

MCMAHAN & TAYLOR
ATTORNEYS LLC

RECEIVED

OCT 03 2019

September 30, 2019

S.C. SUPREME COURT

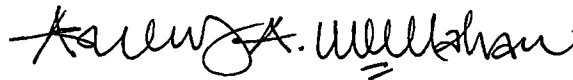
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Adrian L. Jenkins, #273602, v. State of South Carolina
2018-CP-07-00190

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. Jenkins.

Best regards,



ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: Adrian L. Jenkins, #273602
Benjamin H. Limbaugh, Asst. Attorney General
Beaufort County Clerk of Court
Office of Appellate Offense

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 03 2019

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2018-CP-07-00190

Adrian L. Jenkins, #273602, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Adrian L. Jenkins, appeals the order of the Honorable William H. Seals, dated September 14, 2019, filed September 19, 2019, and received by the undersigned on September 30, 2019.

Sept. 30th, 2019


ASHLEY A. McMAHAN, ESQUIRE

McMAHAN & TAYLOR, ATTORNEYS, LLC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@macvance.com

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ATTORNEY FOR APPLICANT

Opposing Counsel:

Benjamin H. Limbaugh, Asst, Attorney General

S.C. Attorney General's Office

PO Box 11549

Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

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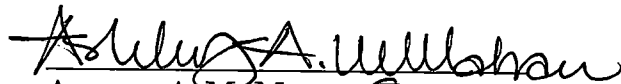
PROOF OF SERVICE

I, Ashley A. McMahan, 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:

Benjamin H. Limbaugh, Asst. Attorney General
S.C. 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.

Sept. 30th, 2019


ASHLEY A. MCMAHAN, ESQUIRE
MCMAHAN & TAYLOR, ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP0700190**

| | | | |
|----------------|--|-------------------------|--|
| Adrian Jenkins | | South Carolina State Of | |
|----------------|--|-------------------------|--|

| | |
|----------------------|--|
| PLAINTIFF(S) | DEFENDANT(S) |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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: **Order of Dismissal**
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- 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 Statement of Judgment by the Court.

ORDER OF DISMISSAL

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 (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (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.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ W. H. Seals, Jr
Circuit Court Judge

2157
Judge Code

9/14/2019
Date

For Clerk of Court Office Use Only

This judgment was entered on September 19, 2019, and a copy mailed first class or placed in the appropriate attorney's box on September 20, 2019, to attorneys of record or to parties (when appearing pro se) as follows:

Jenkins Adrian Lieber Corr. Inst. AA-0013-B Post Office
Box 205 Ridgeville, SC 29472
Ashley A. McMahan PO Box 5501 West Columbia, SC
29171

Sara Elyssa Gunton PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

MMK

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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)
)
 COUNTY OF BEAUFORT)
)
 Adrian Jenkins, #273602,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-07-0190

ORDER OF DIMISSAL

2019 SEP 19 PM 12:51
 BEAUFORT COUNTY CLERK OF COURT
 C. S. S. C.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In January 2016, the Beaufort County Grand Jury indicted Applicant for first-degree burglary (2015-GS-07-1617). The charge arose from a September 2015 incident in which Applicant stole approximately fifty X-box videogames, a television, and other electronics from a home he had “cased” the day before with a friend who was borrowing a shirt from the victim. Tr. p. 96, ll. 3-19. Applicant already had two prior burglary convictions. Tr. p. 96, ll. 20-25. Trasi Campbell, Esquire, represented Applicant at trial. Assistant Solicitor Hunter Swanson prosecuted the case. On April 18, 2016, Applicant proceeded to trial before the Honorable Carmen T. Mullen. The jury found Applicant guilty of first-degree burglary. On April 20, 2016, Judge Mullen sentenced Applicant to imprisonment for twenty years.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander, Esquire, filed a brief on behalf of Applicant pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant subsequently filed a pro se brief. The South Carolina Court of Appeals dismissed Applicant’s appeal in an unpublished opinion filed October 4, 2017. State v. Jenkins, Op. No. 2017-UP-363 (Ct. App. 2017). The remittitur was returned to the circuit court on October 20, 2017.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel
 - a. "Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993)."
 - b. "Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000)."

