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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Darius Ransom-Williams (#351629) v. State of South Carolina
Case No: 2017-CP-38-01281

George M. McFadden, Circuit Court Judge

Case No. 2017-CP-38-01281

Darius Ransom-Williams,(#351629) Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Darius Ransom-Williams appeals the Order of Dismissal of the Honorable George M. McFadden, Jr. dated March 30, 2021. Appellant received written notice of entry of this Order on April 14, 2021.

April 20, 2021

s/ *C. Bradley Hutto*
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STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Darius Ransom-Williams, SCDC #351629, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2017-CP-38-01281 **ORDER OF DISMISSAL**

This matter comes before the Court by way of Applicant Darius Ransom-Williams's post-conviction relief (PCR) application filed on September 26, 2017, and received by the South Carolina Attorney General's office on October 2, 2017. Respondent the State of South Carolina (Respondent) served its return to the application on February 9, 2018, and requested an evidentiary hearing for the claim of ineffective assistance of counsel and moved for a more definite statement as to all other allegations.[1] Applicant filed an amended application on February 19, 2019. An evidentiary hearing was convened before this Court on February 3, 2020, at the Dorchester County Courthouse. Applicant was present and represented by C. Bradley Hutto, Esquire. Respondent was represented by Assistant Attorney General Sara E. Gunton.

After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof in establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

[1] Respondent moved for a more definite state on Applicant's allegations of "violation of due process" and "inappropriate contact between the State and defendant".

PROCEDURAL HISTORY

These charges resulted from an incident on July 25, 2011, where Applicant broke into sixty-one year old, George Harrison's home. Applicant demanded money from Mr. Harrison and took twenty dollars and a cell phone from him. Applicant beat Mr. Harrison with an axe handle, hitting him in the head and the face, and knocked him to the ground. After Applicant left, Mr. Harrison made it to the home of a neighbor, who took him to a hospital in Orangeburg, where after he was immediately taken to Palmetto Richland Hospital. As a result of the beating, Mr. Harrison spent fifty days in the hospital. Mr. Harrison had an operation on his face and was treated for a fractured skull, a fractured jaw, and bleeding on his brain.

Applicant is presently confined in the South Carolina Department of Corrections. During its December 2011 term, the Orangeburg County Grand Jury indicted Applicant for burglary – first degree (2012-GS-38-0114) and attempted murder (2012-GS-38-0124). First Circuit Assistant Solicitor Donald N. Sorenson prosecuted the case. Assistant Public Defenders Mark Wise and John Stroud represented Applicant. On July 16, 2012, Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson. After a three-day trial, the jury found Applicant guilty, as indicted, of burglary – first degree and guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). On July 18, 2012, Judge Dickson sentenced Applicant to imprisonment for thirty years for first degree burglary and twenty years for the ABHAN charge, to be served concurrently.

There was a significant delay in the delivery of the trial transcript. The court reporter present at trial retired, and the court reporter's tapes and notes were delivered to Court Administration. Some tapes proved to be inaudible while others were missing, resulting in the case being remanded for reconstruction of the jury selection and motion under *Batson v. Kentucky*, 476

U.S. 79 (1986) and the closing arguments. The reconstruction hearing was held before Judge Dickson. Applicant's trial counsel, Mark Wise was present, as was Donald N. Sorenson, who prosecuted the case. Applicant's co-counsel, John Stroud, was not present, but Mr. Wise indicated he had consulted with Mr. Stroud prior to the hearing. On January 16, 2014, Judge Dickson issued an order finding the reconstructed proceedings should be included on the record on appeal and was sufficient for appellate review. Applicant filed a motion pursuant to Rule 59(e), SCRCP. The motion was denied by Judge Dickson by written order dated January 31, 2014.

