

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

FEB 09 2022

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Edgar W. Dickson, Circuit Court Judge

Case No. 2017-CP-38-00519

Justin Bradley #307820.....Applicant/Appellant

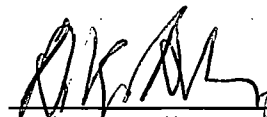
v.

State of South Carolina.....Respondent/Respondent

**NOTICE OF APPEAL**

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on December 23, 2021. Appellant received written notice of the Order of Dismissal entered on December 23, 2021, by mail on January 7, 2022. A copy of the Order of Dismissal appealed from is attached.

February 7, 2022



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STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

Justin Bradley, #307820, )  
Applicant, )

v. )

State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
THE FIRST JUDICIAL CIRCUIT

FEB 09 2022

S.C. SUPREME COURT

Case No. 2017-CP-38-00519

ORDER OF DISMISSAL

CLERK OF COURT  
ORANGEBURG, SC

FEB 09 2022

FILED FOR RECORD  
WINNIE B. CLARK

The above-captioned matter is before the court pursuant to a post-conviction relief (PCR) application filed by Justin Bradley (Applicant) on April 10, 2017. An evidentiary hearing convened on December 12, 2017, at the Dorchester County Courthouse before the Honorable Kristi L. Harrington. Applicant was present at the hearing and represented by Arthur Aiken, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Minh Wyman (Counsel), Esquire, was also present and testified.

As Judge Harrington is no longer on the bench, this Order was sent to the undersigned for signature in the undersigned's capacity as Chief Administrative Judge by agreement of the parties. As noted above, the Court has reviewed the transcript of the evidentiary hearing, at which no exhibits were introduced and only two witnesses testified. The Court has also thoroughly reviewed the record in this case including the application, the State's return, the guilty plea transcript, and Applicant's appellate records. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies relief.

ATTEST: TRUE COPY  
*Winnifred B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

## I. PROCEDURAL HISTORY

In May 2016, the Orangeburg County Grand Jury indicted Applicant for armed robbery (2016-GS-38-0198). Applicant was also charged with possession of cocaine.<sup>1</sup> Assistant Public Defender Minh Wyman represented Applicant. Assistant Solicitor Josh Edwards prosecuted the case.

The charges arose out of an incident that occurred on November 16, 2015, in which Applicant approached the victim, Aleric Cann (Cann), at a gas station and asked for a ride to a house a few block away. (Tr. 7). When Cann pulled up to the house, Applicant offered to show him a dog for sale in the back yard. (Tr. 8). After Cann exited the car, Applicant approached Cann and asked for his change. (Tr. 8). Cann replied he did not have anything for Applicant, and Applicant pulled out a revolver and took Cann's money and cellphone. (Tr. 8). Cann returned to the gas station and called police. (Tr. 8). The clerk at the gas station identified Applicant by his alias, and investigators eventually learned Applicant's real name. (Tr. 8). Investigators then prepared a photo lineup from which Cann identified Applicant as the robber. (Tr. 8). Applicant was arrested at his home one month later, at which time officers discovered a small quantity of cocaine in his bedroom. (Tr. 8, 12).

On May 24, 2016, Applicant pleaded guilty pursuant to Alford v. North Carolina<sup>2</sup> to armed robbery before the Honorable D. Craig Brown. In exchange for Applicant's Alford plea, the State dismissed the possession of cocaine charge *nolle prosequi*. Judge Brown sentenced Applicant to imprisonment for eighteen years for armed robbery.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on July 22, 2016, for failure to provide a sufficient explanation as required by

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<sup>1</sup> Based on the records available on the Orangeburg County Public Index, it does not appear Applicant was ever indicted by the grand jury on this charge.

<sup>2</sup> 400 U.S. 25 (1970).

Rule 203(d)(1)(B)(iv). State v. Bradley, Appellate Case No. 2016-001166 (S.C. Ct. App. filed July 22, 2016). The remittitur returned to the circuit court on August 10, 2016.

## II. ALLEGATIONS

In his PCR application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
  - a. "Counsel failed to investigate the relevant facts and circumstances of [Applicant's] case – that this was a drug deal and that [Applicant] was being robbed."
  - b. "Counsel did not object to nor preserve anything for appeal."

At the evidentiary hearing, Applicant proceeded on the allegation regarding Counsel's failure to investigate. Applicant did not present any evidence or testimony that Counsel failed to object or preserve any issues for appeal. Therefore, this Court dismisses Applicant's allegation Counsel failed to object or preserve any issues for appeal because Applicant presented no evidence on this issue. The remaining issue is analyzed fully below.

