THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No(s) 2019-CP-37-0315 > MERGER
2010-CP-37-0531

Timothy Blassingame, #213064 . . . . . Prose Appellant,

vs.

The State of South Carolina, ... Respondent.

NOTICE OF APPEAL

I, Timothy Blassingame appeals the Order [Judgment] of the Honorable R. Lawton McIntosh dated June 14, 2020. Appellant received written notice of entry of this Order [Judgment] on December 29, 2020.

2-19-21
DATE

/s/ Timothy Blassingame, Prose

Other Counsel of Record:
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
		2010-CP-37-0531
Timothy Blassingame, #213064,	)	
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 30, 2010. The Respondent made its Return on or about August 4, 2010. An evidentiary hearing into the matter was convened on March 14, 2011, at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Keith Denny, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Robert S. Sprouse, Esquire ("Counsel"). Applicant also presented testimony from Assistant Solicitor Lindsay Simmons, Major Steve Pruitt of the Oconee County Detention Center, Justin Diggs, and Jonathan Bryson. This Court had before it the records of the Oconee County Clerk of Court, the trial transcript, the appellate records, the Applicant's records from the South Carolina Department of Corrections, and exhibits introduced at hearing.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Oconee County Clerk of Court. Applicant was indicted for Distribution of Crack Cocaine (Cocaine Base) 3rd Offense (2009-GS-37-

0820). Robert S. Sprouse, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Alexander S. Macaulay. Applicant was found guilty and sentenced to thirty (30) years imprisonment.

A Notice of Appeal was filed. Applicant's appeal was dismissed by the South Carolina Court of Appeals in a written order dated April 15, 2010. The Remittitur was sent on May 7, 2010.

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

1. Prosecutorial misconduct
2. "Illegal use of evidence, violation of chain of custody, Rule 6 and 36."
3. Brady violation.
4. "Admission of false testimony + bolstering of state's witnesses + vouching for state's witness, improper comments."
5. "6th Amendment and due process violations, discrimination of jury venire because his race was excluded."
6. Ineffective assistance of counsel.
   a. "Failure to object to untimely witness list."
   b. "Failure to object to preserve for appellate review." (Mis.)
   c. "Failure to object to State's evidence that was not in the record." False Testimony
   d. "Failure to object to discriminatory jury venire."
   e. "Failure to subpoena witness and enter exculpatory evidence." (Statement)
   f. "Failure to investigate case and chain of custody."

In an Amended PCR Application Brief filed February 23, 2011, Applicant set forth the following additional grounds:

1. "Prosecutorial misconduct as evidenced by the prosecutor's improper comment."
2. "Conflict of interest as evidenced by trial counsel's failure to subpoena witnesses and enter exculpatory evidence." (Statement)

In an Amended PCR Application Brief filed February 25, 2011, Applicant set forth the following additional grounds:

1. "Trial counsel failed to enter favorable impeaching evidence."
2. "Trial counsel failed to investigate favorable impeaching evidence."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. ' 17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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, 300

S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Object to Racial Composition of Jury Panel

Applicant argues that Counsel should have challenged the racial composition of the jury venire because only three (3) of the thirty-six (36) potential jurors were black. Of the three (3), only one (1) was drawn during jury selection, and the juror was selected as an alternate. Assistant Solicitor Lindsay Simmons ("Simmons") has been employed in the Tenth Circuit since 2005. Simmons stated that having only three (3) black jurors in a jury pool would not be unusual in Oconee County. Simmons believed that there were probably about a dozen black jurors on any master list, but having only three (3) to seven (7) black jurors in any given jury pool would not be out of the ordinary. Counsel also stated that he did not consider the racial composition of the jury pool to be atypical. Counsel stated that in a typical jury pool of sixty (60) to seventy (70) potential jurors, typically only eight (8) or nine (9) would be black. Counsel noted that the three (3) black jurors did not come up in random jury selection. Counsel stated that he did not feel this was prejudicial to Applicant.