Applicant filed a timely notice of appeal. Sheila M. Bias, Esquire, and Chief Appellate Defendant Robert M. Dudek, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal (Appellate Case No. 2012-212566). On January 20, 2016, the Court of Appeals affirmed Applicant's conviction in an unpublished opinion. *State v. Ransom-Williams*, Op. No. 2016-UP-021 (S.C. Ct. App. 2016). Applicant petitioned for a rehearing. On February 19, 2016, the court denied the petition. Applicant subsequently filed a petition for writ of certiorari on March 18, 2016 (Appellate Case No. 2016-000590). The Supreme Court of South Carolina denied the petition for writ of certiorari on October 20, 2016. The remittitur was issued on October 24, 2016, and the case was returned to the circuit court.

CURRENT PROCEEDING

In his original application for post-conviction relief, Applicant raised the following claims:

1. "Ineffective assistance of counsel";
2. "Violation of due process"; and
3. "Inappropriate contact between the State and Defendant"

Applicant simply requested "new trial" as relief sought.

Applicant subsequently amended his application on February 19, 2019, supplementing the aforementioned allegations as follows:

1. "Counsel failed to have Applicant's statements suppressed at trial" and

2. "Investigators improperly interrogated Applicant when he had expressly asked for an attorney".

At the beginning of the evidentiary hearing, counsel for Applicant informed the Court he would proceed forward with two issues: 1) a statement made by Applicant during the investigation, after he had asked for the counsel and 2) the issue of the trial record. Applicant's counsel stated that because the record had to be reconstructed and some portions were missing, Applicant's due process rights had been violated.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified he was arrested and taken to a sheriff-investigation room in Orangeburg where he met with Lieutenant Shumpert of the Orangeburg County Sheriff's Office. Lieutenant Shumpert attempted to discuss with him a crime committed in Orangeburg earlier that week. Applicant testified he told the Lieutenant he wanted a lawyer, and Lieutenant Shumpert read his rights to him. Applicant explained he was then transferred from the Orangeburg detention center to the Bamberg detention center.

As to Applicant's allegation regarding statements made without the presence of an attorney, Applicant testified that Detective Shumpert, Investigator Gillard of the Orangeburg County Sherriff's Office, and Applicant's mother, visited him in Bamberg the next morning. He further stated, he had not had a chance to talk to a lawyer yet. During this meeting, Applicant's mother became very upset and was removed to another room. Applicant testified he repeatedly told officers, "I don't know what you talking about. I don't know what you talking about," and asserts he again asked for a lawyer. Applicant claims the officers continued to tell him he was lying. Applicant explained, after witnessing his mother become upset, he told the officers "If you say I did it, I did it. Just leave me". Applicant also stated the Lieutenant wrote out a series of

questions and Applicant conceded he responded to all questions, claiming he told officers what he needed to tell them to end the interview.

Applicant additionally testified, after the trial, he found out the transcript was without the jury selection portions and opening and closing arguments. When questioned by PCR counsel about jury selection and whether there were two different juries selected, Applicant stated "After we picked the jury I think they did, like, a restroom break or a lunch break. I don't know what exactly happened. But I know we came back. They was striking my jury. Now, the second jury, I didn't pick the second jury at all." Respondent objected to this allegation as one not raised in the application and raised directly on appeal.

Trial Counsel Testimony

Mark Wise (hereafter "Counsel") also testified at the evidentiary hearing. On direct, Counsel testified he prepared for trial by speaking to Applicant's mother to confirm what Applicant had said about the incident and researched the issues surrounding the statement Applicant made to Officers. Counsel also testified Applicant asked for a lawyer the night of his arrest, but Counsel was not present, as he had not yet been assigned to Applicant's case. Counsel testified he believes the statement issue was properly preserved and raised to the Court during the pretrial hearing through Lieutenant Shumpert. Counsel stated he believed Applicant should have had the assistance of a lawyer during the second interrogation when deciding whether to reconvene the interview or not. Counsel also testified he believes he very clearly raised the issues under state law regarding Applicant's right to counsel during trial. Counsel stated he did not recall whether he argued the Sixth Amendment issues at trial.

