

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

C/A No.: 2015-CP-32-01590

Breon Jacoby Mayers, SCDC # 351819,

Petitioner,

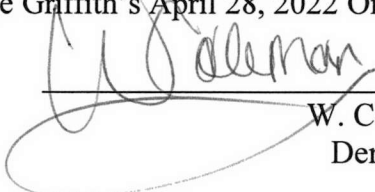
v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Breon Jacoby Mayers appeals the Order Granting in Part and Denying in Part Mr. Mayers' Motion to Alter, Amend, and Reconsider pursuant to Rule 59(e), SCRPC of the Honorable Eugene C. Griffith, Jr. dated and signed April 28, 2022. Appellant received written notice of the entry of the Order on May 9, 2022. Appellant also appeals the underlying Order of Dismissal filed May 4, 2017, to the extent it was not superseded by Judge Griffith's April 28, 2022 Order.



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May 11, 2022

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Breon Jacoby Mayers, SCDC #351819,

Case No. 2015-CP-32-1590

Applicant,

v.

ORDER GRANTING IN PART AND
DENYING IN PART APPLICANT'S
MOTION TO ALTER, AMEND, AND
RECONSIDER PURSUANT TO RULE
59(E), SCRPC

State of South Carolina,

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LISA M. CONNER
CLERK OF COURT
LEXINGTON SC

FILED

I. INTRODUCTION

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Breon Jacoby Mayers (Applicant) on April 28, 2015, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. A hearing into the matter convened before the undersigned on January 30, 2017, at the Lexington County Judicial Center. Applicant was present at the hearing and represented by Mindy W. Zimmerman,¹ Senior Assistant Attorney General Johanna C. Valenzuela represented the State. Applicant testified on his own behalf at the hearing, as did his trial counsel, Robert T. Williams, Sr. In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court denied and dismissed the PCR action

¹ Judge Zimmerman was elected to the family court bench shortly thereafter.

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On March 29, 2018, PCR Counsel contacted the Lexington County Court of Common Pleas and the Office of the Attorney General by letter requesting a status update on the hearing of Applicant's motion to alter or amend. PCR counsel subsequently reached out to the State regarding the status of this motion on February 6, 2020. On March 9, 2020, the State filed its return to Applicant's Rule 59(e) motion. PCR counsel subsequently filed a memorandum in support of Applicant's Rule 59(e) motion on July 20, 2020. This Court convened a hearing into the matter the following day via Cisco WebEx Meetings.

After carefully considering the arguments presented by the parties and the records pertaining to this action, this Court grants Applicant's motion to amend its prior order to address Applicant's claim trial counsel was ineffective for failing to object to the amendment of Applicant's armed robbery indictment after the conclusion of his trial.² A ruling on this issue was inadvertently left out of the original order of dismissal. However, this Court denies Applicant's motion to reconsider its rulings on Applicant's claim trial counsel was ineffective for allowing the jury pool to be tainted; for failing to pursue the possibility of a second weapon; and for stipulating to the chain of custody as to several pieces of evidence.³ This Court further denies Applicant's motion to reconsider the remaining twenty-three issues, and again finds Applicant has failed to establish any constitutional violations or deprivations entitling him to post-

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conviction relief. For the reasons discussed below, this Court again denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its February 2012 term, the Lexington County Grand Jury indicted Applicant for murder (2012-GS-32-0182); first-degree burglary (2012-GS-32-0183); armed robbery (2012-GS-32-0184); and possession of a weapon during the commission of a violent crime (2012-GS-32-0187). Robert T. Williams, Sr., represented Applicant and Deputy Solicitor David Shawn Graham prosecuted the case.

