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June 13, 2018

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JUN 18 2018

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: William Bolt, #3365770 v. State of South Carolina
2017-CP-24-0089

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Hyatt.

Best regards,

Ashley A. McMahan
Attorney at Law

AAM/qpk

cc: William Bolt
Megan Harrigan Jameson, Sr. Deputy Asst. Attorney General
Greenwood County Clerk of Court
Office of Appellate Offense

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 18 2018

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2017-CP-24-0089

William Bolt, #356942, Petitioner,

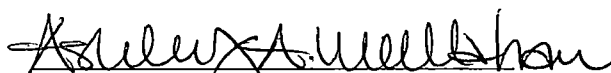
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, William Bolt, appeals the order of the Honorable J. Mark Hayes, II, dated April 20, 2018, filed on May 7, 2018 and received by the undersigned on May 30, 2018.

June 15, _____, 2018



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Opposing Counsel:
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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY
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The Honorable J. Mark Hayes, II, Circuit Court Judge
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William Bolt, #356942, Petitioner,

v.

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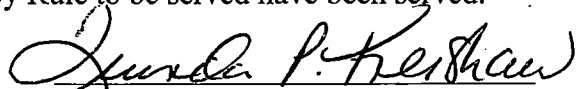
PROOF OF SERVICE

I, Quinda P. Kershaw, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Megan H. Jamieson, Sr. Assistant Deputy Attorney General
Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

June 15, 2018



QUINDA P. KERSHAW
PARALEGAL

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West Columbia, SC 29171
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STATE OF SOUTH CAROLINA)
 COUNTY OF GREENWOOD)
)
 William Bolt,)
 SCDC # 356942)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

2017-CP-24-0089

ORDER OF DISMISSAL

FILED COMMON PLEAS
 8TH JUDICIAL CIRCUIT
 GREENWOOD, S.C.
 2018 MAY -7 AM 9:55

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 24, 2017. Respondent made its Return on or about May 18, 2017. Applicant filed an amended PCR application on September 29, 2017. An evidentiary hearing into the matter was convened on Tuesday, February 27, 2018, at the Laurens County Courthouse in Laurens County, South Carolina. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Janna Nelson and Shane Goranson, Esquires, testified. This Court had before it a copy of Applicant's records from the Greenwood County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application and Amendment, the exhibits introduced at the PCR hearing, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenwood County Clerk of Court. Applicant was indicted at the May 2009 term of the Greenwood County Grand Jury for lewd act (2009-GS-24-543) and the June 2009 term of the Greenwood County Grand Jury for criminal sexual conduct (2009-GS-24-

633). Janna Nelson and Shane Goranson, Esquires, represented him. Assistant Solicitors Lance Sheek and Cam Morrow represented the State. On September 3-5, 2013, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker after which he was found guilty of both charges. He was sentenced to imprisonment for eight years for lewd act on a minor under sixteen years of age and imprisonment for thirteen years for criminal sexual conduct with a minor (second).

A Notice of Appeal was timely filed on Applicant behalf and an appeal was perfected by Appellate Defender David Alexander. Mr. Alexander raised the following issues on appeal:

1. Whether statements signed by appellant, who could not write, and made orally to private contractor who administered a polygraph examination were admitted in violation of appellant's Fifth and Sixth Amendment rights when the police conducted a three-phase interrogation violating *Missouri v. Seibert*, 542 U.S. 600 (2004) and failed to administer Miranda warnings before the polygraph?
2. Whether the trial court should have directed a verdict in favor of appellant on the lewd act charge under the corpus delicti rule because, other than appellant's extra-judicial statements, no independent evidence existed.

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by an unpublished opinion. State v. William Bolt, Op. No 2015-UP-477 (Ct. App. Filed Oct. 7, 2015). Applicant filed a petition for writ of certiorari to the South Carolina Supreme Court, which denied his petition on November 9, 2016. The remittitur was sent November 14, 2016.

