

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

George C. James, Circuit Court Judge

Case No.: 2014-CP-23-7031

Lamar Dontray Williams, Appellant.

v.

State of South Carolina,, Respondent,

Notice of Appeal

Lamar Dontray Williams hereby appeals from the ORDER DISMISSING PCR APPLICATION, signed by the Hon. George C. James, Circuit Court Judge, on July 21, 2017 and entered of record on July 21, 2017, a copy of which is attached hereto.



J. Falkner Wilkes (SC Bar #12893)
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Greenville, SC 29601
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Counsel for Respondent/Appellant

RECEIVED

AUG 24 2017

S.C. SUPREME COURT

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Counsel for Respondent

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
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George C. James, Circuit Court Judge

Case No.: 2014-CP-23-7031

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v.

State of South Carolina,, Respondent,

Certificate of Service

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on August 21, 2017, addressed to the attorney of record for the Respondent and others as follows, and by facsimile if indicated:

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And by facsimile to: (803) 734-1839

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AUG 24 2017

S.C. SUPREME COURT

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AUG 24 2017

S.C. SUPREME COURT

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP23070

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.
2017 JUL 21 AM 10:23

Lamar Williams vs. South Carolina State Of

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.

- 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: _____

IT IS ORDERED AND ADJUDGED:

- See attached order;
- Statement of Judgment by the Court:

NOTICE

Attached To This Notice Is An Order Dismissing PCR Application.
Filed at Greenville, South Carolina, this 21st Day of July, 2017.

Court Reporter

PRESIDING JUDGE - George C James Jr

J. Falkner Wilkes 114 Whitsett St. Greenville, SC
29601

Karen Christine Ratigan 42 Old Shandon Circle
Columbia, SC 29205

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Lamar Dontray Williams,)
 S.C.D.C. No. 285568,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE THIRTEENTH JUDICIAL CIRCUIT

2014-CP-23-7031

ORDER DISMISSING PCR APPLICATION

ENTERED COMPUTER

FILED-CLERK OF COURT
 PAUL B. WICKENHAUER
 GREENVILLE CO., SC
 2017 JUL 20 AM 10:23

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 22, 2014. Respondent made its Return on or about June 3, 2015. An evidentiary hearing into the matter was convened on June 14, 2016, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present at the hearing and represented by J. Falkner Wilkes Esquire. Patrick Schmeckpeper Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Larry H. Cooke, Esquire, also testified. Other witnesses testifying at the PCR hearing were Paula Taylor, James M. Stewart, and Glenn Shannon. The record includes a copy of Applicant's records from the Greenville County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant for murder (2011-GS-23-2011), first-degree burglary (2011-

GS-23-2010), kidnapping (2011-GS-23-2013), attempted armed robbery (2011-GS-23-2012), conspiracy (2011-GS-23-2014), and possession of a weapon during commission of a violent crime (2011-GS-23-2011). Larry H. Cooke, Esq. (Counsel or trial counsel), represented Applicant at trial. Co-defendant Richey Boyd was tried jointly with Applicant. The Honorable Carmen T. Mullen presided over the trial, which spanned February 13-16, 2012.

Applicant was found guilty by a jury. Judge Mullen sentenced Applicant to concurrent terms of life for first-degree burglary and murder, 20 years for attempted armed robbery, 30 years for kidnapping, 5 years for conspiracy, and 5 years for possession of a weapon during the commission of a violent crime. The Court of Appeals affirmed the convictions in State v. Williams, Op. No. 2014-UP-262 (June 30, 2014). The remittitur was sent on July 16, 2014. This PCR proceeding was timely commenced on December 22, 2014.