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III. ISSUES BEFORE THIS COURT

Applicant, through PCR counsel, filed an amended post-conviction relief application on August 10, 2015, raising the following issues:

1. Trial counsel was ineffective by failing to move for a mistrial after it was found the jury had been tainted.
2. Defense counsel was ineffective when he failed to object to the testimony of Detective Novak.
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17. Defense counsel was ineffective in failing to object to the testimony of Linda Marsh.
18. Defense counsel did not object to the alternate juror being seated by drawing the names out of a cup.
19. Defense counsel was ineffective by failing to object to the introduction of the alleged murder weapon into evidence despite the fact that the witness failed to identify it.
20. Defense counsel failed to object when the State asked a question that the Court had previously ruled improper.
21. Defense counsel failed to review the state of the video evidence after the Sheriffs Office recovered a video tape from a neighbor's security system.
22. Defense counsel was ineffective by stipulating to chain of custody on all evidence without any testimony about chain of evidence.
23. Defense counsel failed to object to the testimony of David Day about the ability to take fingerprints from certain materials despite the fact Mr. Pay was never certified as an expert in any field.
24. Defense counsel failed to question Investigator Strickland on cross examination despite the fact that Investigator Strickland never tested the revolver allegedly present during the murder for touch DNA.
25. Defense counsel failed to object to the testimony of Deputy Robert Oates as to fingerprinting and conducting DNA tests on bullets and coolers.
26. Defense counsel was ineffective in consenting to the qualification of every expert, even those whose experience or time in practice was questionable.
27. Defense counsel was ineffective for not pursuing his objection to the amendment of the indictments.

28. Defense counsel was ineffective in stipulating to the admission of Breon Mayers' application to Amick Farms.

At the outset of the evidentiary hearing, Applicant, through PCR counsel, withdrew allegations 10, 11, and 13.

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

In Applicant's memorandum in support of his motion to alter, amend, and reconsider pursuant to Rule 59(e), SCRPC, Applicant contends this Court failed to rule on issue twenty-seven, pertaining to trial counsel's failure to object to the amended indictment for armed robbery. This Court agrees, and makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80 and Rules 52(a) and (59)(e) of the South Carolina Rules of Civil Procedure.

Allegation twenty-seven in the amended application states the following:

Defense counsel was ineffective for not pursuing his objection to the amendment of the indictments. After the close of the entire case the State moved to amend the indictment for armed robbery. Defense counsel made a half-hearted objection, and did not pursue the subject past saying he wasn't sure an amendment is necessary. When the judge read the amended charges, he mistakenly indicated the murder charge was amended, not armed robbery. Defense counsel never had him remedy that mistake."

During the charge conference, Deputy Solicitor Graham moved to amend the armed robbery indictment to conform with the evidence. (R. 954). He explained that the indictment mentions only U.S. currency; however, he argued it was appropriate to amend it to add the stolen handgun and marijuana pursuant to S.C. Code Ann. § 17-19-100⁵ based on the evidence the State presented regarding these items. (R. 954-55). Counsel Williams argued in response that motion

⁵ "If there be any defect in form in any indictments or (b) on the trial of any case there shall appear to be any variance between the allegations of the indictment and the evidence offered in proof thereof, the court before which the trial shall be had may amend the indictment (according to the proof, if the amendment be because of a variance) if such amendment does not change the nature of the offense charged."

to amend was untimely. (R. 954, 957). Judge Young disagreed, finding the amendment did not change the nature of the offense charged because both the handgun and marijuana constitute personal property. (R. 957-58).

In his memorandum, Applicant contends Counsel Williams was ineffective for failing to further object to this amendment, claiming the amendments "clearly change the nature of the offense charged because the possession of the items in question constitute felonies in and of themselves." Applicant further claims the nature of the offense and lack of opportunity to offer evidence to refute the amendment prejudiced him such that Counsel Williams was constitutionally ineffective.

This Court finds Applicant failed to meet his burden of proving Counsel Williams' failure to further challenge the amendment of the armed robbery indictment constituted ineffective assistance of counsel. In a post-conviction relief action, the reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668).

The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard, and failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP; see also *Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not

be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)). Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, 466 U.S. at 696.

