

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM PICKENS COUNTY  
Court of Common Pleas  
HONORABLE EDWARD W. MILLER  
2018-CP-39-852

BRENT C. MCLAUREN, JR, SCDC# 166894

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RECEIVED**

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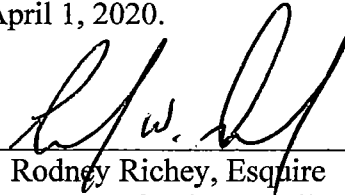
S.C. SUPREME COURT

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**NOTICE OF APPEAL**

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Brent C. McLauren, Jr. appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Edward W. Miller, Circuit Judge on October 22, 2019 an Order issued on January 31, 2020 and filed on February 18, 2020. The Appellant received notice of the judgment on April 1, 2020.



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STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS  
THE THIRTEENTH JUDICIAL CIRCUIT

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Brent C. McLauren, Jr., #166894, )

Case No. 2018-CP-39-852

Applicant, )  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

This matter comes before this Court by way of an Application for Post-Conviction filed on August 6, 2018, by Brent C. McLauren, Jr. (Applicant). The State (Respondent) filed its return on March 22, 2019, in which it moved to dismiss some of the grounds raised by Applicant and moved for a more definite statement. An evidentiary hearing in the matter was held before the undersigned on October 22, 2019, at the Greenville County Courthouse. Applicant was present and was represented by Rodney W. Richey, Esquire. Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf and called John W. DeJong, Esquire, as a witness. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet his requisite burden of proof and denies this application.

**PROCEDURAL HISTORY**

Applicant is presently incarcerated by the South Carolina Department of Corrections pursuant to orders issued by the Pickens County Clerk of Court. During its June of 2014 term, the Pickens County Grand Jury indicted Applicant for grand larceny (2014-GS-39-0499), entering a bank with the intent to commit robbery (2014-GS-39-0497), and armed robbery

(2014-GS-39-0498). Assistant Solicitor Brandi Batson Hinton, of the Thirteenth Circuit Solicitor's Office, prosecuted the case on behalf of the State. On April 19, 2019, the State dismissed the indictment for armed robbery. On May 18-19, 2015, Applicant proceeded to a jury trial with the Honorable John C. Hayes, III, presiding. Applicant was tried as a pro se defendant after the Honorable R. Scott Sprouse granted Applicant's motion to relieve DeJong as counsel and proceed as a pro se defendant, finding Applicant was aware of the dangers of self-representation and of the benefits of having legal representation. State v. McLaurin, No. 14-GS-39-497 (Pickens, S.C., Ct. General Sessions, February 17, 2015).<sup>1</sup> At the conclusion of trial, the jury convicted Applicant of grand larceny, for which Judge Hayes sentenced Applicant to imprisonment for ten years, and entering a bank with the intent to steal, for which Judge Hayes issued a sentence of imprisonment for thirty years, with both sentences running concurrently.

Applicant filed a notice of appeal on May 22, 2015. Appellate Defender Robert M. Pachak represented Applicant on appeal, and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and a petition to be relieved as counsel. On March 21, 2017, Applicant filed a pro se brief. The Court of Appeals affirmed the conviction and relieved Pachak as appellate counsel. State v. McLaurin, 2017-UP-376 (S.C. Ct. App. filed October 11, 2017), cert. denied, State v. McLaurin, S.C. Sup. Ct. Order dated November 2, 2017. The Remittitur was issued on November 22, 2017.

#### **CURRENT PROCEEDING**

On August 6, 2018, Applicant, filed an application for post-conviction relief, in which he alleged that he was being held in custody unlawfully based on the following grounds:

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<sup>1</sup> At trial, Judge Hayes discussed with Applicant his status as a pro se defendant, and then found Applicant freely, voluntarily, knowingly, and intelligently understood the benefits of having legal representation and the dangers of self-representation, and that Applicant desired to proceed with trial as a pro se defendant.

