

STATE OF SOUTH CAROLINA
 COUNTY OF Georgetown
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

RECEIVED

CASE NO. 2012- CP-22-726

JAN - 9 2015

Donovan R. Pringle, #338600

State of South Carolina

S.C. Supreme Court

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The above matter came before the Court on Applicant's Motion to Alter or Amend and Motion to Reconsider. Upon review of the record, together with Applicant's Motions and the State's Return, the Court hereby DENIES Applicant's Motion to Alter or Amend and DENIES Applicant's Motion to Reconsider.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

FILED COURT CLERK
 GEORGETOWN COUNTY, SC
 JAN 13 PM 3:57
 LISA V. WHITE
 CLERK OF COURT

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ 2151 _____ 11/4/14
 Judge Code Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
)
DONOVAN R. PRINGLE, #338600)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

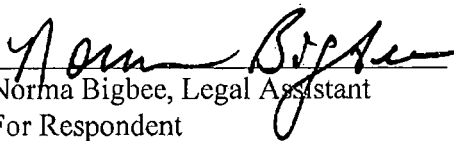
2012-CP-22-726

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Form 4 Order in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 20TH day of November, 2014.


Norma Bigbee, Legal Assistant
For Respondent

RECEIVED

JAN -9 2015

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS **S.C. Supreme Court**
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Donovan R. Pringle, #338600,)

Case No. 2012-CP-22-0726

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
GEORGETOWN COUNTY, S.C.
2014 OCT 20 AM 10:36
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 10, 2012. Respondent made a timely Return on or about October 5, 2012. The Court convened an evidentiary hearing into the matter on August 28, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant, Applicant's trial counsel, Attorney C. Reuben Goude, Applicant's mother, Carla Thompson, and Applicant's sister, Carlette Thompson, all testified at the evidentiary hearing. The Court had before it a copy of the trial transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In July 2009, the

Georgetown County Grand Jury indicted Applicant for Armed Robbery (2009-GS-22-836) and Possession of a Weapon During the Commission of a Violent Crime (2009-GS-22-837). C. Reuben Goude, Esquire ("trial counsel"), represented Applicant. On December 14, 2009, Applicant proceeded to a jury trial before the Honorable Benjamin H. Culbertson. On December 15, 2009, the jury found Applicant guilty as indicted on both charges. Judge Culbertson sentenced Applicant to concurrent terms of twenty (20) years for Armed Robbery and five (5) years for Possession of a Weapon During the Commission of a Violent Crime.

Applicant filed a timely notice of appeal, and Elizabeth A. Franklin-Best, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on May 16, 2012. *State v. Pringle*, Op. No. 2012-UP-303 (S.C. Ct. App. filed May 16, 2012). The remittitur was returned to the circuit court on June 5, 2012.

ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Fail to perform any Pretrial Investigation"
3. "Failure to properly give Notice of Alibi and a Complete Defense"
4. "Failure to object to closing argument of State"

At the evidentiary hearing, Applicant proceeded on only the allegations of ineffective assistance of trial counsel for failing to prepare and present an alibi defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Trial counsel testified he was a part-time public defender appointed to Applicant's case. He testified he normally meets with clients immediately after receiving discovery, but could not recall how many meetings he had with Applicant because the public defender's office misplaced his file. Trial counsel recalled the State's only evidence were statements from Applicant's two co-defendants. The first co-defendant, Applicant's cousin, confessed to committing the robbery with Applicant during a taped interview with police. The second, Applicant's girlfriend, confessed she gave Applicant details of the location to be robbed and received a text message from Applicant after the robbery was complete. Trial counsel also recalled discussing the evidence, as well as reviewing the police reports, with Applicant.

Trial counsel recalled Applicant providing names of potential alibi witnesses who could testify Applicant was at home during the time that the robbery allegedly occurred. Trial counsel had each of the witnesses prepare statements detailing their knowledge of the case. He identified each of their statements as the items attached to Applicant's application. Trial counsel testified he had extensive discussions with Applicant about the witnesses that could be called to establish an alibi defense. Trial counsel testified Applicant did not wish to call his mother as a witness because she had a prior criminal record. Additionally, Applicant did not want to call his sister to testify on his behalf because she was nervous and confused. Trial counsel did not call either of these witnesses because neither could positively establish an alibi. Neither Applicant's mother nor sister could testify that they recalled Applicant's exact whereabouts at the time of the robbery. Trial counsel testified Applicant's mother could not account for Applicant after 1:30 AM the night of the robbery. Trial counsel also testified Applicant's mother's testimony may have been detrimental to Applicant's case as it would place Applicant and his cousin together the

day of the robbery. Trial counsel maintained that the decision to not call Applicant's mother or Applicant's sister was made jointly with Applicant, but trial counsel testified he would have called them if he believed they could have helped.

Applicant testified he only spoke to trial counsel four (4) times. He testified trial counsel did not review discovery with him, but they did have vague discussions about the State's evidence. Applicant averred trial counsel advised that Applicant's cousin would testify against him. Applicant recalled discussing calling his family as alibi witnesses, but claimed that he and trial counsel never discussed not calling his family as witnesses at trial. Applicant alleged he was under the impression his mother and sister would testify in his case. Despite Applicant's contention that he and trial counsel did not discuss his family's testimony, he alleged trial counsel refused to call them as witnesses because trial counsel had not spoken to them prior to trial.