As to the deficiency prong, this Court finds Applicant failed to overcome the “strong presumption” that Counsel Williams’ decision not to further pursue the amended indictment issue “fell below an objective standard of reasonableness” as required as measured by “prevailing professional norms.” *Id.* at 688. An indictment is a mere notice document, of which the primary purpose is “threefold: to put the defendant *on notice* of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know what judgment to pronounce following a conviction.” *State v. Lewis*, 434 S.C. 158, 172, 863 S.E.2d 1, 8 (2021) (emphasis added), *reh’g denied* (Oct. 12, 2021); *see Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (clarifying that “[t]he primary purposes of an indictment are to put the defendant *on notice* of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted” (citing *State v. Gentry*, 363 S.C. 93, 102–03, 610 S.E.2d 494, 500 (2005) and S.C. Code Ann. § 17-29-20)); *see generally Gentry*, 363 S.C. at 102–03, 610 S.E.2d at 500 (explaining that an indictment in South Carolina is a notice document and abandoning the view that the circuit court retains jurisdiction to hear a particular case by way of a valid indictment).

At the PCR hearing, Counsel Williams testified that he did not pursue the matter further because he was given sufficient notice before trial that the State was planning to present evidence or testimony showing that the armed robbery Applicant was alleged to have participated in

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involved a gun and drugs being stolen along with money. (PCR Tr. 60). He therefore did not believe amending the indictment prejudiced his client or affected his ability to represent him. (PCR Tr. 61). *Cf. Lewis*, 434 S.C. at 173–74, 863 S.E.2d at 9 (finding the indictment sufficient where it (1) “satisfied all three considerations required by our jurisprudence[;]” (2) “it is clear from the record that Lewis was not surprised and certainly not ambushed at trial by the allegations against him[;] and (3) “even if the indictment was questionable, further specificity was available by reviewing the discovery materials”); *State v. Baker*, 411 S.C. 583, 589, 769 S.E.2d 860, 864 (2015) (“[O]ne is to look at the ‘surrounding circumstances’ that existed pre-trial, in order to determine whether a given defendant has been ‘prejudiced,’ i.e., taken by surprise and hence unable to combat the charges against him.” (quoting *State v. Wade*, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991))).

This Court additionally finds Applicant failed to demonstrate a reasonable probability that, had Counsel Williams further challenged the amended indictment, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. In evaluating prejudice, the PCR court must consider the “specific impact counsel’s error had on the outcome of the trial” in addition to “the strength of the State’s case in light of all the evidence presented to the jury.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018); *Strickland*, 466 U.S. at 695–96. In general, “the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice.” *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843 (citing *Strickland*, 466 U.S. at 696) (stating “a verdict . . . only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support”).

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Here, as noted by the trial court, the amendment did not change nature of the charged offense of armed robbery. (R. 957). Further, even had the trial court denied the State's motion to amend the indictment, the jury would have nonetheless convicted him of armed robbery based solely on the stolen U.S. currency alleged in the original indictment. Accordingly, Applicant failed to establish Counsel Williams' performance in this regard "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. See also *Harrington v. Richter*, 562 U.S. 86, 105 (2011) ("[W]hile in some instances even an isolated error can support an ineffective assistance claim if it is sufficiently egregious and prejudicial, it is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy." (citation omitted)).

V. CONCLUSION

Based on the evidence presented at the PCR hearing, the arguments pertaining to this action, and the arguments presented by both parties, this Court hereby amends its order of dismissal to reflect the foregoing findings of fact and conclusions of law as to issue twenty-seven of Applicant's amended application for post-conviction relief. As discussed above, this Court denies Applicant's motion to reconsider the remaining twenty-three issues, including claims five, nine, and twenty-two, and upholds its previous findings that Applicant failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this Court denies the application for post-conviction relief in its entirety and dismisses this action with prejudice.

IT IS THEREFORE ORDERED:

That Applicant's motion to reconsider, alter, or amend, pursuant to Rule 59(e), SCRCP, is **GRANTED IN PART** to address Applicant's claim

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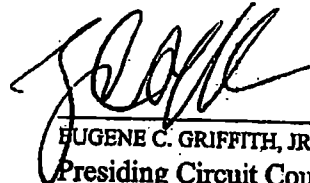
trial counsel was ineffective for failing to object to the amendment of Applicant's armed robbery indictment after the conclusion of his trial.