1. Constitutional violations
  - a. Fifth Amendment to the United States Constitution
  - b. Sixth Amendment to the United States Constitution
  - c. Fourteenth Amendment to the United States Constitution
  - d. Article One, Section Three of the South Carolina Constitution
  - e. Article One, Section Fourteen of the South Carolina Constitution
2. Ineffective assistance of trial counsel
  - a. "My attorney failed to conscientiously discharge his professional responsibilities while handling my case."
  - b. "My attorney failed to act as a diligent conscientious advocate on my behalf."
  - c. "My attorney did not have my best interest in mind while he was employed as my professional advocate."
  - d. "My attorney failed to serve my cause in good faith."
  - e. "My attorney neglected to do the necessary investigations to properly prepare for my case."
  - f. "My attorney did not try to have my case settled in a manner that would have been to my best advantage."
  - g. "My attorney, knowing that I was illiterate to the legal process and complexities of a trial as well as the fact that I was an elderly man with numerous health issues, and that I did not fully understand the consequences involved."
  - h. "My attorney never consulted with me about the possible consequences of proceeding to trial."
  - i. "My attorney failed to file any effective pre trial motions on my behalf."
  - j. "My attorney failed to inform me of the dangers associated with self-representation."
  - k. "Because of my attorney's gross neglect and numerous mistakes and legal errors, Applicant has been subjected to unjust trial and conviction."
3. Ineffective assistance of appellate counsel
  - a. Failed to raise issues on appeal
4. Prosecutorial misconduct

At the start of the evidentiary hearing before the undersigned on October 22, 2019, Respondent requested that Applicant specify for the record the grounds upon which he would move forward. Applicant affirmatively abandoned all allegations in the application, and stated that he would move forward upon one ground only: that DeJong was constitutionally ineffective for failing to conduct an adequate pre-trial investigation, which forced Applicant to represent

himself at trial. This Court finds that all allegations other than this one have been expressly waived and abandoned by Applicant and they will not be addressed in this order.

#### **Denial of Respondent's Motion to Dismiss**

After Applicant narrowed the action to a single issue, Respondent moved to dismiss pursuant to S.C. Code Ann. § 17-27-20(a) (2003) and § 17-27-70(c) (2003), arguing that there was no genuine issue of material fact and that Respondent is entitled to the summary dismissal of the application for post-conviction relief because, even if Applicant's allegations are true, they do not support a claim for post-conviction relief, as Applicant appeared pro se after knowingly, voluntarily, and intelligently waiving his right to counsel.

On February 17, 2015, Applicant and DeJong appeared before Judge Sprouse, and DeJong informed Judge Sprouse that Applicant was adamant that he wanted to represent himself in the case going forward and that DeJong had no reason to question Applicant's mental competency. After being sworn, Applicant affirmed to Judge Sprouse that he understood that it could be beneficial for him to have the counsel of an attorney. Applicant affirmed that he understood that it is inherently dangerous for a defendant to represent himself, although he disagreed with Judge Sprouse that it is inherently dangerous in all cases. Applicant informed Judge Sprouse that he had been studying law informally since 1968, that he had prevailed on a petition for the writ of habeas corpus, and that he knew his "way around a courtroom" because he had won many trials. Applicant assured Judge Sprouse that he did not have any mental health issues or physical disabilities that would prevent him from effectively representing himself. Applicant affirmed to Judge Sprouse that he understood that he would be held to the same standard as an attorney if he were to represent himself. Both Applicant and DeJong asked Judge Sprouse to allow DeJong to sit with Applicant during his trial, not in a representative capacity.

Applicant brought up on his own that he was not seeking hybrid-representation. When Judge Sprouse informed Applicant that he would grant his request to proceed as a pro se defendant, Applicant responded, "Praise the lord." Judge Sprouse allowed DeJong to continue to assist Applicant before trial due to the fact of Applicant's incarceration, which DeJong described at that hearing as his being a paralegal to Applicant. Judge Sprouse's order made it clear that DeJong was no longer representing Applicant. State v. McLaurin, No. 14-GS-39-497 (Pickens, S.C., Ct. General Sessions, February 17, 2015).

At the start of Applicant's trial, Judge Hayes questioned Applicant about his desire to proceed as a pro se defendant. Applicant affirmed to Judge Hayes that he understand that there are dangers in self-representation and that his case could benefit from having the advice of counsel. Then Applicant informed Judge Hayes that Applicant had formal legal training, "substantial legal expertise", and that he knew his way around a courtroom. Applicant's answers to Judge Hayes indicated that he would have preferred to hire private counsel if he had been able to avoid the \$155,000.00 bail, but that he preferred to proceed pro se over allowing an appointed attorney to represent him if he could retain private counsel.