Applicant testified he was sleeping at his mother's trailer the night of the robbery, which he stated was four to five minutes outside of Andrews, South Carolina. Applicant testified his mother, father, and two sisters were sleeping in the trailer with him. Applicant alleged the trailer had thin walls. Applicant further alleged he had not seen his cousin the night of the robbery. He testified he came home at 1:30 AM, played video games for two and a half hours, and went to bed.

Applicant's mother testified she never spoke with trial counsel personally, but that she did speak to his paralegal and prepared a statement. She testified she was present at Applicant's trial, but that she was kept out of the courtroom by the bailiffs. She testified her house has thin walls, which enables her to hear when cars pull into her driveway. She further stated she is a

light sleeper. Applicant's mother stated she was wrapping Christmas gifts all afternoon the day before the robbery. She testified Applicant returned home that evening and she did not hear him leave. She stated Applicant was at home when she awoke the next morning. Applicant's mother initially alleged she went to bed around 4:00 AM, but later claimed she was up between 4:00 AM and 5:00 AM and saw Applicant playing video games.

Applicant's sister testified she spoke to Applicant at 1:30 AM the night of the robbery when he returned home. She stated that she did see Applicant the next morning, but did not know if he left the house before then.

In a post-conviction relief action, the 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) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any 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." *Id.* at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to present an alibi defense. Trial counsel had Applicant's witnesses prepare statements. Trial counsel reviewed these statements prior to trial, had the witnesses present in court, and was prepared to present their testimony. Trial counsel's investigation and preparation of Applicant's witnesses was reasonable under the circumstances.

Trial counsel articulated valid strategic reasons for not calling either of these witnesses at trial. *See Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))). Applicant and trial counsel discussed the witness's testimony during trial and Applicant instructed trial counsel to not call the witnesses. Although tactical decisions at trial are left to counsel, consultation with a defendant about trial strategy is always a prudent measure. *See Abney v. State*, 408 S.C. 41, 52, 757 S.E.2d 544, 550 (Cl.App. 2014) (Pieper, J., concurring), *reh'g denied* (Apr. 24, 2014). Applicant told trial counsel not to call these witnesses and cannot now complain that trial counsel did not utilize them. Furthermore, trial counsel indicated these

witnesses would not be able to provide helpful information. Applicant's sister was nervous and confused about dates. Applicant's mother's statement to some extent bolstered the State's case by corroborating the stories of Applicant's cousin and girlfriend. The Court finds that trial counsel offered a valid strategic reason to not present these witnesses.

The Court additionally finds Applicant was not prejudiced by the failure to call these witnesses because their testimony at the evidentiary hearing does not establish an alibi. For a witness to provide an alibi, his testimony must "prove that [the defendant] was at a place so distant that his participation in the crime was impossible." *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d *Criminal Law* § 136). The alibi testimony must "cover sufficient of the time at or before the crime to render the presence of accused impossible or highly improbable." *Id.* at 377, 271 S.E.2d at 321 (Ness, J., Dissenting). A purported alibi that leaves open the possibility the defendant is guilty "is no alibi at all." *Id.* at 375, 271 S.E.2d at 320 (quoting 21 Am. Jur. 2d *Criminal Law* § 136).

Applicant's sister's testimony did not establish an alibi defense for Applicant. She testified she saw Applicant at 1:30 AM, and again the next morning, but could not account for his whereabouts in the interim. Because she could not testify to Applicant's whereabouts immediately prior to 4:50 AM, Applicant's sister's testimony would not have provided an alibi for Applicant. *See Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (witness' testimony regarding applicant's whereabouts hours before crime does not create an alibi)

Applicant's mother's testimony also failed to meet the standard for establishing an alibi defense. Her testimony changed between direct and cross-examination regarding key details, including what times she was asleep and what times she actually saw Applicant in her house.

Further, her testimony did not account for his whereabouts leading up to the time of the robbery. She initially testified she went to sleep at 4:00 AM, which would have left time for Applicant to have traveled the roughly twenty (20) miles to the crime scene. *See id.* Applicant's mother later testified she recalled being awake between 4:00 AM and 5:00 AM and she saw Applicant awake and playing video games during that hour. Applicant's own testimony placed him asleep at approximately 3:00 AM. The Court finds that Applicant's mother's testimony would have directly contradicted Applicant's own testimony and would have failed in establishing an alibi at trial. The Court finds Applicant has not demonstrated a reasonable probability his mother's testimony would have changed the result of his trial.

CONCLUSION

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

IT IS THEREFORE ORDERED THAT the Application for Post-Conviction Relief is denied and dismissed with prejudice; and

IT IS FURTHER ORDERED THAT Applicant be remanded to the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8th day of October, 2014.

Charles, South Carolina

Kristi Lea Harrington
THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge

STATE OF SOUTH CAROLINA)
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COUNTY OF GEORGETOWN)
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)
DONOVAN R. PRINGLE, #338600)
vs)
STATE OF SOUTH CAROLINA,)
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Respondent.)
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IN THE COURT OF COMMON PLEAS

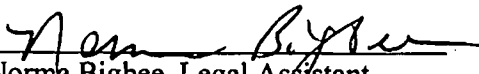
2012-CP-22-0726

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29

DATED this 22ND day of October, 2014.


Norma Bigbee, Legal Assistant
For Respondent