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April 18, 2017

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Keith Letmon, SCDC# 214137 vs. State of South Carolina
Case No: 2015-CP-42-2886

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and a Proof of Service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please filed the copies that I have enclosed and return the copies to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,


Rodney Richey

RWR/
enclosures
cc: Caitlin B. Hastings, Esquire

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE EDWARD W. MILLER

2015-CP-42-2886

KEITH LETMON, SCDC#: 214137,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

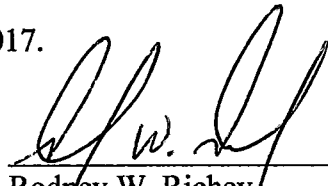
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S.C. SUPREME COURT

NOTICE OF APPEAL

Keith Letmon appeals the denial of his Post- Conviction Relief. The Post Conviction Relief action was heard and denied by the Honorable Edward W. Miller, Circuit Judge on January 30, 2017 and Order issued on March 29, 2017 and filed on April 6, 2017. The Appellant received notice of the judgment on April 9, 2017.



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Attorney for the Appellant
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Other Counsel of Record:
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Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
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HONORABLE EDWARD W. MILLER

2015-CP-42-2886

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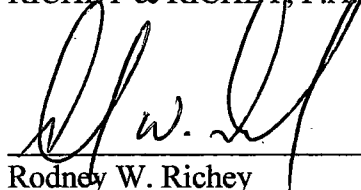
S.C. SUPREME COURT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on April 18, 2017, addressed to their attorney of record, Caitlin B. Hastings, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: April 18, 2017

RICHEY & RICHEY, P.A.



Rodney W. Richey
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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT

Keith Letmon,)
S.C.D.C. No. 214137,)

2015-CP-42-2886

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 29, 2015. Respondent made its Return and Motion for a More Definite Statement on February 16, 2016. An evidentiary hearing was held on January 30, 2017, at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Assistant Attorney General Caitlin B. Hastings represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel Matthew Shealy, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

Keith Letmon ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the September 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-5626). Matthew W. Shealy, Esquire, represented Applicant. On December

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10-12, 2012, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to imprisonment for a term of life.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 4, 2015. State v. Letmon, Op. No. 2015-UP-117 (S.C. Ct. App. filed March 4, 2015). The Remittitur was returned on May 20, 2015.

ALLEGATIONS

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel
3. Prosecutorial Misconduct

In his amended Application, Applicant also asserted 31 additional claims of ineffective assistance of counsel. At the evidentiary hearing, Applicant proceeded on allegations of ineffective assistance of trial counsel for (1) failure to investigate—failure to interview alibi witnesses; (2) failure to review discovery with Applicant; and (3) failure to communicate a plea offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. As a matter of general impression, this Court finds Counsel's testimony to be credible and Applicant's testimony to be neither credible nor legally

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relevant. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

Summary of the Testimony

Applicant testified that he met with counsel three times before trial. Applicant testified that Counsel did not review his rule 5 discovery materials with him and that they did not discuss a strategy until two days before his trial. Applicant testified that Counsel did not properly investigate his case because Counsel did not interview the alibi witnesses Applicant provided him. Applicant also testified that Counsel failed to communicate a plea offer to him and that, in general, Counsel did not sufficiently communicate with Applicant. On cross-examination, Applicant admitted that he always wanted to go to trial rather than take a plea.