PCR Counsel then questioned Counsel on whether the statement did come into evidence. Counsel stated it did; however, Counsel could not recall whether the statement was addressed in

closing and did not have a transcript of the closing argument. Counsel was then questioned about whether there was a *Batson* issue with the jury. Counsel did not immediately recall whether there were two juries. Counsel stated he had heard Applicant's testimony regarding the juries and reiterated there is no transcript of the jury striking or the closing arguments. Counsel further testified there was a hearing in order to reconstruct the transcript. Counsel stated that when he was called upon to be part of the appeal to help gather the record, he learned there was not a transcript of the entire proceeding. Upon checking his notes, Counsel was able to confirm there were two juries.

During cross-examination, Respondent pointed out there were two issues raised on appeal: one dealing with the voluntariness of the subject statement and the second dealing with the reconstruction of the trial transcript. Respondent also noted there was a transcript of the trial that was sufficient to be put up on direct appeal and ruled on[2]. Counsel disagreed with the assessment that the reconstruction of the transcript was good enough for an appeal.

Assistant Solicitor Testimony

Assistant Solicitor Donald Sorenson of the office of the solicitor for the First Judicial Circuit was the lead prosecutor on the underlying case. Mr. Sorenson also testified at the evidentiary hearing. Mr. Sorenson stated he became aware through the attorney general handling the direct appeal that some of the court reporter's notes or tapes were missing. He further testified there was no other recordings of the testimony at trial as the Orangeburg courthouse is not equipped with any other way of recording other than through the court reporter. Mr. Sorenson stated that he did not have knowledge of any existing transcripts and to his knowledge the missing portions of the transcript have never been able to typed up or found.

[2] *State v. Ransom-Williams*, Op. No. 2016-UP-021 (S.C. Ct. App. 2016).

Closing Arguments

Respondent noted in closing that all of the allegations raised during the evidentiary hearing had been raised and ruled on, on direct appeal. Respondent further elaborated that though the trial transcript was reconstructed, it was adequate for appellate review. Respondent stated there had been no testimony to the issue of whether or not Counsel was or was not ineffective in anything that he did during his course of representation and in summary Respondent believed there were no issues raised that were sufficient for post-conviction relief.

PCR Counsel responded stating: 1) Mr. Wise did testify that he did not raise a Sixth Amendment challenge to the statement coming in and 2) PCR Counsel does not believe he can properly determine or argue whether there was anything done ineffectively during the proceeding without a full transcript. Furthermore, PCR Counsel asserted Applicant's due process rights were violated because PCR Counsel, as the reviewing attorney, could not review the full transcript, because it doesn't exist.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety, including the Clerk of Court records regarding the subject convictions, the amended application for post-conviction relief, the reconstructed trial transcript, and Applicant's appellate records. 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. After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof in establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80 (2014).

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 or due process violations.

Applicant alleges his trial counsel was ineffective for failing to keep Applicant's statements made during questioning by law enforcement suppressed at trial. This Court finds counsel was not deficient because Applicant's statements were made voluntarily. The Court further finds the issues raised at the evidentiary hearing were addressed and ruled upon by the South Carolina Court of Appeals in *State v. Ransom-Williams*, holding:

> [t]he circuit court properly held that *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981), did not mandate the suppression of Appellant's statements. *See In re Tracy B.*, 391 S.C. 51, 61, 704 S.E.2d 71, 75–76 (Ct. App. 2010) ("Once an accused has invoked his right to have an attorney present during custodial interrogation, he may not be subjected to further police interrogation 'unless the accused himself initiates further communication, exchanges, or conversations with the police.'" (quoting *Edwards*, 451 U.S. at 484–85 (1981))); *id.* at 65, 704 S.E.2d at 78 ("The United States Supreme Court has stressed 'the *Edwards* rule is not a constitutional mandate, but judicially prescribed prophylaxis.'" (quoting *Maryland v. Shatzer*, 559 U.S. 98, 105 (2010))). Additionally, we find the circuit court correctly determined that Appellant's inculpatory statements were made voluntarily. *See State v. Miller*, 375 S.C. 370, 378, 652 S.E.2d 444,

