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JUN 23 2017

S.C. SUPREME COURT

June 19, 2017

Attn: Ashli Thompson
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Chavis Pullen appeal

Dear Ms. Thompson:

Please find enclosed for filing:

- Proof of Service of the Notice of Appeal
- Copy of the final Order being appealed

If you have questions or concerns, please do not hesitate to contact me.

Sincerely,

s/ *Brandt Rucker*

Brandt Rucker, Esq.

CC:

Alicia A. Olive, Esq.
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Circuit Court

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2014-CP-42-2864

State of South Carolina,

Respondent,

v.

Chavis Pullen, #345139,

Appellant.

Notice of Appeal

Chavis Pullen appeals the order of the Honorable R. Ferrell Cothran, Jr., dated February 9, 2017. Appellant received written notice of entry of this order on May 11, 2017.

June 9, 2017

Sincerely,



Brandt Rucker
128 Millport Circle, Suite 200
Greenville, South Carolina 29607
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Alicia A. Olive, Esq.
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

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APPEAL FROM SPARTANBURG COUNTY
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State of South Carolina,

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v.

Chavis Pullen, # 00345139,

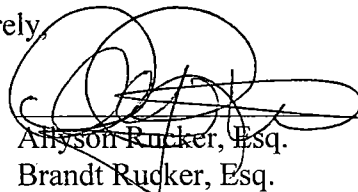
Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2017, addressed to its attorney of record, Alicia A. Olive, Esq., SC Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211.

June 19, 2017

Sincerely,



Allyson Rucker, Esq.

Brandt Rucker, Esq.

The Rucker Law Firm, LLC

128 Millport Circle, Suite 200

Greenville, South Carolina 29607

(864) 271-9925

Attorney(s) for Appellant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Chavis Pullen, #345139,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-42-2864

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 21, 2014. Respondent made a Return on or about December 31, 2014. The Court convened an evidentiary hearing into the matter on June 13, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Robert B. Hall, Esquire, ("Counsel") 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, Applicant's direct appeal records and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In October 2009, the Spartanburg County Grand Jury indicted Applicant for three counts of armed robbery (2009-GS-42-5465,-5465A, and -5465B), burglary, first degree (2009-GS-42-5484), and assault and battery

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of a high and aggravated nature (ABHAN) (2009-GS-42-5485). Robert B. Hall, Esquire, ("Counsel") represented Applicant. On March 10, 2011, Applicant proceeded to trial before the Honorable J. Mark Hayes, II, and a jury. The jury found Applicant guilty as indicted. Judge Hayes sentenced Applicant to concurrent terms of imprisonment for 25 years on each armed robbery charge, 25 years for burglary, first degree, and 10 years for ABHAN.

Applicant filed a timely notice of appeal. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Pullen, No. 2013-UP-387 (filed October 9, 2013). The Remittitur was returned on October 30, 2013.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel

III. 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. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified he met with Counsel approximately ten to twelve times, but the visits were not very long. Applicant testified Counsel communicated a plea offer to him that could have required him to testify against his co-defendant and he did not agree. Applicant admitted he

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did not wish to testify at trial. Applicant testified that Counsel should have challenged the photo identification process because the photographs were of complete faces without any coverings despite Victim's indication that the assailants' faces were covered when they broke into her home.

Counsel testified the victim had already identified Applicant by his nickname, Kool-Aid, prior to being shown the photo line-up. See Tr. p. 75. Counsel's theory at trial was that, though Applicant went by the nickname Kool-Aid, the person who committed the crime was a different person with the same nickname, and the victim misidentified him based on that name. Counsel testified, and the trial transcript reflects, the victim also recognized Applicant by his eyes. See Tr. p. 75, line 5. Counsel testified the line-up was standard. He stated as part of his closing, he showed the jury the photo-lineup with part of the faces covered with paper to show what they would have looked like without masks.

Counsel testified he has been practicing law for approximately thirty years. Counsel testified he reviewed all discovery with Applicant. He also 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. The potential alibi witness was Applicant's girlfriend, with whom Applicant was carrying on an extramarital affair. However, Counsel testified that there were problems with this defense, specifically, information in a police report that this witness had told police she had been alone with another female in her apartment that night, and ultimately he was not able to produce an alibi.

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B. 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).

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.

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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 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, 388 S.C. 496,

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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.

C. 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.

IV. 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.

Qdr
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

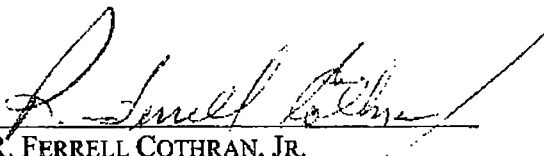
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395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice 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 5 day of Feb, 2017.


R. FERRELL COTHRAN, JR.
Presiding Judge
Seventh Judicial Circuit

 , South Carolina

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The Honorable Daniel E. Shearouse
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