That Applicant's motion to reconsider, alter, or amend, pursuant to Rule 59(e), SCRCP, is **DENIED IN PART** as to Applicant's request to reconsider the remaining twenty-three issues addressed in the order of dismissal.

That the application for post-conviction relief be denied and dismissed with prejudice; and

Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 27th day of April, 2022.



EUGENE C. GRIFFITH, JR.
Presiding Circuit Court Judge
Eleventh Judicial Circuit

W. Long, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL
) CIRCUIT

)
) Breon J. Mayers, #351819

)
) Case No.: 2015-CP-32-01590

) Applicant,

)
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) Certificate of Service

)
) State of South Carolina

) Respondent,
)
)
_____)

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Service by E-Mail in the Trial Courts" (Appellate Case No. 2022-000029), dated May 6, 2022, "[a] lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the Order Granting in Part and Denying in Part Applicant's Motion to Alter, Amend, and Reconsider Pursuant to Rule 59(e), SCRCP records in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

W. Coleman Lawrimore, Esquire
cole.lawrimore@derricklawfirm.com

DATED this 9th day of May, 2022.

s/LillianMeadows

LILLIAN L. MEADOWS
Assistant Attorney General

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28. Defense counsel was ineffective in stipulating to the admission of Breon Mayers' application to Amick Farms.

At the outset of the evidentiary hearing, Applicant, through PCR counsel, withdrew allegations 10, 11, and 13.

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

In Applicant's memorandum in support of his motion to alter, amend, and reconsider pursuant to Rule 59(e), SCRCP, Applicant contends this Court failed to rule on issue twenty-seven, pertaining to trial counsel's failure to object to the amended indictment for armed robbery. This Court agrees, and makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80 and Rules 52(a) and (59)(e) of the South Carolina Rules of Civil Procedure.

Allegation twenty-seven in the amended application states the following:

Defense counsel was ineffective for not pursuing his objection to the amendment of the indictments. After the close of the entire case the State moved to amend the indictment for armed robbery. Defense counsel made a half-hearted objection, and did not pursue the subject past saying he wasn't sure an amendment is necessary. When the judge read the amended charges, he mistakenly indicated the murder charge was amended, not armed robbery. Defense counsel never had him remedy that mistake."

During the charge conference, Deputy Solicitor Graham moved to amend the armed robbery indictment to conform with the evidence. (R. 954). He explained that the indictment mentions only U.S. currency; however, he argued it was appropriate to amend it to add the stolen handgun and marijuana pursuant to S.C. Code Ann. § 17-19-100⁵ based on the evidence the State presented regarding these items. (R. 954-55). Counsel Williams argued in response that motion

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to amend was untimely. (R. 954, 957). Judge Young disagreed, finding the amendment did not change the nature of the offense charged because both the handgun and marijuana constitute personal property. (R. 957-58).

In his memorandum, Applicant contends Counsel Williams was ineffective for failing to further object to this amendment, claiming the amendments "clearly change the nature of the offense charged because the possession of the items in question constitute felonies in and of themselves." Applicant further claims the nature of the offense and lack of opportunity to offer evidence to refute the amendment prejudiced him such that Counsel Williams was constitutionally ineffective.

This Court finds Applicant failed to meet his burden of proving Counsel Williams' failure to further challenge the amendment of the armed robbery indictment constituted ineffective assistance of counsel. In a post-conviction relief action, the reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668).

The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard, and failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP; see also *Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not

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be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted). Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696.

