

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
STATE OF SOUTH CAROLINA)
)
vs)
)
TAVISH D. YEARGIN,)
)
DEFENDANT.)
_____)

IN THE COURT OF GENERAL SESSIONS

2011-GS-39-2148
2011-GS-39-2149

**ORDER DENYING
DEFENDANT'S APPLICATION
FOR FORENSIC DNA TESTING**

This matter comes before the Court by way of Defendant's Application for Forensic DNA Testing pursuant to Section 17-28-10 et seq. of the South Carolina Code of Laws. A hearing was held in open court and on the record on May 25, 2017. Defendant was present but was not represented by counsel. The State was represented by Assistant Solicitor Brady. After hearing from both sides, I find the Defendant's request that the State be found in default is denied. I find there was no prejudice to the Defendant in the timing of the hearing. Further, I find Defendant's Application for Forensic DNA Testing should be denied.

Defendant was convicted after a jury trial on November 20, 2013 for the offenses of Murder and Grand Larceny. The Access to Justice Post Conviction DNA Testing Act (Section 17-28-10 et seq.) authorizes the application by convicted defendants for forensic DNA testing that may affect their conviction. The Act describes the form and content of the Defendant's application as well as the procedure by which the testing is to be conducted.

The Act specifically states a person "may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication." Defendant requests that multiple items be tested including: a BB gun, clothing, .22 caliber bullet and any

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keys related to the stolen vehicle in his case. I find that that these items were not related to his conviction and that they would not yield any new forensic evidence if tested.

Furthermore, the Act requires that the applicant specifically articulate the basis for his request for additional testing, noting that the applicant must make a reasonable attempt to identify the physical evidence that should be tested and the specific testing sought. On the application, Defendant lists only "pathology, autopsy report and scientific forensic serology." I find the Defendant's list does not identify any physical evidence warranting testing nor do I find any testing would constitute new evidence.

The Act requires that the applicant explain why the identity of the applicant was or should have been a significant issue during the original proceedings. Defendant explains in his application that "[t]he Applicant's identity is a significant issue during the original proceedings, but counsel was inadequate." I find the identity of the Defendant was not at issue in this case based on co-defendant testimony. Further, there was significant fingerprint testing done that connected all co-defendants to the crime. Finally, I find any inadequacies in counsel are appropriate arguments for a PCR analysis and not for an Application for DNA testing.

The Act also requires that the applicant explain why material to be tested was not previously subjected to testing or why additional testing would provide a substantially more probative result. Defendant indicates in his application that counsel "bolstered" the State's case against him, he should have challenged the chain of custody of the evidence, the State failed to meet its burden and DNA would prove his innocence. Again, I find any inadequacies in counsel are appropriate arguments for a PCR analysis and not for an Application for DNA testing.

Finally, the Act requires that the applicant explain why, if the testing were to produce exculpatory results, the results will constitute new evidence that would change the results of the



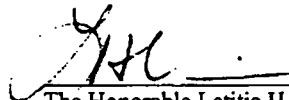
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applicant's conviction. Defendant's application notes that "a new trial ...could exonerate the Applicant." He also states his attorney was not aware of the "Forensic DNA Testing Application." Again, Defendant has failed to provide any reason why the testing would constitute new evidence.

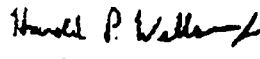
THEREFORE IT IS ORDERED THAT Defendant's Application for Forensic DNA Testing be denied. I find the presence of any DNA evidence would be unlikely and that any further DNA evidence would be cumulative based on the co-defendants' testimony and fingerprint analysis. Additionally, Defendant failed to state any legitimate DNA testing that would be necessary. Further, Defendant has not articulated why DNA testing would prove probative or change the outcome of his trial.

IT IS SO ORDERED!

Dated: 5/30/17


The Honorable Letitia H. Verdin
Presiding Judge, Thirteenth Judicial Circuit

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