Before this Court, Respondent argued that there is no controlling case law in which trial counsel has been found to have been ineffective based upon an applicant's decision that he had no choice other than to represent himself at trial due to the performance of trial counsel; instead, Respondent argued that authorities, such as Strickland v. Washington, 466 U.S. 668 (1984), and Hill v. Lockhart, 474 U.S. 52 (1985), allow an applicant to seek post-conviction relief if he maintains that his counsel's deficiency forced him to plead guilty rather than facing trial. Respondent maintained that, in reliance on United States v. Lawrence, 161 F.3d 250 (4th Cir. 1998) ("[t]he Sixth Amendment does not require a court to grant advisory counsel to a criminal

defendant who chooses to exercise his right to self-representation by proceeding pro se”), United States v. Mikolajczyk, 137 F.3d 237 (5th Cir. 1998) (holding that, as the defendant “had no right to standby counsel, it seems unlikely that standby counsel’s failure to assist could be a violation of his Sixth Amendment rights”), and United States v. Bova, 350 F.3d 224 (1st Cir. 2003) (nothing that the defendant did not have the right both to “represent himself and to enjoy the benefit of standby appointed counsel”), Applicant’s decision to move to relieve his counsel and proceed as a pro se defendant precludes Applicant from maintaining an application for post-conviction relief solely based upon a claim of the ineffective assistance of trial counsel.

Applicant argued that he was entitled to a PCR hearing because DeJong represented Applicant for a period of time before Applicant moved to proceed as a pro se defendant, and Applicant believed he had no choice but to represent himself due to DeJong’s failure to conduct a proper investigation. Upon questioning from this Court about Applicant’s affirmations to Judge Sprouse that Applicant had formal legal training and knew his way around a courtroom, Richey answered that he suspected that Applicant did not understand the consequences of proceeding as a pro se defendant and that Applicant may have embellished his legal ability.<sup>2</sup> Respondent cited the trial transcript, in which Judge Hayes again questioned Applicant before the start of trial about the dangers of self-representation, and noted that Applicant affirmed to Judge Hayes that he wanted to proceed to trial as a pro se defendant and stated that he would not later claim that he was not given proper warnings about the dangers.

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<sup>2</sup> Of note, the State brought to the attention of Judge Hayes at trial, before Judge Hayes found Applicant was aware of the dangers of self-representation, the fact that Applicant had previously been convicted of practicing law without being admitted by the South Carolina Supreme Court as an attorney in this State. During that trial, Applicant also proceeded as a pro se defendant. State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (S.C. Ct. App. 2002).

This Court denied Respondent's motion for the summary dismissal of the application and required the parties to proceed to an evidentiary hearing on Applicant's claim of ineffective assistance of counsel based upon DeJong's failure to conduct an adequate pre-trial investigation.

#### **Testimony at PCR Hearing**

Applicant first testified on his own behalf at the PCR hearing. He testified that he has suffered three strokes while being imprisoned within SCDC, and that the strokes have affected his memory. He remembered DeJong's representing him and that they had discussions about Applicant's criminal case. He testified that DeJong investigated the facts of Applicant's case and that Applicant asked him to investigate. When asked if Applicant believed, based upon the conversations with DeJong, that DeJong had actually done the investigation requested by Applicant, Applicant answered that he could not remember the content of their conversations. He then testified that he did not believe that DeJong had done any pre-trial investigation because DeJong was not interested in Applicant's case, and that Applicant therefore decided to try his own case. Applicant also testified that he wanted this Court to know of his deteriorating health condition while in SCDC.

On cross-examination, Applicant admitted that he had appeared before Judge Sprouse in advance of his trial and requested that he be allowed to proceed as a pro se defendant, and affirmed to this Court that Judge Sprouse questioned him extensively about that request. Applicant testified that he did not remember being questioned by Judge Hayes immediately before his trial about his status as a pro se defendant. When asked if there was some investigation Applicant wanted DeJong to do that he did not do, Applicant answered that he wanted competent counsel who would have been interested in handling his case. He testified that the majority of the witnesses who testified at trial did not provide favorable testimony for him, although he said that

they could have done so. He testified that there were many witnesses who could have provided favorable testimony but who did not show up at trial. He testified that these witnesses could have established that Applicant was not in the bank at the time of the robbery and that a majority of the witnesses did not remember seeing Applicant in the bank on the day of the robbery. He testified that there were no witnesses who were able to testify at trial that Applicant participated in the robbery.