> 448 (Ct. App. 2007) ("The [circuit court] determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence."); *id.* ("On appeal, the conclusion of the [circuit court] as to the voluntariness of a statement will not be reversed unless so erroneous as to show an abuse of discretion."); *id.* at 378–79, 652 S.E.2d at 448 ("When reviewing a [circuit court]'s ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the [circuit court]'s ruling is supported by any evidence.").

Op. No. 2016-UP-021 (S.C. Ct. App. 2016). This Court finds this allegation should be denied and dismissed as Applicant has not established any constitutional violations or deprivations which would require this Court grant the relief requested in his application, nor has Applicant suffered any prejudice by Counsel's alleged failure.

Ultimately, the appellate court found the statement was made voluntarily and properly admitted as evidence. This Court further finds trial counsel did make a motion to suppress the statement and the trial court ruled on and denied that motion. This allegation was also raised and ruled on, on direct appeal. As such, Applicant has not shown what else counsel could have discovered or done that would have made the statement inadmissible. Therefore, counsel was neither deficient nor prejudicial under the *Strickland* standard for failing to suppress the statement. This Court finds Applicant cannot establish counsel was ineffective, and this allegation should be denied and dismissed with prejudice.

Applicant also alleges his due process rights were violated, resulting from a deficiently reconstructed trial transcript. This Court finds Applicant did not suffer any due process violation as a result of the need for a reconstructed trial transcript. Though Applicant's trial counsel testified at the evidentiary hearing he did not believe the reconstructed transcript adequate to be put up on

direct appeal, this Court emphasizes the Court of Appeals holding affirming the records as sufficient for appellate review.[3]

Additionally, discretion in determining how to proceed with a reconstruction or an unavailable transcript lies with the trial court. *Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 658, 726 S.E.2d 9, 13 (Ct. App. 2012). This Court acknowledges that a reconstruction hearing will never be so effective as to provide a verbatim recreation of every question and response elicited during the original hearing. When a transcript has been lost or destroyed, the Court may remand to have the record reconstructed so as to allow for meaningful appellate review. *Whitehead v. State*, 352, S.C. 215, 574 S.E.2d 200 (2002); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). In the instant case, there was a reconstruction of the transcript. The trial court was satisfied with the record and the unavailability of the tapes. This Court therefore finds this allegation should be denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief requested

[3] *See Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 656, 726 S.E.2d 9, 12 (Ct. App. 2012) ("[T]he reconstructed record must allow for meaningful appellate review."); *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) (explaining our state aligned with the majority of jurisdictions that hold the inability to prepare a complete transcript, in and of itself, does not necessarily present a ground for reversal); *Id.* at 325, 644 S.E.2d at 273 ("Before a defendant can establish that he is entitled to a new trial on the basis of an inadequate reconstructed record, he must identify a *specific* appellate claim that this court would be unable to review effectively using the reconstructed record." (brackets omitted) (emphasis added) (quoting *Harris v. Comm'r of Corr.*, 671 A.2d 359, 363 (Conn. App. Ct. 1996))); *Sweat v. Crawford*, 292 S.C. 324, 327, 356 S.E.2d 147, 149 (Ct. App. 1987) (finding omissions from the record did not prejudice appellant because the evidence included in the record sufficiently supported the findings of fact made by the referee).

in his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notifies the Applicant that he must file and serve a notice of appeal within thirty days from post-conviction relief 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), an Applicant has the 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, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

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~~ 30th day of March, 2021.

South Carolina

GEORGE M. MCFADDIN, JR.
Presiding Circuit Court Judge
First Judicial Circuit