Based on the evidence before this court, I find that Applicant has failed to meet his burden of demonstrating that Counsel's failure to challenge the jury pool on the basis of racial composition was unreasonable under professional norms. Both Simmons and Counsel, attorneys experienced in

practicing in the area, stated that such a makeup was not unusual. As stated in State v. Patterson, 324 S.C. 5, 21, 482 S.E.2d 760, 767-68 (1997):

> In order to establish a prima facie violation of the fair cross-section requirement, the defendant must show that 1) the group excluded is a "distinctive" group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process.

While a racial group may be a distinctive group, Applicant has failed to demonstrate that the number of black jurors in the jury pool was not "fair and reasonable in relation to the number of such persons in the community" or that there was a "systematic exclusion of the group in the jury selection process." See State v. Ravenell, 387 S.C. 449, 459, 692 S.E.2d 554, 560 (Ct. App. 2010). Therefore, I find further that Applicant has failed to demonstrate prejudice in that had such a challenge been made, there is no evidence that it would have been successful.

Failure to Object to Comments by Solicitor

Applicant asserts that Counsel failed to object to comments by the solicitor at trial. Applicant specifically points to the solicitor's arguments at p. 156, lines 2-8 and at p. 158 where the solicitor argues regarding confidential informant James Walker's ("Walker") credibility. Applicant argues that these passages constitute improper vouching. "A solicitor's argument based on the record and its reasonable inferences is not error." State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990). "A solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record." Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). Counsel stated that he did not believe that the solicitor's comments constituted improper vouching and were not objectionable. I agree. I find that the solicitor did not

vouch in this matter but based her closing comments upon evidence in the record or inferences reasonably arising from that evidence. For example but not exclusively, I refer to Officer Crum's testimony found at pages 54, 55, 57, 59, 60, 63, 66, 67, 74, 75 and 83, also Mr. Walker's testimony found at pages 87, 88, 89, 92, 95, 98, 101 and 102. Therefore, I find Counsel's performance well within reasonable professional norms in this regard. Moreover, any objection would have been fruitless.

Chain of Custody

Applicant argues that Counsel should have objected to the drug evidence on the basis of chain of custody. Applicant's claim is based on testimony by Walker that he handed the narcotics from the transaction to Officer John Michael Crum ("Crum"). Both Crum and Officer Timothy Hunnicutt ("Hunnicutt") testified that Walker handed the narcotics to Hunnicutt and that Hunnicutt passed them to Crum. (Tr. p. 66, lines 14-16; p. 113, lines 1-17.) Applicant argues that the discrepancy between the testimony of Walker and that of Hunnicutt and Crum compromises the chain of custody. Such discrepancy raises an issue of credibility, not admissibility. See State v. Mathis, 359 S.C. 450, 465-466, 597 S.E.2d 872, 880-881 (Ct. App. 2004). I find Counsel's failure to object in this instance not unreasonable under professional norms.

Witness List/Prosecutorial Misconduct

Applicant further asserts that Counsel should have objected when the solicitor provided the State's witness list on the day trial commenced. Applicant relies on Rule 5(e)(2), SCCrimP. Rule 5(e), SCCrimP, addresses a notice of alibi. Alibi was not an issue in this case. Moreover, Counsel was aware of the witnesses that would be called in support of the State's case. When Counsel assumed representation, the solicitor and investigating officer Crum met with Counsel and reviewed

the State's evidence. Counsel was given an opportunity to observe the audio and visual recordings in the case. The solicitor stated that she provided Counsel with all names in the discovery and that Counsel had access to everything remotely relevant. Counsel confirmed that there were no surprises on the witness list. Based on the foregoing, I find Counsel's performance to be well within reasonable professional norms. Further, Applicant has pointed to no evidence or witness which would have been procured but for the alleged shortcoming. Therefore, I find that Applicant has failed to demonstrate ineffective assistance of counsel. I also find no evidence of vindictiveness which would support a claim of prosecutorial misconduct.

Failure to Present James Walker's Written Statement

Applicant asserts that Counsel erred in failing to enter the written statement of confidential informant James Walker ("Walker") into evidence. Walker, Applicant's cousin, testified at trial that Applicant gave him crack cocaine. Walker stated that, while they were in prison together, Applicant had asked him to write a statement denying that Applicant was the person he had received crack cocaine from. (Tr. p. 95, lines 3-20.) At trial, Walker disavowed the written statement and affirmed his trial testimony. (Tr. p. 95, line 21 – p. 96, line 10; p. 105, lines 11-19.) Counsel cross-examined Walker on the subject. (Tr. p. 101-103.) Counsel testified at PCR hearing that he placed the Walker's statement on an overhead projector so that the jury could see the document during his cross-examination. Counsel stated that the solicitor did not object to the statement for some minutes. Counsel stated that he chose not to enter the statement into evidence so as not to lose last argument, especially since the jury had seen the statement while it was displayed.