Applicant also called DeJong as a witness. DeJong testified that he did not remember any conversations with Applicant about DeJong's conducting an investigation, but admitted that he and Applicant had many conversations. He testified that, from the very beginning of his representation, Applicant informed DeJong that he wanted to represent himself. DeJong testified that his role quickly transformed from that of an attorney into the role of a support person, and that he would provide legal cases and other legal research to Applicant upon Applicant's request. He testified that he did not remember Applicant asking him to contact any witnesses.

On cross-examination, DeJong testified that Applicant made it clear at the beginning of DeJong's representation that Applicant was not happy with him. He testified that Applicant was not happy when he was appointed to represent Applicant. He testified that Applicant told him that he had previously defended himself in a trial with success, and that Applicant was quite familiar with law. He testified that Applicant's desire to represent himself was an ongoing desire with Applicant, and that it did not come about suddenly during the representation. He testified that there was nothing in his conversations with Applicant that would have caused Applicant to feel that he had to represent himself. He testified that he explained to Applicant the dangers of self-representation, and summarized his advice to Applicant by repeating the phrase, "He who represents himself has a fool for a client." He testified that he did not have any interactions with

Applicant that caused him question Applicant's mental health or led him to suspect that Applicant did not understand the dangers of self-representation. He testified that he would have done as much investigation as possible if Applicant had decided that he wanted DeJong to continue the representation. When asked if he would describe his role at Applicant's trial as "standby counsel", DeJong testified that his role did not reach even that level. In his mind, he was essentially a paralegal to Applicant.

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

This Court has thoroughly reviewed the record in its entirety, including the transcript from Applicant's trial before Judge Hayes and the hearing on the motion to relieve counsel before Judge Sprouse. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. 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).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he 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. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, 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 the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "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). 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 Petitioner 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.

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. 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. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

***Counsel was constitutionally ineffective for failing to conduct an adequate pre-trial investigation.***

Applicant argues that DeJong performed an inadequate pre-trial investigation, and that this deficiency left Applicant with no choice but to represent himself as a pro se defendant at trial. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” *Id.* at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

This Court finds that Applicant has failed to establish any deficiency in DeJong's preparation for trial. DeJong testified that he began acting as an assistant for Applicant almost as soon as he was appointed, and that this practice was formalized in Judge Sprouse's order. Since Applicant had been adamant from the beginning of DeJong's representation that he did not want to continue the attorney-client relationship, DeJong testified that he did not do much preparation for trial. Applicant was unable to articulate at the PCR hearing any specific preparation or investigation that DeJong did not do that he should have done. Instead of putting before this Court evidence of DeJong's lack of preparation, Applicant speculated as to what some witnesses would have said at trial had they been called; however, since Applicant did not produce these witnesses at the PCR hearing, his speculation as to their usefulness in his defense is not sufficient to meet his burden in this action. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (instructing that an applicant for post-conviction relief "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness's failure to testify at trial.") (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)). At any rate, Applicant was representing himself at the time of trial, and had been a pro se defendant for approximately two months before trial began. By that point, the failure to acquire favorable witnesses for trial would have been his own.

This Court finds that Applicant's allegation that DeJong's alleged failure to investigate was the motivating factor in Applicant's decision to proceed to trial as a pro se defendant is not credible in light of the record and DeJong's testimony at the PCR hearing. Applicant's answers to both Judge Sprouse and Judge Hayes indicate that Applicant wanted to proceed as a pro se defendant because he trusted his legal ability over that of his appointed attorney. Applicant

rebuffed the attempts of the courts to appoint a different attorney in place of DeJong, which shows that Applicant was not motivated by dissatisfaction with DeJong or DeJong's performance.

This Court finds that counsel was not constitutionally ineffective for failing to conduct an adequate pre-trial investigation as Applicant has failed to show any deficiency in DeJong's performance and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

#### CONCLUSION

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

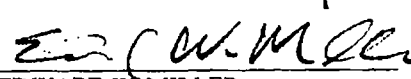
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


#### **IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 31 day of January, 2020.

  
EDWARD W. MILLER  
Presiding Judge

, South Carolina

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CLERK OF COURT  
PIEDMONT COUNTY  
SOUTH CAROLINA