As to the deficiency prong, this Court finds Applicant failed to overcome the "strong presumption" that Counsel Williams' decision not to further pursue the amended indictment issue "fell below an objective standard of reasonableness" as required as measured by "prevailing professional norms." *Id.* at 688. An indictment is a mere notice document, of which the primary purpose is "threefold: to put the defendant *on notice* of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know what judgment to pronounce following a conviction." *State v. Lewis*, 434 S.C. 158, 172, 863 S.E.2d 1, 8 (2021) (emphasis added), *reh'g denied* (Oct. 12, 2021); *see Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (clarifying that "[t]he primary purposes of an indictment are to put the defendant *on notice* of what he is called upon to answer; *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted" (citing *State v. Gentry*, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) and S.C. Code Ann. § 17-29-20)); *see generally Gentry*, 363 S.C. at 102-03, 610 S.E.2d at 500 (explaining that an indictment in South Carolina is a notice document and abandoning the view that the circuit court retains jurisdiction to hear a particular case by way of a valid indictment).

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involved a gun and drugs being stolen along with money. (PCR Tr. 60). He therefore did not believe amending the indictment prejudiced his client or affected his ability to represent him, (PCR Tr. 61). *Cf. Lewis*, 434 S.C. at 173–74, 863 S.E.2d at 9 (finding the indictment sufficient where it (1) “satisfied all three considerations required by our jurisprudence[;]” (2) “it is clear from the record that Lewis was not surprised and certainly not ambushed at trial by the allegations against him[;] and (3) “even if the indictment was questionable, further specificity was available by reviewing the discovery materials”); *State v. Baker*, 411 S.C. 583, 589, 769 S.E.2d 860, 864 (2015) (“[O]ne is to look at the ‘surrounding circumstances’ that existed pre-trial, in order to determine whether a given defendant has been ‘prejudiced,’ i.e., taken by surprise and hence unable to combat the charges against him.” (quoting *State v. Wade*, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991))).

This Court additionally finds Applicant failed to demonstrate a reasonable probability that, had Counsel Williams further challenged the amended indictment, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. In evaluating prejudice, the PCR court must consider the “specific impact counsel’s error had on the outcome of the trial” in addition to “the strength of the State’s case in light of all the evidence presented to the jury.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018); *Strickland*, 466 U.S. at 695–96. In general, “the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice.” *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843 (citing *Strickland*, 466 U.S. at 696) (stating “a verdict . . . only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support”).

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Here, as noted by the trial court, the amendment did not change nature of the charged offense of armed robbery. (R. 957). Further, even had the trial court denied the State's motion to amend the indictment, the jury would have nonetheless convicted him of armed robbery based solely on the stolen U.S. currency alleged in the original indictment. Accordingly, Applicant failed to establish Counsel Williams' performance in this regard "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. See also *Harrington v. Richter*, 562 U.S. 86, 105 (2011) ("[W]hile in some instances even an isolated error can support an ineffective assistance claim if it is sufficiently egregious and prejudicial, it is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy." (citation omitted)).

V. CONCLUSION

Based on the evidence presented at the PCR hearing, the arguments pertaining to this action, and the arguments presented by both parties, this Court hereby amends its order of dismissal to reflect the foregoing findings of fact and conclusions of law as to issue twenty-seven of Applicant's amended application for post-conviction relief. As discussed above, this Court denies Applicant's motion to reconsider the remaining twenty-three issues, including claims five, nine, and twenty-two, and upholds its previous findings that Applicant failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this Court denies the application for post-conviction relief in its entirety and dismisses this action with prejudice.

IT IS THEREFORE ORDERED:

That Applicant's motion to reconsider, alter, or amend, pursuant to Rule 59(e), SCRCP, is **GRANTED IN PART** to address Applicant's claim

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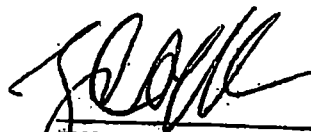
trial counsel was ineffective for failing to object to the amendment of Applicant's armed robbery indictment after the conclusion of his trial.

That Applicant's motion to reconsider, alter, or amend, pursuant to Rule 59(e), SCRCP, is **DENIED IN PART** as to Applicant's request to reconsider the remaining twenty-three issues addressed in the order of dismissal.