PCR Application

In his application for post-conviction relief, Applicant alleged the following grounds:

1. Ineffective assistance of counsel
 - a. Trial Counsel made no effort to suppress coerced statement

On September 29, 2017, Applicant filed an Amended PCR Application, alleging the following grounds of relief:


1. Ineffective Assistance of Counsel of Circuit Public Defender Janna A. Nelson and Assistant Public Defender Shane E. Goranson, Esquires:

- a. Failed to communicate any plea offers to the Applicant.
 - b. Failed to sufficiently cross examine the victim about her motives for the allegations (mainly that she was trying to get out of the house).
 - c. Failed to discuss with Applicant parole eligibility possibility of evaluation as a sexually violent predator if the Applicant was convicted.
 - d. Failed to move into evidence the medical records the doctor testified about.
 - e. Failed to sufficiently contact and discuss the case with the Applicant.
2. Newly Discovered Evidence - Greenwood officer Strickland has since been arrested and indicted for Misconduct in Office.
- a. Officer Strickland resigned as part of an ongoing SLED probe in late October 2015. He has since been arrested and indicted. The veracity of the statements made by Officer Strickland on the warrant and during trial has come into question since his arrest and the interests of justice would require that the Applicant's conviction be vacated accordingly.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).



Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

III. 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 Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, the exhibits received at the PCR hearing, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Failed to communicate any plea offers to the Applicant

Applicant alleged Ms. Nelson and Mr. Goranson were ineffective for failing to communicate any plea offers. Ms. Nelson testified Charles Grose, Esquire, represented Applicant prior to her representation. She testified Mr. Grose received a plea offer of ten years and another offer of a cap of five years. She testified Mr. Grose would have relayed the offers. Ms. Nelson testified when she assumed representation, a new solicitor took over the case, took the plea offers off the table, and only offered a straight up plea.

This Court finds Applicant has failed to meet his burden of proving Ms. Nelson or Mr. Goranson were ineffective for failing to communicate plea offers. To be successful on an allegation of an un conveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Petitioner was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted he original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). This Court finds no plea offers were made during Ms. Nelson's and Mr. Goranson's representation. This Court finds any challenge to Mr. Grose's representation is not being made by Applicant at this time. This Court finds no meaningful plea offers were made by the State, and as the solicitor's office controlled the docket, this Court does not contribute the delay to the conduct of his lawyer. Applicant has failed to meet his burden of proving counsel were ineffective and this allegation must be dismissed.

Failed to sufficiently cross examine the victim about her motives for the allegations (mainly that she was trying to get out of the house).

Applicant alleged his counsel were ineffective for failing to sufficiently cross-examine the victim about her motives for the allegations. He alleged the victim made up the allegations to get out of the house. He testified he did not discuss with his counsel the issue of the victim's motive. Ms. Nelson testified she went to Applicant's house and talked to Applicant and his wife for hours. She testified she made a diagram of his house. Ms. Nelson testified most of her investigation consisted of the victim's records and her home life. She testified the victim wanted to get out of her current living situation.

The transcript reflects Ms. Nelson cross-examined the victim about seeing a counselor, Ms. Martha Moore, and telling the counselor she wanted to get out of the house she was living in with her mother. Tr. 202. The victim testified she did not remember saying that and did not

remember ever seeing Ms. Moore. Tr. 202. Ms. Nelson went into incidents of the victim's mother's bad character to show why the accusations were made. Tr. 206-207. Ms. Nelson asked the victim about her mother getting in fights and arguments with her boyfriend while the victim was living in their house. Tr. 212-213. Ms. Nelson showed the victim a report from Ms. Moore that indicated the victim told Ms. Moore she wanted to get out of the house she was living in with her mother and Greg because it was difficult to live there. Tr. 214-215. The victim agreed to making that statement. The victim again agreed with Ms. Nelson that she had problems with her mother while they lived together. Tr. 216-217.

This Court finds Applicant has failed to meet his burden of proving Ms. Nelson was deficient for failing to sufficiently cross-examine the victim about her motive for the allegations. This Court finds the record reflects Ms. Nelson did ask the victim about her relationship with her mother and the statements she made to the counselor about wanting to leave her home. This Court finds Applicant has failed to meet his burden of proving Ms. Nelson should have taken a different approach or should have employed different cross-examination. This Court finds Ms. Nelson was prepared and her actions were not deficient. Furthermore, this Court finds Applicant has failed to meet his burden of proving he was prejudiced by Ms. Nelson's actions. This Court finds Applicant has failed to show the outcome of the trial would have been different but for Ms. Nelson's questioning. Furthermore, this Court will not speculate as to how different cross-examination would have impacted Applicant's case. Accordingly, this allegation must be dismissed.