I find Counsel's performance to be well within reasonable professional norms. Counsel articulated a valid reason for choosing not to place the statement into evidence. See for example

Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992) (where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel). Moreover, any failure in this regard was harmless inasmuch as the jury saw the document and Walker testified to recanting his statement and his reasons for doing so.

Failure to Call Additional Witnesses

At PCR hearing, Applicant presented three (3) additional witnesses who he believes should have been called on behalf of the defense at trial. Walker testified at trial that he had copied a statement written by Applicant at Applicant's request. Walker stated that he complied because he "didn't want to lay in the cell knowing that my life could be in danger." (App. p. 95, lines 13-14. See also p. 103, lines 8-10.) Walker testified that he made complaints to jail staff. (App. p. 102, lines 20-25.) Applicant asserts that the testimony from additional witnesses - Major Steve Pruitt of the Oconee County Detention Center ("Pruitt") and former Oconee County inmates Justin Diggs ("Diggs") and Jonathan Bryson ("Bryson") – would have impacted the outcome of his trial.

Pruitt provided records of where Applicant and Walker were housed at the Oconee County Detention Center ("OCDC"). Walker was in Cell A from July 31, 2009, until October 2, 2009. Applicant was in Cell A from September 26, 2009 until October 29, 2009. Therefore, the two were in Cell A together from September 26, 2009, until October 2, 2009, a little less than one week. Walker's written statement is dated September 28, 2009.

Bryson and Diggs testified that they did not see any threats made to Walker by Applicant. Bryson estimated that Walker was in a cell with them for about three (3) months. Bryson stated that he saw Walker write a statement but did not see any coercion. Diggs stated that he, Applicant, and Walker were housed together for three (3) to four (4) months and that the group would play cards

together. Diggs and Bryson admitted their criminal convictions and that they did not observe Walker and Applicant the entire time. Notably, their estimates of time incarcerated together vary significantly from the jail's records. I find the testimony of Bryson and Diggs lacking credibility.

Counsel noted that Walker's testimony did not make mention of any specific threat made but rather was a blanket statement that he was afraid of consequences if he did not comply with Applicant's request to write the statement. Counsel did have concerns over an incident alleged to have occurred the weekend before trial wherein Applicant made a threatening call to Walker through a three-way phone call. (Tr. pp. 26-34.) It was agreed that incident would not be raised at trial. Counsel also noted that Applicant had not mentioned Diggs or Bryson as potential witnesses in their meetings. Counsel reported that Applicant told him that Walker wrote the statement to "make things right." After listening to the testimony presented at PCR hearing, Counsel still felt that preserving last argument was more important than the testimony offered from Pruitt, Diggs, and Bryson, especially since Walker did not testify about any specific threat. Counsel attacked Walker's credibility on cross-examination through, *inter alia*, evidence of drug use and his criminal record.

I find Counsel's performance in this regard not unreasonable under professional norms. I further find that even if Counsel should have known of and called the witnesses, the outcome of trial would not likely have been affected. Therefore, I find Applicant has failed to carry his burden in this regard.

Failure to Object to Testimony by Officer Crum and Walker

Applicant also argues that Counsel should have objected to testimony by Officer Crum that Walker said "thank you, thank you, I appreciate that," because the testimony was not accurate. Counsel stated that this statement was not grounds for an objection but provided fodder for an

argument on credibility. Counsel pointed out the inconsistency in his closing argument. (Tr. p. 165, lines 2-8.) Applicant also points to testimony by Walker about what was said on the video. (See for example Tr. p. 92, lines 16-17.) Counsel felt that any discrepancies between the testimony and the actual tape were factual disputes, and he used the audio tape as impeachment. The tape was played for the jury multiple times. I find Counsel's performance well within reasonable professional norms in this regard.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

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 Respondent.