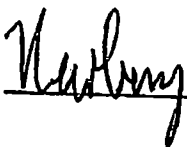
That the application for post-conviction relief be denied and dismissed with prejudice; and

Applicant be remanded to the custody of the State.


AND IT IS SO ORDERED this 25th day of April, 2022.



EUGENE C. GRIFFITH, JR.
Presiding Circuit Court Judge
Eleventh Judicial Circuit



South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL
) CIRCUIT

Breon J. Mayers, #351819

)
)
) Applicant,

)
)
) Case No.: 2015-CP-32-01590

v.

)
) Certificate of Service

State of South Carolina

)
)
) Respondent,

-
1. Undersigned is counsel of record for the Respondent in the above-captioned action.
 2. Pursuant to the South Carolina Supreme Court's Order "RE: Service by E-Mail in the Trial Courts" (Appellate Case No. 2022-000029), dated May 6, 2022, "[a] lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
 3. Undersigned has served a copy of the Order Granting in Part and Denying in Part Applicant's Motion to Alter, Amend, and Reconsider Pursuant to Rule 59(e), SCRCP records in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

W. Coleman Lawrimore, Esquire
cole.lawrimore@derricklawfirm.com

DATED this 9th day of May, 2022.

s/LillianMeadows

LILLIAN L. MEADOWS
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
LillyMeadows@scag.gov



ALAN WILSON
ATTORNEY GENERAL

May 9, 2022

Mr. W. Coleman Lawrimore, Esquire
The Derrick Law Firm
901 Main Street
Conway, SC 29526
(via email: cole.lawrimore@derricklawfirm.com)

Re: Breon J. Mayers, #351819 v. State of South Carolina
2015-CP-32-1590

Dear Mr. Lawrimore,

Enclosed for service please find a copy of the signed and filed Order Granting in Part and Denying in Part Applicant's Motion to Alter, Amend, and Reconsider Pursuant to Rule 59(e), SCRCF, issued by the Honorable Eugene C. Griffith in the above-captioned post-conviction relief case.

Sincerely,

s/LillianMeadows

LILLIAN L. MEADOWS
Assistant Attorney General

LLM/jj
Enclosure

cc: S.C. Attorney General's Office Victim Advocacy Division (via email)

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Breon Jacoby Mayers, SCDC #351819,

Case No. 2015-CP-32-1590

Applicant,

v.

ORDER GRANTING IN PART AND
DENYING IN PART APPLICANT'S
MOTION TO ALTER, AMEND, AND
RECONSIDER PURSUANT TO RULE
59(E), SCRPC

State of South Carolina,

Respondent.

2022 MAY -2 AM 11:40
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

FILED

I. INTRODUCTION

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Breon Jacoby Mayers (Applicant) on April 28, 2015, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. A hearing into the matter convened before the undersigned on January 30, 2017, at the Lexington County Judicial Center. Applicant was present at the hearing and represented by Mindy W. Zimmerman.¹ Senior Assistant Attorney General Johanna C. Valenzuela represented the State. Applicant testified on his own behalf at the hearing, as did his trial counsel, Robert T. Williams, Sr. In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court denied and dismissed the PCR action

Judge Zimmerman was elected to the family court bench shortly thereafter.

A TRUE COPY

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via email on March 1, 2017, and directed the State to submit a formal proposed order of dismissal. By order filed May 4, 2017, this Court issued an order denying post-conviction relief and dismissing the action with prejudice. Both parties were served with the order on May 11, 2017. Applicant, through substitute PCR counsel, W. Coleman Lawrimore, subsequently filed a timely motion to alter or amend pursuant to Rule 59(e), SCRPC, on May 17, 2017.

On March 29, 2018, PCR Counsel contacted the Lexington County Court of Common Pleas and the Office of the Attorney General by letter requesting a status update on the hearing of Applicant's motion to alter or amend. PCR counsel subsequently reached out to the State regarding the status of this motion on February 6, 2020. On March 9, 2020, the State filed its return to Applicant's Rule 59(e) motion. PCR counsel subsequently filed a memorandum in support of Applicant's Rule 59(e) motion on July 20, 2020. This Court convened a hearing into the matter the following day via Cisco WebEx Meetings.