Failed to discuss with Applicant parole eligibility and possibility of evaluation as a sexually violent predator if the Applicant was convicted.

Applicant alleged his counsel were ineffective for failing to inform him of his parole eligibility and possibility of evaluation as a sexually violent predator if he was convicted.

Applicant testified he only found out about the possibility of evaluation as a sexually violent predator after he was convicted. Ms. Nelson testified he could not recall whether she advised Applicant of these consequences but testified she believes she told him.

This Court finds Applicant has failed to meet his burden of proving his counsel were ineffective in this regard. This Court finds Applicant has failed to show that either Ms. Nelson or Mr. Goranson gave incorrect advice prior to his trial. This Court finds Applicant's counsel were not deficient for failing to discuss parole eligibility or potential SVP evaluation prior to the trial. Our courts have held "the fact that [the defendant] was not advised of the collateral consequence of his parole eligibility did not render his counsel ineffective." *Randall v. State*, 356 S.C. 639, 641-642 (2004). See also *Jackson v. State*, 349 S.C. 62, 562 S.E.2d 475 (2002) (trial counsel need not advise client of collateral consequence of parole eligibility); *Page v. State*, 364 S.C. 632, 615 S.E.2d 740 (S.C. 2005) (the possibility of civil commitment as a sexually violent predator is considered a collateral consequence of sentencing). This Court finds the failure to discuss with Applicant the collateral consequences of parole eligibility and SVP status did not render Ms. Nelson's or Mr. Goranson's performances ineffective. Furthermore, Applicant has failed to prove that he was prejudiced by his counsel's advice in this regard as he has failed to show the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Failed to move into evidence the medical records the doctor testified about.

Applicant alleged his counsel were deficient for failing to introduce the victim's medical records, testified to by her doctor, into evidence. Ms. Nelson testified she cross-examined the victim's doctor of things in the medical records that would play into Applicant's favor. She testified she objected to the records being admitted into evidence because there were many things

in the medical records that would hurt Applicant at trial, including the victim's statements and results of her hymeneal cleft that are suggestive of vaginal penetration.

This Court finds Applicant has failed to meet his burden of proving Ms. Nelson was deficient in this regard. This Court finds Ms. Nelson articulated a valid trial strategy of cross-examining the doctor to get favorable testimony from the medical records, but objecting to the entire record coming in evidence as it included information detrimental to Applicant's case. This Court finds it was certainly reasonable for Ms. Nelson to exclude the admission of evidence that would hurt Applicant's case. This Court further finds Applicant has failed to meet his burden of proving he was prejudiced, as he has failed to show what information should have come in and how the outcome of his trial would have been different had Ms. Nelson admitted the medical records. Accordingly, this allegation must be dismissed.

Failed to sufficiently contact and discuss the case with the Applicant

Applicant alleged his counsel failed to contact him and discuss the case with Applicant prior to trial. He testified he never met his attorneys until two weeks before trial. Applicant testified he met with Mr. Grose once or twice during his representation. He testified he needed more time to discuss the case but testified Ms. Nelson did come to the house in question to investigate. Applicant testified his statement was forced because Officer Strickland said he would increase his bond. He testified he wrote a confession but the officer did not read him the entire statement before he signed it. Applicant testified he had a Jackson v. Denno hearing to challenge the statement in court.

Ms. Nelson testified Applicant never came to her office while he was out on bond. She testified she went to his house and talked to Applicant and his wife for hours. She testified she meet a sufficient number of times. Ms. Nelson testified she discussed the statement with

Applicant. She testified Applicant voluntarily went to police and first gave a statement saying he did not do it. She testified Applicant requested a lie detector test which he failed. She testified Applicant then admitted to the crime but their theory was that he was intimidated into confessing by the officer telling him he had failed to polygraph and intimidated later by Officer Strickland threatening to increase Applicant's bond. Ms. Nelson testified she retained her own polygraph expert who concluded Applicant did not fail the polygraph but the results were inconclusive.