AND IT IS SO ORDERED this 19 day of May 2011.

R. LAWTON MCINTOSH

STATE OF SOUTH CAROLINA COUNTY OF OCONEE	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
Timothy Blassingame, SCDC #213064, Applicant, v. State of South Carolina, Respondent.	)	Case Nos.: 2010-CP-37-0531 2019-CP-37-0315 **ORDER OF MERGER AND ORDER DENYING APPLICANT'S MOTION TO VACATE JUDGMENT PURSUANT TO RULE 60(b), SCRCP**

This matter comes before the Court by way of a post-conviction relief (PCR) action filed by Timothy Blassingame (Applicant) on April 30, 2010. After an evidentiary hearing, this Court issued an Order on May 26, 2011, denying the application on all grounds and dismissing the action with prejudice. On May 30, 2019, Applicant filed a motion to vacate this Court's Order of Dismissal pursuant to Rule 60(b), SCRCP. For the reasons set forth below, this Court denies Applicant's motion.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. During its July 2009 term, the Oconee County Grand Jury indicted Applicant for distribution of crack cocaine—third or subsequent offense (2009-GS-37-0820). On October 26, 2009, Applicant proceeded to a jury trial before the Honorable Alexander S. Macaulay. R. Scott Sprouse,[1] Esquire (Counsel) represented Applicant. Tenth Circuit Solicitor Christina Adams and Assistant Solicitor Lindsey Simmons

[1] The Honorable R. Scott Sprouse has since been elected to the Circuit Court bench.

prosecuted the case. On October 28, 2009, the jury convicted Applicant as indicted. Judge Macaulay sentenced Applicant to thirty years' imprisonment. Applicant filed a timely notice of appeal, but subsequently filed an affidavit indicating he wished to withdraw the appeal. By order filed April 15, 2010, the South Carolina Court of Appeals dismissed Applicant's appeal. The case was remitted back to the circuit court on May 5, 2010.

Applicant timely commenced this PCR action (2010-CP-37-0531) on April 30, 2010. The State submitted its return requesting an evidentiary hearing on August 4, 2010. On May 14, 2011, this Court convened an evidentiary hearing into the matter before the undersigned. Applicant was present at the hearing and represented by Keith Denny, Esquire. Assistant Attorney General Mary S. Williams appeared on behalf of the State. Applicant, Counsel, Major Steve Pruitt of the Oconee County Detention Center, Assistant Solicitor Lindsay Simmons, Justin Diggs, and Jonathan Bryson all testified at the hearing. On May 26, 2011, this Court issued an order denying the application on all grounds and dismissing the action with prejudice. Applicant, through PRCR counsel, filed a motion to alter or amend pursuant to Rule 59(e), SCRCP, which this Court denied by order dated June 28, 2011.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing a petition for writ of certiorari with the Supreme Court, raising the following issues:

> I. Did the PCR court err in holding that trial counsel's failure to introduce into evidence a statement by Walker, in which he admitted Petitioner did not sell him drugs, was not ineffective assistance of counsel because Walker's credibility was the key issue at trial as he provided the prosecution with the only evidence against [Applicant]?
>
> II. Did the PCR court err in determining trial counsel provided effective assistance where trial counsel failed to introduce witnesses who would have refuted the prosecutor's key

witness that he felt his life was in danger when he signed a statement recanting his statement to law enforcement?

III. Did the PCR court err in determining the prosecutor did not improperly bolster a key prosecutorial witness when her closing argument claimed the witness was credible because he did not hide the drug buy money despite the ability and opportunity to do so, but no evidence in the record supported this assertion?

IV. Did the PCR court err in determining trial counsel rendered effective assistance by failing to object to the prosecutor eliciting known false testimony from two witnesses, one of whom provided the only direct evidence against [Applicant]?

The State filed its return to the petition on June 18, 2012. On September 18, 2013, the Court issued an order denying certiorari. The case was remitted back to the circuit court on October 7, 2013.

On March 30, 2017, Applicant filed a *pro se* motion for relief from judgment pursuant to Rule 60(b)(4). Applicant filed an additional *pro se* 60(b) motion on May 26, 2018. On November 27, 2018, the State filed a motion to strike the *pro se* motion pursuant to Rule 11, SCRCP. This Court issued an order striking the motion from the record on December 4, 2018.