PCR Application

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

1. Ineffective assistance of counsel.
 - a. Failing to properly investigate the crime scene;
 - b. Failing to investigate "the mileage from the crime scene, to where I was at that would have collaborated my alibi witnesses testimony, which would also have allowed counsel to effectively cross examine the State's witnesses."
 - c. Failed to interview Iesha Scruggs before trial or adequately question her during trial.
 - d. Failed to object to the alibi charge.
 - e. Failed to obtain a DNA expert.
 - f. Failed to object to improper evidence.
 - g. Failed to obtain a ballistics expert.
 - h. Failed to object to the State's vouching for the credibility of their witnesses.
 - i. Failed to move for a mistrial "after the clerk told the jury, it shall try the case on improper charge intimidation or attempted intimidation of a potential witness."
 - j. Failed to object to the "hand of one is the hand of all" jury charge.



- k. "[P]rejudiced me per S.C.R.Crim.Procedure Rule 29 (b); on or about February the 18th 2012. I called him when I got the first statement from Willie Taylor exonerating me."

Of the foregoing grounds for relief, Applicant presented evidence and argument only as to the ground alleging trial counsel's failure to investigate the mileage from the scene to Applicant's claimed location some hours after the murder (ground b above). At the hearing, Applicant claimed that trial counsel should have called Glenn Shannon as a trial witness to rebut the trial testimony of prosecution witness Wendy Bridges, who testified that after the murder, Applicant gave her a gun in a paper bag to deliver to Mr. Shannon. The court will also address this claim for relief in this order.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "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." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has considered the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed their testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failure to investigate mileage from crime scene to Neeley Road in Laurens and failure to establish a timeline to travel that distance

At trial, Scottie Butler and Jeff Dornberg were called by the State to testify. Butler and Dornberg admitted their involvement in the incident. Butler had pled guilty to an accessory charge and Dornberg had pled guilty to voluntary manslaughter. Both were awaiting sentencing at the time of Applicant's trial. Butler and Dornberg testified at trial that Applicant played a substantial

part in planning the burglary of the victim's home, the goal being to steal drugs and money. Butler and Dornberg testified the robbery went bad and the victim was shot and killed by Applicant. Butler and Dornberg testified that they, Applicant, and the remaining perpetrators (Willie Jermaine Taylor and Richey Boyd) rode from the scene with Butler driving. Butler testified that he dropped off Taylor on High Valley Road in Greenville, Boyd on Blake Street in Greenwood, and then Applicant on Neeley Road in Laurens.

At the time of trial, Applicant had other pending criminal charges and was paying his bail bondsman in installments. Kristine Sterling testified at trial that she was Applicant's girlfriend at the time of the murder and that Applicant spent the night before the murder with her at her home on Neeley Road in Laurens (she testified she was not Applicant's girlfriend at the time of trial but that they still talked every day). She testified that they got up around 8:00 a.m., left the house around 9:15 a.m., went to an ATM in Laurens, and that between 9:30 a.m. and 10:00 a.m., she took Applicant to make a bond premium payment at Reliable Bonding in Laurens. At trial, she produced a receipt showing payment of \$100 to Reliable on the day of the murder. No time was on the receipt.

Iesha Scruggs testified at trial that she was working Reliable Bonding the morning of the murder. She testified she saw Applicant the morning of the murder when he came in to make a payment on a bond. She identified the receipt with her initials on it and testified that Applicant came in to make the payment between 8:30-10:00 a.m. She testified Applicant was the first person to make a payment that day, and that she knew he came in before 10:00 because she had a training session that day, the session started at 10:00 a.m., and no one else came in after 10:00.

Applicant called two witnesses at the PCR hearing on the travel/timeline issue, Paula Taylor and James M. Stewart. They testified that they reviewed the trial testimony of Butler and

Dornberg to develop the path of travel between the murder scene at 49 Valley Road in Travelers Rest and 7742 Neeley Road in Laurens, where Butler and Dornberg claim Applicant was dropped off by Butler some hours after the murder. Relevant trial testimony indicated that the murder occurred between 7:15-7:25 a.m. and that Applicant was dropped off on Neeley Road in Laurens before 10:00 a.m. The testimony of Butler and Dornberg established a path of travel from Valley Road in Travelers Rest to High Valley Road in Greenville to Blake Street in Greenwood to Neeley Road in Laurens.

