due to his prior record (giving false information to police) and his inability to account for where he was for the four or five hours after the incident.

Trial counsel testified that Applicant was, as to maturity, "below age level" and that Applicant had nervous habits. However, trial counsel testified he did not question Applicant's competence and, if he had, he would have asked for a mental evaluation.

Trial counsel testified his strategy at trial was to attack the victim's credibility by bringing out inconsistencies in his story. This was acceptable trial strategy and, pursuant to *Stokes*, supra, and *Ingle*, supra, Applicant's claim is without merit.

Applying the *Strickland* and *Cherry* standard to trial counsel's representation, I find that trial counsel provided to Applicant representation within the range of competence required in criminal cases. I find trial counsel's performance in his representation of Applicant reasonable under professional norms.

I find Applicant has failed to carry his burden of proof and failed to prove trial counsel was ineffective. Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. *See* Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

December 13th, 2016
Greenville, South Carolina

John C. Hayes, III
Presiding Judge