On May 30, 2019, Applicant filed another *pro se* 60(b) motion for relief from the 2011 Order. However, because he filed the motion with a civil action coversheet as an inmate petition, the Clerk of Court opened a new file under docket number 2019-CP-32-0315. On November, 13, 2019, Applicant filed a motion for default judgment, which this Court denied by Form 4 on December 13, 2019. Applicant appealed. On January 23, 2020, the Supreme Court issued an order dismissing the appeal without prejudice to petitioner's ability to timely seek review once a final decision or judgment is filed in the circuit court. The case was remitted back to the circuit court on February 13, 2020.

II. ORDER OF MERGER

As discussed above, Applicant in the above-captioned matters has two PCR actions pending with this Court—2010-CP-37-0531 and 2019-CP-37-0315. Since an applicant is generally not permitted to have multiple PCR proceedings challenging the same convictions,[2] this Court finds the two proceedings should be merged. This Court therefore directs the Oconee County Clerk of Court to merge the two cases, with docket 2010-CP-37-0531 being the surviving case. Docket number 2019-CP-37-0315 shall be dismissed upon the merger.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

Applicant makes his motion pursuant to Rule 60(b)(4), SCRCP, alleging this Court's Order of Dismissal is " 'void' because the PCR court err[ed] in failing to give a credibility determination for [A]pplicant's PCR witness–'Major' Francis Steve Pruitt, Jr." He claims this alleged error is "substantially uncontested by the record" and that "no sufficient record evidence of the [PCR] court's 'credibility determination' of [this witness] . . . pursuant to S.C. Code Ann. § 17-27-80 and Ru;e 52(a), [SCRCP,] exist[s] within the court's record." Applicant further asks this Court to "reopen this claim . . . for a fair ruling on the above-stated witness." For reasons set forth below, this Court denies Applicant's motion.

James Walker, Applicant's cousin, shared a cell with Applicant at the Oconee County Detention Center (OCDC) between July and October of 2009. At the time, Walker was working with the narcotics unit of the Seneca Police Department. Walker was provided with $40 to make an undercover transaction with Applicant for crack cocaine, but did not end up needing the money

[2] *See Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (PCR rules "contemplate adjudication on the merits of the original petition, one bite as the apple as it were"); *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981) (successive applications for post-conviction relief strongly disfavored); *see also* S.C. Code Ann. § 17-27-90 ("All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application.").

because Applicant gave Walker the crack. The transaction was recorded via audio and video. Applicant was subsequently indicted for distribution of crack cocaine—third or subsequent offense.

Walker testified at trial that Applicant gave him the crack cocaine. He further stated that, while they were in prison together, Applicant asked him to write a statement denying Applicant was the person he received the crack cocaine from. At trial, Walker disavowed the written statement and affirmed his trial testimony. Applicant alleged in his PCR that Counsel was ineffective for failing to enter Walker's written statement into evidence.

At the PCR hearing, Counsel testified he placed Walker's written statement on an overhead projector during cross-examination, allowing the jury to examine it. Counsel stated that he chose not to enter the statement into evidence so as not to lose last argument, especially since the jury had seen the statement while it was displayed. Counsel further testified he was able to attack Walker's credibility on cross-examination through evidence of drug use, Walker's extensive criminal record, and a possibility of leniency by the State in exchange for Walker's testimony.

Applicant also presented the testimony of two individuals who were cellmates with Walker and Applicant at OCDC. They stated they never saw Applicant threaten Walker. Major Pruitt also testified, providing this Court with the OCDC Inmate Housing Reports for Walker and Applicant. Pruitt testified about the procedures used by the detention center when an inmate alleges he has been threatened by another inmate. Pruitt testified that if there were a complaint of a threat, the inmates would be separated; however, he was not aware of Walker identifying a specific threat or a specific individual. Applicant alleged Counsel was ineffective because these witnesses could have refuted Walker's testimony that he felt his life was in danger when he signed the above-mentioned statement recanting his initial statement to law enforcement. After listening to the

testimony presented at PCR hearing, Counsel still felt that preserving last argument was more important than the testimony offered from Pruitt and the former cellmates especially since Walker did not testify about any specific threat.