Applicant amended his application to include the following allegations:

1. Trial counsel failed to argue in closing that the video of Applicant was manipulated. The video had the wrong date and time on it and had been modified before shown to the jurors. Had Applicant known she was not going to argue this, he would have testified at the trial. Also, Applicant was never allowed to view the video before the trial.
2. Trial counsel failed to question George Lawson about the video and the chain of custody during the trial and did not object to the question about whether he thought somebody in the house.
3. Trial counsel failed to address the fact that the DNA on the cigarettes found at the scene came back as female.
4. Trial counsel was ineffective when she allowed Applicant's indictments that contained highly prejudicial details about previous crimes to be admitted as proof of prior convictions for burglary.
5. Trial counsel failed to argue that the State never proved entry into the dwelling and that the items were actually left outside for him to pick up.
6. Trial counsel did not move to quash the indictment.
7. Trial counsel did not question Miranda Brock-Lucas if she told the Applicant those were her items in the yard.

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985). The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “reasonably competent attorney.” ” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U.S. at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even

under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." *Id.* at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. *Id.* at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Failure to Argue to Jury that the Video was Manipulated

Applicant alleges that counsel was deficient for failing to argue to the jury in closing that the video they saw had been manipulated and did not have the right date or time stamp on it.

Applicant testified that he did not see the video prior to trial. Applicant testified that he would have testified had he seen the video. Applicant testified that the video shows him taking stuff from the victim's house. Applicant testified that the time stamp on the video was not correct. Applicant testified that he was not aware that the video had been edited. Applicant testified that counsel told him that the video was damning evidence against him at trial. Applicant testified that the video did not show him entering the dwelling. Applicant testified that he never asked counsel to see the video prior to trial. Applicant testified that he would have liked to explain the video to the jury. Applicant testified that he does not believe the video should have come in after being edited. Counsel testified that the video showed Applicant taking items over the fence and putting them in a vehicle. Counsel testified that she cross-examined George Lawson and law enforcement about the video. This Court finds that counsel did in fact argue to the jury that the video had been manipulated. Counsel, in her closing argument, made note that the video presented did not have the correct date or time stamp. This Court finds that Applicant has failed to meet his burden and that counsel was not deficient in regards to this allegation. Therefore, this allegation is summarily dismissed.

Failure to Question George Lawson about Surveillance Video

Applicant alleges that counsel was deficient for failing to question George Lawson about the surveillance video and the chain of custody. Applicant testified that he felt counsel should have asked Lawson why it took him so long to get the video to the police. Counsel testified that she did cross-examine the witness about the surveillance video. The record indicates that counsel did in fact cross-examine the witness about aspects of the surveillance video. The record also indicates that counsel asked law enforcement officers about any potential chain of custody issues related to the surveillance video. Applicant has failed to show how counsel was ineffective in her

cross-examination of the witness or any alleged prejudice resulting therefrom. This Court finds that counsel did ask the witness about the surveillance video and directed any chain of custody questions toward the proper witnesses. Therefore, this Court finds that Applicant has failed to meet his burden and this allegation is summarily dismissed.

Failure to Address Female DNA

Applicant alleges that counsel was ineffective for failing to address the female DNA found to be on cigarettes recovered from the scene. Applicant testified that the DNA analyzed from the cigarettes came back as being female. Applicant testified that the female DNA found on the cigarettes was from the person he was with at the house the day before the crime. After review of the trial transcript, this Court finds that counsel did in fact address the fact that the DNA found on the cigarettes was female. Counsel cross-examined the State's DNA expert witness, allowing the jury to hear that the DNA found on the cigarettes was female and that the DNA found on the fence was mixed. Counsel, in her closing argument, calls into question the DNA evidence and puts the fact that none of the evidence was linked to Applicant in the minds of the jury. This Court finds that Applicant has failed to show deficiency on the part of counsel or any prejudice resulting therefrom. Therefore, this Court summarily dismisses this allegation.

Failure to Object to Prior Indictments Entering into Evidence

Applicant alleges that counsel was ineffective for failing to object to the entering of Applicant's indictments that contained highly prejudicial details about previous crimes to be admitted as proof of prior convictions of burglary. Counsel testified that she did challenge the old indictments and sentencing sheets being entered into evidence with the potentially prejudicial information being un-redacted. The record reflects that counsel did in fact challenge the records from the previous convictions being entered into evidence. The record shows that counsel argued

that any prejudicial information that should not be before the jury should be redacted from the records. The trial court was given the records and made redactions before they were entered into the record. This Court finds that counsel was not ineffective in arguing that any prejudicial information should be redacted from the records introduced. This Court finds that Applicant has failed to meet his burden and therefore this allegation is summarily dismissed.