After carefully considering the arguments presented by the parties and the records pertaining to this action, this Court grants Applicant's motion to amend its prior order to address Applicant's claim trial counsel was ineffective for failing to object to the amendment of Applicant's armed robbery indictment after the conclusion of his trial.² A ruling on this issue was inadvertently left out of the original order of dismissal. However, this Court denies Applicant's motion to reconsider its rulings on Applicant's claim trial counsel was ineffective for allowing the jury pool to be tainted; for failing to pursue the possibility of a second weapon; and for stipulating to the chain of custody as to several pieces of evidence.³ This Court further denies Applicant's motion to reconsider the remaining twenty-three issues, and again finds Applicant has failed to establish any constitutional violations or deprivations entitling him to post-

² Claim twenty-seven in the amended application.

³ Claims five, nine, and twenty-two in the amended application.

conviction relief. For the reasons discussed below, this Court again denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its February 2012 term, the Lexington County Grand Jury indicted Applicant for murder (2012-GS-32-0182); first-degree burglary (2012-GS-32-0183); armed robbery (2012-GS-32-0184); and possession of a weapon during the commission of a violent crime (2012-GS-32-0187). Robert T. Williams, Sr., represented Applicant and Deputy Solicitor David Shawn Graham prosecuted the case.

On April 6, 2012, Applicant proceeded to trial before the Honorable Roger M. Young, Sr., and a jury. Following a multi-day trial, the jury convicted Applicant as indicted on all offenses. Judge Young sentenced Applicant to concurrent sentences of life imprisonment without the possibility of parole for murder; life without the possibility of parole for burglary; thirty years' imprisonment for armed robbery; and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected Applicant's appeal by filing an *Anders*⁴ brief with the Court of Appeals on the following issue:

⁴ In *Anders v. California*, the United States Supreme Court announced the procedure an appointed attorney should follow if that attorney believes the client's appeal is frivolous and without merit. 386 U.S. 738 (1967). Following a "conscientious examination" of the record, the attorney seeking to withdraw must submit a brief referencing anything in the record that arguably could support an appeal and furnish a copy of that brief to the defendant. *Id.* at 744. After providing the defendant with an opportunity to respond and raise any additional points in a *pro se* brief, the reviewing court must conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." *Id.* If no issue of arguable merit is discovered, the appeal will be dismissed and counsel's petition to be relieved will be granted. In the event the reviewing court finds any issues of arguable merit, the parties will be directed to submit new briefs. See generally *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991) (clarifying the

Whether the trial court erred when it allowed the State to amend the indictment after the close of the evidence to add factual circumstances that were never presented to a grand jury?

Applicant did not file a *pro se* brief in response. On September 24, 2014, the Court issued an unpublished per curiam opinion affirming Applicant's convictions and granting appellate counsel's request to be relieved. *State v. Mayers*, Op. No. 2014-UP-344 (S.C. Ct. App. filed Sept. 24, 2014). The case was remitted back to the circuit court on November 24, 2014.

III. ISSUES BEFORE THIS COURT

Applicant, through PCR counsel, filed an amended post-conviction relief application on August 10, 2015, raising the following issues:

1. Trial counsel was ineffective by failing to move for a mistrial after it was found the jury had been tainted.
2. Defense counsel was ineffective when he failed to object to the testimony of Detective Novak.
3. Defense counsel failed to object to testimony from the codefendants regarding the possible sentence.
4. Defense counsel was ineffective when he failed to strike the jury foreman when it was discovered that this juror was a victim of a lynching.
5. Defense counsel was ineffective by failing to move to strike the jury pool after a potential juror revealed what she knew about the case within hearing of the rest of the jury pool.
6. Defense counsel was again ineffective when he failed to utilize the handwritten note allegedly received by defendant to Jasmine Bowers during his cross-examination of her.
7. Defense counsel was ineffective when he failed to raise the issue of improper discovery responses.
8. Defense counsel was ineffective for not moving to suppress the testimony of detectives Lindt and Derrenbacher.
9. Defense counsel was ineffective by not pursuing the second Hi Point 9mm pistol in the case.
10. Defense counsel was ineffective for failing to properly advise his client about the risks of testifying.
11. Defense counsel was ineffective for only visiting his client three times from the time he was arrested until the trial started.

procedural guidelines for *Anders* review in accordance with the South Carolina Appellate Court Rules).

