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March 19, 2018

South Carolina Supreme Court
Daniel Shearouse
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

MAR 22 2018

S.C. SUPREME COURT

RE: Zachary Bullock #357427 v. State of South Carolina
Case No.: 2016-CP-26-02627

Enclosed is the Order of Dismissal, Notice of Appeal, and request for the PCR transcript. I have enclosed an extra copy of the notice and request. Please file the Notice of Appeal and request and return a clocked copy of each in the envelope provided.

Please feel free to contact our office should you have any questions.



Lacey Thompson
Attorney at Law

Enclosures

THE STATE OF SOUTH CAROLINA
SUPREME COURT

RECEIVED

MAR 22 2018

APPEAL FROM Horry County Court of Common Pleas **SC SUPREME COURT**

William H. Seals, Jr., Circuit Court Judge

Case No. 2016-CP-26-02627

Zachary Bullock, #357427Appellant,

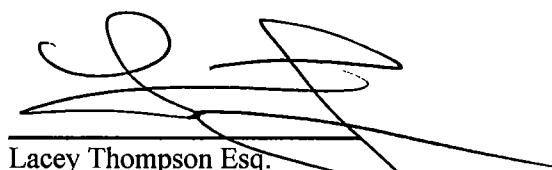
v.

The State,Respondent.

NOTICE OF APPEAL

Zachary Bullock appeals the denial of post conviction relief in this case.
The Order of Dismissal was served on Appellant on March 19, 2018.

March 19, 2018



Lacey Thompson Esq.
Thompson Defense Firm
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843-444-6122

Other Counsel of Record:
Attorney General's Office
Johnny James, Esq.
P.O. Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

ZACHARY BULLOCK, #357427
Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2016-CP-26-02627


CERTIFICATE OF SERVICE

I certify that on the 19th day of March, 2018, a copy of the Notice of Appeal and request for transcript in the above referenced matter was served by U.S. mail to the following addresses:

Horry County Common Pleas
Clerk of Court
PO Box 667
Conway, SC 29526

Attorney General's Office
Johnny James Esq.
P.O. Box 11549
Columbia, SC 29211

Supreme Court Building
Daniel Shearouse
1231 Gervais Street
Columbia, SC 29201


Mindi Ellison
Legal Assistant

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Zachary Bullock,
S.C.D.C. No. 357427,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

) Case No.: 2016-CP-26-02627
)
)
)

) **ORDER OF DISMISSAL**
)
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RENEE M. ELIAS
CLERK OF COURT
HORRY COUNTY, SC

2018 FEB -5 PM 1:01

HORRY COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed by Zachary Bullock ("Applicant") on April 21, 2016. Respondent made its return on or about January 27, 2017. Applicant thereafter amended by filing on March 6, 2017. Respondent made its amended return on October 13, 2017. The Court convened an evidentiary hearing into the matter on Monday, November 27, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Lacey M. Thompson, Esquire, Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, John M. Hilliard, III, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the pleadings, and copies of caselaw provided by the parties at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the October 2012 term of the Horry County Grand Jury for burglary, first degree (2012-GS-26-04334). John M. Hilliard, Esq. represented Applicant, and J. Stephen Grooms, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Steven H. John and a jury on October 7, 2013. The jury found Applicant guilty as indicted on October 8, 2013. Judge John sentenced Applicant to imprisonment for a term of 15 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrin H. Hudgins, Esq., who raised the following issue to the South Carolina Court of Appeals:

Did the trial judge err in allowing a detective to testify about inadmissible hearsay statements implicating [Applicant] made by two co-defendants when both co-defendants testified against [Applicant] at trial, the trial testimony was consistent with the prior statements, the hearsay testimony improperly bolstered the testimony of the co-defendants and the credibility of these two co-defendant witnesses was a critical factor for the jury to determine?

By unpublished opinion decided December 2, 2015, the Court of Appeals affirmed Applicant's convictions. State v. Bullock, Op. No. 2015-UP-549 (S.C. Ct. App. 2015). The Remittitur was issued on December 22, 2015.

Present Application

In his post-conviction relief application, as supplemented by filings on March, 6, 2017, and November 7, 2017, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial counsel failed to investigate the first degree burglary charge by failing to contact the victims of the burglary."
 - a. "The victims of the burglary have said they were never contacted by trial counsel or the solicitor during the time the case was pending. The victims said they were never asked by trial counsel or the solicitor as to what they wanted in the case."