Counsel testified that he has been practicing law for eight to nine years, all of which being criminal law. Counsel testified that at the time of Applicant's case, Counsel had experience trying murder cases. Counsel testified that he met with Applicant at least five times. During these meetings, Counsel testified that he reviewed all discovery with Applicant at least five different times and provided Applicant with several copies of the discovery. Counsel also testified that he discussed with Applicant the elements of the charges and possible defenses to those charges and advised Applicant concerning his right to testify. Counsel investigated the leads that Applicant provided to him, including a possible alibi defense. However, Counsel testified that Applicant only provided him with a list of names, some of which were not accurate or lacked last names. Counsel testified that he pulled the corresponding mugshots to the names Applicant gave him. He then brought the photos to Applicant to verify if they were correct. After this, Counsel testified he pulled the addresses he could find. Counsel testified that it was very difficult to track down the list of witnesses Applicant gave him. He explained that often no one would be home or

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he would have to leave his name and number with another cohabitant. Counsel testified that he was never contacted by any of the witnesses but was eventually able to talk with a few of them. Counsel testified that after speaking with these witnesses, he felt that none were helpful, and some would be even harmful to Applicant's case. Counsel also testified that he has no recollection of any plea offers being made in Applicant's case, as Applicant was always planning to go to trial. Counsel also testified that there was a lot of communication between he and Applicant and that Applicant was a very active participant in the case.

Ineffective Assistance of Trial Counsel

In this post-conviction relief action, 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 counsel 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)). The Court presumes counsel 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 in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

Failure to Investigate

Applicant alleged at the evidentiary hearing that Counsel failed to conduct a proper investigation. This Court finds Applicant has failed to show that Counsel was deficient or that he was prejudiced by any alleged deficiency.

"[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. Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

Here, Counsel reviewed all the evidence in the case, discussed possible defenses with Applicant, and pursued leads that Applicant provided. Specifically, Counsel pursued a possible alibi defense and attempted to contact purported alibi witnesses. He also reviewed the State's evidence with Applicant prior to trial. Such an investigation was reasonable under the circumstances. See Edwards, 392 S.C. at 457, 710 S.E.2d at 65 (citing Daniels v. State, 676

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S.E.2d 13 (Ga. 2009)). This Court finds Counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Accordingly, Applicant has failed to show Counsel was deficient in investigating or developing a defense.

Likewise, Applicant has failed to demonstrate any prejudice resulting from Counsel's alleged failure to investigate. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). This Court can only speculate as to what additional investigation could have been done and what evidence that investigation would have uncovered. Applicant testified on his own behalf but presented no other witnesses and produced no evidence of what Counsel might have uncovered had he conducted any additional investigation. Therefore, Applicant has failed to demonstrate any alleged deficiency prejudiced him. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.").

This Court finds Applicant has failed to satisfy either prong of the Strickland analysis. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to Review Discovery

Applicant alleged at the evidentiary hearing that Counsel failed to review discovery with him. This Court finds Applicant has failed to show that Counsel was deficient or that he was prejudiced by any alleged deficiency. Counsel testified that he recollects reviewing all of the evidence in the case with Applicant at least five times and provided Applicant with numerous

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copies of the discovery. Therefore, this Court finds Applicant has failed to satisfy either prong of the Strickland analysis and denies and dismisses this allegation with prejudice.

Failure to Communicate a Plea Offer

Applicant alleged at the evidentiary hearing that Counsel failed to communicate a plea offer to him. This Court finds Applicant has failed to show that Counsel was deficient or that he was prejudiced by any alleged deficiency. Counsel testified that he does not recollect any plea offers being made in Applicant's case. Applicant and Counsel both testified that Applicant maintained his innocence and wanted to go to trial rather than take a plea. Therefore, this Court finds Applicant has failed to satisfy either prong of the Strickland analysis and denies and dismisses this allegation with prejudice.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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CONCLUSION

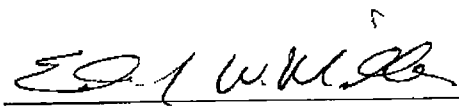
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR 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), Applicant has a 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, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is 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 _____ day of 3/29/17, 2017.



EDWARD W. MILLER
Presiding Judge
Seventh Judicial Circuit

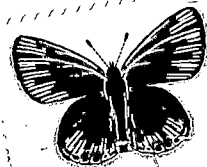
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The Honorable Daniel E. Shearouse
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