Failure to Argue that State did not Prove Entry into the Dwelling

Applicant alleges that counsel was deficient for failing to argue that the State failed to prove that Applicant entered the dwelling and that the items were actually left outside of the house. Applicant testified that he never entered the dwelling the day of the crime. Applicant testified that he felt the State did not prove that he entered the dwelling. A review of the record indicates that counsel cross-examined the State's DNA expert and showed that there was no evidence to suggest that Applicant's DNA was recovered from inside the dwelling. The record also reflects that counsel made a directed verdict motion specifically arguing that the State failed to show that the Applicant ever entered the dwelling. Counsel argued that there was video showing Applicant at the location, but nothing showing him ever taking items from inside the dwelling. The Court ultimately denied the directed verdict motion. This Court finds that Applicant has failed to show any deficiency on the part of counsel or any prejudice resulting therefrom. This Court finds that Applicant has failed to meet his burden and therefore summarily dismisses this allegation.

Failure to Move to Quash Indictment

Applicant alleges that counsel was deficient for failing to move to quash the indictment. Applicant testified that counsel should have moved to quash the indictment because there was no proof he ever entered the dwelling. Counsel testified that she did not move to quash

the indictment as she did not feel there was any basis to do so. Counsel testified that she would expect the State to re-indict if the indictment was quashed. . An "indictment is a notice document."

State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). In considering a timely challenge to the sufficiency of an indictment, the trial judge should determine whether:

- (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and
- (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

Id. at 102-103, 610 S.E.2d at 500 (citing State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003); see also S.C. Code Ann. § 17-19-20 (2003) (sufficiency of indictment)).¹ A court reviewing an indictment for sufficiency should consider the indictment "on its face," and consider the events at trial." State v. Reddick, 348 S.C. 631, 636, 560 S.E.2d 441, 443 (Ct. App. 2002). The court must also observe the indictment with a practical eye in view of all the surrounding circumstances. Gentry, 363 S.C. at 103, 610 S.E.2d at 500 (citing State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)). In other words, a court should examine "the totality of the circumstances" to determine if Petitioner was cognizant of the crimes for which he was charged. Reddick, 348 S.C. at 636, 560 S.E.2d at 443. Moreover, a challenge to the indictment on the ground of insufficiency must be made before the jury is sworn. Gentry, 363 S.C. at 102, 610 S.E.2d at 500; S.C. Code Ann. § 17-19-90.

This Court finds that Counsel made no errors in advising Applicant on the sufficiency of the indictment and Applicant produced no evidence to support his allegations that the indictment is

¹ Section 17-19-20 provides:

Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. Code Ann. § 17-19-20.

defective. Furthermore, Applicant has failed to show that a challenge to the indictment would have been successful. This Court finds there is no reasonable probability that had Counsel challenged the sufficiency of the indictment, the result of the trial would have been different. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving he was prejudiced by any alleged error of Counsel. Therefore, this allegation is denied and dismissed.

Failure to Question Witness about what she told Applicant about Items

Applicant alleges that counsel was deficient for failing to question the witness about whether or not she told Applicant that those were her items in the yard. Applicant testified that he went to go retrieve his friend's stuff out of the yard that day because she asked him to do so. Applicant testified that counsel reviewed her trial strategy with him prior to trial.

“Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). “Accordingly, when 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)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “[D]ecisions primarily involving trial strategy and tactics may be made by trial

counsel. Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant’s behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.’ What motions to file and ‘whether to put on evidence so as to preserve the final word in closing argument’ are also strategic and tactical decisions to be made by trial counsel.” Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations omitted). Trial counsel’s strategy is reviewed under “an objective standard of reasonableness.” Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

Counsel testified that the strategy was to show that there was no evidence to suggest that Applicant ever entered the dwelling to retrieve any items. Counsel was attempting to cast doubt in the jury’s minds by highlighting the lack of DNA evidence and the drug deal that preceded the burglary. This Court finds that Applicant has failed to show any deficiency on the part of counsel or any resulting prejudice resulting therefrom. This Court finds that Applicant has failed to meet his burden and therefore dismisses this allegation.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty 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:

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

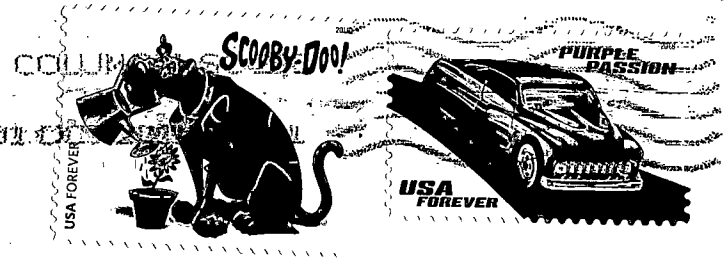
AND IT IS SO ORDERED this 14 day of September, 2019.



WILLIAM H. SEALS JR.
Presiding Judge

Maulon, South Carolina

McMAHAN & TAYLOR
ATTORNEYS
PO Box 5501
West Columbia, SC
29171



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

29211-193030