- b. "This was highly prejudicial during his case because Mrs. Skipper, one of the victims, would not have wanted to press charges. This information is extremely favorable to [Applicant] and should have been used by trial counsel when negotiating with the solicitor, as the solicitor did not have this information as well when he made [Applicant] a plea offer of seven years to burglary second degree or when he offered probation to both co-defendants after their testimony against [Applicant]. With the homeowner's statement that they did not want to press charges against [Applicant], there is a reasonable probability that trial counsel could have negotiated a significantly more favorable plea offer than seven years in prison, especially since Petitioner had no prior record."
2. "Trial counsel was ineffective for failing to object to inadmissible victim impact testimony, which was also irrelevant."
- a. "During Mr. Skipper's testimony, the solicitor asked him why he moved. Trial counsel objected based on relevance, but it was also inadmissible victim impact testimony. The judge allowed the question over the relevance objection, but trial counsel did not object based on the fact that it was inadmissible victim impact testimony."
- b. "Mr. Skipper testified during trial that they left that night and moved the next day. He said 'We didn't sleep another day in that house.' This was directly implying that he and his family moved because of the burglary, which was not true at all."
- c. "In addition to not objecting to the inadmissible victim impact statement, trial counsel failed to impeach the credibility of Mr. Skipper. In the initial police report, Mr. Skipper testified to the officer that he and his family were moving in two weeks. Furthermore, after the trial, trial counsel was able to obtain newly discovered evidence which further shows Mr. Skipper was not being truthful about moving out that night due to the burglary. Mr. and Mrs. Skipper's landlord, James Perkins, signed an affidavit dated October 13, 2013 stating that Mrs. Skipper had contacted him around January 1, 2012 about breaking the lease because she could not afford to pay the rent. The landlord, James Perkins, said he agreed to allow her to break the lease. Furthermore, trial counsel failed to speak with Jill Lankford. Ms. Lankford is Mrs. Skipper's sister as well as the neighbor who called the police after noticing a burglary had occurred at her sister's house. Ms. Lankford could have also impeached Mr. Skipper's testimony that they moved out that night due to the burglary. Ms. Lankford would have testified that although she is not sure if Mr. and Mrs. Skipper were moving before the burglary, that she did know they

were looking because the house was too small, and they needed more room."

3. "[I]neffective assistance of counsel based on trial counsel's failure to investigate the case by failing to subpoena [Applicant's] phone records."

a. "[Applicant] did own and operate a cell phone during the time of the burglary. He had communications with his co-defendants, some of which may have been exculpatory. Trial counsel never subpoenaed these phone records. PCR counsel did subpoena the phone records, however, because of retention policies of the cell phone companies, was unable to retrieve the necessary data for GPS location or text message content. If these records had been obtained, they could have shown the actual relationship [Applicant] had with his co-defendants to support that he was not involved in the burglary."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented. Because Applicant's first and third allegations involve common questions of law, they are addressed together.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure

of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696.

A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Investigate Victim Witnesses, Cell Phone Records

Applicant alleges Counsel was deficient for failing to contact the burglary victims prior to trial in order to inquire as to their disposition regarding the case. Applicant further alleges Counsel was ineffective for failing to investigate and obtain potentially exculpatory cell phone records, which could have shown his location at the time of the crime and/or his text messages.

In order to prevail upon a claim that counsel did not adequately investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared.

Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Victim Joseph Skipper testified on behalf of the State at trial. Tr. 59-74. Mr. Skipper explained Applicant, his neighbor, knew he was a fan of Glock firearms and knew he owned guns. Tr. 65-66. Mr. Skipper also testified he and his family moved out of the burglarized house immediately after the crime and never slept in it again. Tr. 67-68.

At the evidentiary hearing, victim Amy Skipper testified her name was on the lease of the house burglarized, but neither Counsel nor the State ever inquired as to her desired disposition of the investigation and case. Ms. Skipper expressed her belief that Applicant's punishment was harsh. Ms. Skipper admitted she never attempted to call either Counsel or the State.

Counsel testified his understanding in preparing for trial was that Mr. Skipper was angry about the burglary. Counsel explained he affirmatively decided against contacting Mr. Skipper due to the risk of only further angering a hostile victim witness. Counsel discussed with Applicant his relationship with the victim and believed that Mr. Skipper disliked Applicant. Counsel admitted he has gotten charges dismissed due to friendly victims in his experience as a criminal defense attorney, but was uncertain as to whether the State would have "played ball" in this case if the victim was actually favorable to Applicant.