## III. SUMMARY OF TESTIMONY

Applicant testified he told his attorney to contact Veronica or Vermena Fields (Fields)<sup>3</sup> and Germane Coulter, as witnesses who were potentially helpful to Applicant's defense. Applicant testified he spoke to Coulter, who said he was never contacted by Counsel's office. Applicant maintained he left the gas station with the victim and an unidentified third party robbed Applicant of his phone and marijuana. Applicant testified the victim then returned to the gas station and lied, saying Applicant robbed the victim when it was Applicant who was robbed by the unidentified person. Applicant acknowledged neither Fields nor Coulter were present during the robbery itself, and their testimony could only establish Applicant never had "a

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<sup>3</sup>In the transcript of the PCR hearing, Ms. Fields is alternately referred to as "Veronica" and "Vermena."

problem” with the victim. Applicant also agreed Counsel told him she had been unable to reach Coulter at the number Applicant provided.

Counsel testified she hired a private investigator to review Applicant’s case and find Applicant’s potential witnesses. Counsel testified the investigator was unable to reach Germane Coulter, for whom Applicant gave her office contact information, and the investigation lead only to dead ends. Counsel testified Applicant never gave her the name “Vermena” Fields as a potential defense witness, but Fields was the clerk at the gas station where Applicant and the victim met before driving off together. Counsel stated Fields gave a statement to law enforcement. Counsel testified she reviewed all the evidence and discovery with Applicant, and she was prepared to go to trial. She testified Applicant appeared to understand their conversations and took part in them.

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

This Court has reviewed the evidence presented at the evidentiary hearing, observed the witnesses, evaluated their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject conviction, as well as the plea transcript. This Court finds the combined record of the plea transcript and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code.

Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). When alleging counsel was constitutionally ineffective, an applicant must prove “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 v. Washington, 466 U.S. 668, 686 (1984). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove 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 Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. 474 U.S. 52 (1985); cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58-59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372.

These 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. at 686.

#### **Ineffective Assistance of Plea Counsel for Failure to Investigate**

The Court finds credible Counsel’s testimony she engaged a private investigator to track down the one witness identified by Applicant, Germane Coulter, but she was unable to locate him. The Court also finds credible Counsel’s assertion Applicant never mentioned the witness Fields as a potential defense witness.

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation

of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22 (2003) Moreover, defense counsel’s alleged failure 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, 496 S.E.2d 415 (1998). “The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” State v. Glover, 318 S.C. 496, 498–499, 458 S.E.2d 538, 540. Here, Counsel testified she engaged the services of an investigator to track down potential witnesses, but she was unsuccessful in locating the only witness Applicant told her to contact. Additionally, the only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant.

The Court finds Applicant failed to show how further investigation by Counsel would have benefited Applicant, and Applicant’s assertion Counsel should have investigated further is purely speculative. Counsel testified she hired a private investigator to review Applicant’s case and find Applicant’s potential witnesses. Counsel testified her office was unable to reach Coulter, for whom Applicant gave them the contact information. Counsel testified Fields gave a statement to law enforcement and her statement was not beneficial for Applicant.

Counsel also testified she reviewed all the evidence and discovery with Applicant, including the fact that she had been unable to speak with Coulter, and she was prepared to go to trial had Applicant chosen that option. Additionally, Applicant engaged in a thorough colloquy

with the plea court and never indicated his dissatisfaction with Counsel for allegedly failing to investigate his case. To the contrary, Applicant indicated he had enough to speak to Counsel about her case, understood all of his talks with her, and was completely satisfied with her representation of him. (Tr. 6). He also informed the plea court he had sufficient time to decide whether he wanted to go to trial or plead guilty, and he was pleading guilty freely and voluntarily without threat or coercion. (Tr. 6-7).

This Court also finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel. Applicant's assertion Counsel should have spoken more extensively to Fields and Coulter is meritless. By Applicant's own admission, the two witnesses he alleges Counsel should have investigated further would not have been able to establish a defense to the crime. Applicant admitted neither witness could support his version of events and could only testify he left the gas station with the victim, which was undisputed. Additionally, Applicant never testified he would not have pleaded guilty had Counsel done further investigation; given Applicant's admission neither witness was present at the scene of the crime, this Court fails to see how or why, even if Counsel had been successful in locating them, Applicant would have decided not to plead guilty. Accordingly, this Court denies relief and dismisses this allegation.

V. CONCLUSION

Based on the foregoing, this Court finds and concludes 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 notes Applicant must file and serve a notice of appeal within thirty days from 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), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of December, 2021.

ATTEST: TRUE COPY  
*Wanda S. C. S.*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

*Edgar W. Dickson*  
EDGAR W. DICKSON  
Chief Administrative Judge – Common Pleas  
First Judicial Circuit

*Orangenburg*, South Carolina