12. Defense counsel was ineffective in failing to object to the testimony establishing Breon Mayers' phone number.
13. Defense counsel was ineffective in failing to enforce the sequestration of witnesses, and in sacrificing his alibi witness due to the sequestration order.
14. Defense counsel was ineffective in not exploring the possibility of Cedric Mayer's involvement either in the cross examination of Cedric Mayer, or during closing arguments.
15. Defense counsel was deficient in failing to coherently state his theory that one of the other codefendants was the leader or shooter due to their vastly differing testimony.
16. Defense counsel was ineffective in failing to object to, or further investigate the possible destruction of evidence committed by Deputy Roy Mefford.
17. Defense counsel was ineffective in failing to object to the testimony of Linda Marsh.
18. Defense counsel did not object to the alternate juror being seated by drawing the names out of a cup.
19. Defense counsel was ineffective by failing to object to the introduction of the alleged murder weapon into evidence despite the fact that the witness failed to identify it.
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In Applicant's memorandum in support of his motion to alter, amend, and reconsider pursuant to Rule 59(e), SCRCP, Applicant contends this Court failed to rule on issue twenty-seven, pertaining to trial counsel's failure to object to the amended indictment for armed robbery. This Court agrees, and makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80 and Rules 52(a) and (59)(e) of the South Carolina Rules of Civil Procedure.

Allegation twenty-seven in the amended application states the following:

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Here, as noted by the trial court, the amendment did not change nature of the charged offense of armed robbery. (R. 957). Further, even had the trial court denied the State's motion to amend the indictment, the jury would have nonetheless convicted him of armed robbery based solely on the stolen U.S. currency alleged in the original indictment. Accordingly, Applicant failed to establish Counsel Williams' performance in this regard "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. *See also Harrington v. Richter*, 562 U.S. 86, 105 (2011) ("[W]hile in some instances even an isolated error can support an ineffective assistance claim if it is sufficiently egregious and prejudicial, it is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy." (citation omitted)).

V. CONCLUSION

Based on the evidence presented at the PCR hearing, the arguments pertaining to this action, and the arguments presented by both parties, this Court hereby amends its order of dismissal to reflect the foregoing findings of fact and conclusions of law as to issue twenty-seven of Applicant's amended application for post-conviction relief. As discussed above, this Court denies Applicant's motion to reconsider the remaining twenty-three issues, including claims five, nine, and twenty-two, and upholds its previous findings that Applicant failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this Court denies the application for post-conviction relief in its entirety and dismisses this action with prejudice.

IT IS THEREFORE ORDERED:

That Applicant's motion to reconsider, alter, or amend, pursuant to Rule 59(e), SCRCP, is **GRANTED IN PART** to address Applicant's claim

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trial counsel was ineffective for failing to object to the amendment of Applicant's armed robbery indictment after the conclusion of his trial.

That Applicant's motion to reconsider, alter, or amend, pursuant to Rule 59(e), SCRCP, is **DENIED IN PART** as to Applicant's request to reconsider the remaining twenty-three issues addressed in the order of dismissal.

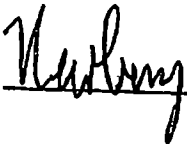
That the application for post-conviction relief be denied and dismissed with prejudice; and

Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 28th day of April, 2022.



EUGENE C. GRIFFITH, JR.
Presiding Circuit Court Judge
Eleventh Judicial Circuit



South Carolina