In reply testimony, Mr. Skipper testified he spoke with the solicitor and investigators frequently before trial. The prosecution kept Mr. Skipper aware of what was going to happen. Mr. Skipper explained he wasn't mad at Applicant specifically, but was generally upset at whoever was responsible for the burglary. The victim expressed he did not know what he would have wanted in terms of resolution at the time of trial.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Counsel articulated clear and valid strategic reasoning for not contacting the victims—the risk of inflaming an already hostile victim. The information available and known to Counsel prior to trial supports his reasoning. Because a valid strategic reason has been provided by Counsel on the record, this Court finds no ineffectiveness of counsel on this ground, and Applicant's request for relief by way of this allegation is **DENIED**.

As for the cell phone records, Counsel testified at the evidentiary hearing he could not recall considering whether to seek phone records. Melinda Ellison, a member of PCR counsel's staff, testified she attempted to attain such records, but was informed they no longer existed. As such, no records were introduced at the hearing. Consequently, this Court is left only to speculate as to what, if anything, the records would have shown—they could have exculpated Applicant by placing him somewhere other than the location of the crime or they could have further inculpated him by placing him on scene. Mere speculation is not enough. See Harris, 377 S.C. at 75, 659 S.E.2d at 145. Accordingly, this Court finds no ineffectiveness on the part of counsel and Applicant's request for relief by way of this allegation is also **DENIED**.

2. Failure to Object to Victim Impact Testimony

Applicant alleges Counsel was ineffective for failing to adequately object to inadmissible victim impact testimony at trial. There is no *per se* rule regarding the treatment of victim-impact evidence during the guilt phase of a non-capital trial; rather, the decision to admit or exclude such evidence is guided by the standard issues of relevance and, even if relevant, whether its probative value is outweighed by the risk of undue prejudice. See Rules 401-403, SCRE.

As previously noted, Mr. Skipper testified at trial that he and his family moved out of the burglarized house immediately after the crime and never slept in it again. Tr. 67-68. Counsel immediately objected on the basis that the testimony was not relevant and was overruled by the trial court. Tr. 67, ll. 15-18. Because the record shows that Counsel timely objected on the appropriate ground, the allegation is without any factual support. Accordingly, this Court finds no ineffectiveness on the part of counsel and Applicant's request for relief by way of this allegation is **DENIED**.

III. CONCLUSION


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25 day of Jan, 2018.


WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Zachary Bullock, 357427

Plaintiff

v.

State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2016-CP-26-2627

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Lacey M. Thompson, Esquire, Bar No. 101285 Address: 516 29th Avenue, North Myrtle Beach, SC 29577 phone: (843) 444-6122 fax: e-mail: lthompson@grandstrandlaw.com other:	Defendant's Attorney: Johnny E. James Jr, Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: jjames@scag.gov other:
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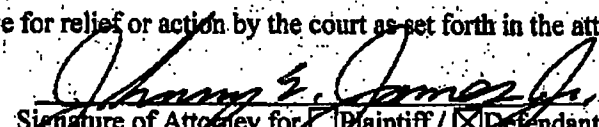
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

2016
 JAN 22 2016
 Horry County
 Date submitted
 Horry County
 -5 PM 1:02
 CLERK OF COURT
 Horry County, SC

SECTION III: Motion Fee

PAID - AMOUNT: _____
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE: _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: _____

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

ZACHARY BULLOCK, #357427,

Applicant,

v.

STATE OF SOUTH CAROLINA,

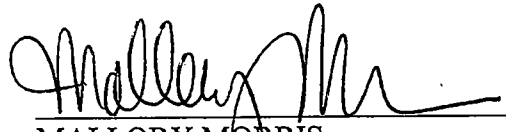
Respondent.

CERTIFICATE OF SERVICE

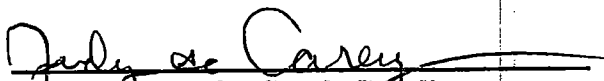
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

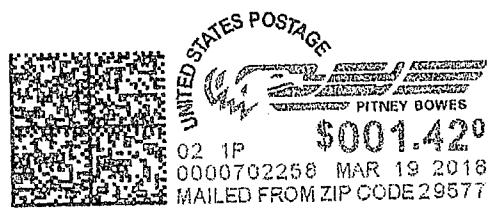
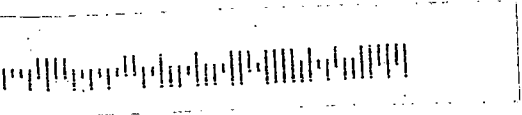
Lacey M. Thompson, Esquire
516 29th Ave. N.
Myrtle Beach, SC 29577

This 15th day of March, 2018.


MALLORY MORRIS
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 15th day of March, 2018.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024



mpson Defense Firm
29th Ave. North
rtle Beach, SC 29577

South Carolina Supreme Court
Daniel Shearouse
1231 Gervais Street
Columbia, South Carolina 29201