Mr. Goranson testified Ms. Nelson asked him to help with the case. He testified they challenged Applicant's statement at trial.

This Court finds Applicant has failed to meet his burden of proving Ms. Nelson or Mr. Goranson was ineffective in this regard. From an evidentiary position the underlying case had obstacles caused first by the delay in reporting the abuse by the victim; and second the delay in prosecuting the case. Applicant's case was not called for five years after his arrest. During the delay in the case coming to trial, Applicant's original defense lawyer left the public defender's office a few years after being assigned the case. Applicant's lack of formal education and his inability to write his own statement contributed to the underlying case. This Court finds Applicant's counsel met with Applicant a sufficient amount prior to trial and investigated the victim, Applicant's family, and Applicant's statement. This Court finds Applicant's counsel properly challenged Applicant's statement at trial and this issue was ruled upon at trial and on appeal. Applicant has failed to meet his burden of proving Ms. Nelson or Mr. Goranson was deficient in their representation.

Furthermore, Applicant has failed to meet his burden of proving he was prejudiced by his counsels' actions as he has failed to show the outcome of his trial would have been different had the met with Applicant more, undertook different representation, and represented him at trial.

Accordingly, this allegation must be dismissed.

Newly Discovered Evidence

Applicant asserts a claim of newly discovered evidence. He asserts Greenwood County Officer Brandon Strickland had since been arrested and indicted for Misconduct in Office. Officer Strickland resigned as part of an ongoing SLED probe in late October 2015. Applicant attached to his PCR application news articles from *The Greenwood Index-Journal* that describe these offenses. Applicant asserts the veracity of the statements made by Officer Strickland on the warrant and during trial has come into question since his arrest and the interests of justice would require that Applicant's conviction be vacated accordingly.

Respondent represented Officer Strickland was indicted in Greenwood County for misconduct in office (2016-GS-24-1112) alleging that Strickland mishandled evidence and public funds while serving as a Lieutenant in the Greenwood County Sheriff's Office from April 1, 2015 to on or about October 12, 2015. Officer Strickland was also indicted in Greenwood County for embezzlement (2016-GS-24-1113) alleging that he withdrew and converted for his own use public funds designated for the use of the Sheriff's Office and Drug Enforcement Unit, resulting in a loss to the Greenwood County Sheriff's Office and Drug Enforcement Unit of an amount of less than ten thousand dollars from April 1, 2015 to on or about October 12, 2015. Officer Strickland pled guilty to misconduct in office on December 13, 2017.

This Court finds Applicant has failed to meet his burden of proving his conviction should be vacated based on newly discovered evidence. A party requesting a new trial based on after-discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the

trial;

(4) Is material to the issue of guilt or innocence; and,

(5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983). First, this Court finds Applicant has failed to show a sufficient nexus to the present matter. The allegations concern Strickland's conduct from April 1, 2015 to October 12, 2015, and Applicant's alleged crimes took place between June 1, 2006 and October 17, 2008. Furthermore, this Court finds such evidence does not directly affect Applicant's guilt or innocence because it could only be used at a new trial to impeach Strickland's testimony or truthfulness. This evidence does not pass the Hayden factors. This Court finds that Applicant has failed to meet his burden of proving that these indictments constitute newly discovered evidence that would warrant a new trial and this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that his counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

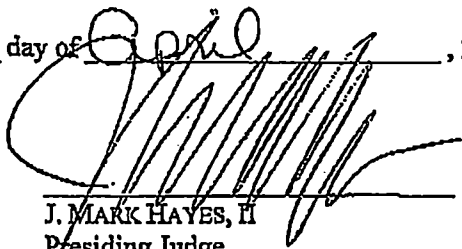
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek

appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.
Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20th day of April, 2018.



J. MARK HAYES, II
Presiding Judge
Eighth Judicial Circuit

Greenwood, South Carolina



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COLUMBIA SC 290

15 JUN 2018 PM 1 L

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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