This Court found the testimony of the cellmates was not credible because their estimations of the time they were incarcerated with Applicant and Walker varied significantly from the jail's records provided by Major Pruitt. **By extension, this Court found Major Pruitt's testimony more credible.** Additionally, Counsel testified that Applicant never mentioned the cellmates as potential witnesses for trial. Counsel stated that he did not consider calling anyone from the jail to discuss the relationship between Walker and Applicant because Counsel felt it was a situation where Walker "felt bad that he had sold his cousin down the river to get money from the police department" and that was what Counsel wanted to project. This Court found Applicant failed to show this strategy was unreasonable under prevailing professional norms or that Applicant was prejudiced by Counsel's decision not to elicit testimony from these witnesses.

Applicant does not contend this Court failed to address his allegation regarding Counsel's failure to call Major Pruitt has a witness at trial. Citing Rule 52(a), SCRCP and section 17-27-80 of the South Carolina Code—he complains only that **this Court did not explicitly address the credibility of Major Pruitt within its ruling on that particular issue.** Section 17-27-80 states that "[t]he court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

Because this Court properly made specific findings of fact and conclusions of law in its order of dismissal as to all issues presented at the evidentiary hearing, this Court finds Applicant's assertion the order is insufficient—solely because it did include a credibility finding as to Major Pruitt—to be without merit, particularly in light of the near eight-year delay between the issuance

of the order and the filing of this motion.[3] *See* Rule 60(b), SCRCP (stating that the motion "shall be made within a reasonable time..."). This Court finds the purpose of Rules 52(a) and section 17-27-80—issue preservation—was clearly satisfied in Applicant's case. Our Supreme Court has stated that

> Trial courts, sitting without juries in an action at law, write their findings specially and separately "to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system."

In re Treatment & Care of Luckabaugh, 351 S.C. 122, 132–33, 568 S.E.2d 338, 343 (2002) (citing *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C. 1980)).

The Supreme Court has consistently vacated and remanded PCR judgments that do not contain findings on issues presented. *E.g.*, *Bryson v. State*, 328 S.C. 236, 493 S.E.2d 500, 500 (S.C. 1997); *McCullough v. State*, 320 S.C. 270, 464 S.E.2d 340, 340 (S.C. 1995); *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (S.C. 1992); *McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (S.C. 1991); *Fishburne v. State*, 427 S.C. 505, 517, 832 S.E.2d 584, 590 (2019); *Simmons v. State*, 416 S.C. 584, 788 S.E.2d 220 (2016). The Supreme Court clearly could have done so in Applicant's case had the order been insufficient for purposes of certiorari review.

[3] Applicant includes in his motion a section titled "Equitable Tolling/Due Diligence" wherein he lists the dates various pleadings and orders were filed in the instant action and in his federal habeas corpus action. This Court would note that federal habeas actions are irrelevant for purposes of determining the timeliness of filing an action or motion in a post-conviction relief action in state court. Applicant filed his initial 60(b) motion—which this Court struck from the record—four years after the remittitur was issued from his PCR appeal. The instant 60(b) motion was filed two years later. The timeliness issue is nonetheless moot because this Court is addressing this motion on the merits.

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. In *Teague v. Lane*, the United States Supreme Court explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." 489 U.S. at 309. In *Mackey v. United States*, 401 U.S. 667, 691 (1971), Justice Harlan wrote:

> Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. at 690–91 (Harlan, J., concurring in judgments in part and dissenting in part). Seven years after *Mackey*, the South Carolina Supreme Court quoted Justice Harlan with approval in *Anderson v. Leeke*, 271 S.C. 435, 441-42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his PCR action—which was dismissed over ten years ago—is contrary to the recognized need for finality of litigation.

IT IS THEREFORE ORDERED that Applicant's motion to vacate this Court's Order of Dismissal pursuant to Rule 60(b), SCRCP, is **DENIED.**

AND IT IS SO ORDERED this 13 **day of** January, **2020.**

R. LAWTON MCINTOSH
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

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WENDY C. BURTON
CLERK OF COURT

2010-CP-37-0531
2019-CP-37-0315