PCR witness James Stewart testified that he is retired from law enforcement and that he has been qualified as an expert witness in accident reconstruction and that he is a certified accident reconstructionist. Mr. Stewart testified that he obtained Scottie Butler's path of travel from Butler's trial testimony and then consulted Google Maps to determine the shortest path of travel from the murder scene on Valley Road in Travelers Rest, to High Valley Road in Greenville, to Blake Street in Greenwood, and then to Neeley Road in Laurens. He testified that he rode as a passenger while Ms. Taylor drove the Google route. He testified it was a 108 mile trip and that it took him and Ms. Taylor 3 hours and 2 minutes to make the trip. He calculated that in order to make the trip from 7:25 a.m. to 10:00 a.m., one would have to travel at 90 miles per hour and catch all 56 traffic lights on green.

Trial counsel testified at the PCR hearing that he did not consider calling a witness such as Mr. Stewart regarding the time it would take to drive the route described by Scottie Butler. Trial counsel testified that he did argue the point to the jury in his closing argument. Therein, he stated to the jury

Now you tell me, you tell me how [Applicant] could have killed Mr. Cruell up in the upper part of Greenville County at 7:30 in the morning, and by the testimony of the State's own witnesses dropped somebody off on White Horse Road, dropped off some other guys over in Laurens, and then drove [Applicant]

back to his house, and he was still able to go to the bail bonding company between 8:30 and 10:00 and make a payment. Does that make any sense? You cannot drive--it's my contention that cannot drive from the upper part of Greenville County in the rush hours in the morning, day, 7:30, a quarter until 8:00, drop somebody off on White Horse Road, drop somebody off in Laurens, and then drive all the way to Greenwood and do that in less than an hour and a half, two hours. It seems impossible. And then be dressed to go make a bail bond payment [by 10:00 a.m.], and then go to the social security office. (Tr. pp. 560-561)

The court first notes that trial counsel's argument to the jury slightly misstated the route described by Scottie Butler, specifically in that Butler testified that he dropped off a participant in Greenwood, then drove Applicant to Laurens. The slight misstatement is of no import. Whatever the case, the gist of the timeline/travel argument was made by trial counsel. Applicant claims that trial counsel's argument to the jury would have been buttressed by actual testimony from a witness (such as Mr. Stewart) that the route taken from Travelers Rest to Greenville to Greenwood and then to Laurens would have taken such a length of time that it would have been impossible for Applicant to have been present at the scene of the murder. Applicant claims counsel was ineffective for not calling such a witness and that there is a reasonable probability that he would not have been found guilty if such testimony had been before the jury.

A cursory glance of the trial transcript would perhaps result in this court finding deficient performance and prejudice on this particular ground for post-conviction relief. However, a close review of the record compels this court to conclude that counsel was not deficient, and that even if he were, Applicant has not met his burden of establishing a reasonable probability that the result of the trial would have been different. While evidence of Applicant's guilt was not overwhelming, the evidence, as a whole, presented to the jury convinces this court that such timeline/travel testimony would not likely have yielded a different result. The jury heard testimony from three participants (Butler, Dornberg, and Willie Taylor) in the crimes that Applicant helped plan the robbery, rode with them some days before to scout the scene, and rode back with them to carry out

the crime. These witnesses were effectively cross-examined by trial counsel and by counsel for co-defendant Boyd, and their potential biases were exposed for the jury to consider. The jury heard testimony from witness Wendy Ann Bridges that she and Applicant had some sort of romantic relationship and that, several days after the murder, Applicant gave her a gun in a paper bag to take to a one-legged black man named Glenn at the Cadillac Apartments in Laurens. She testified she did so. She further testified that Applicant told her he had heard about the murder and was worried that because Butler and Dornberg were his friends and had been arrested, everybody would think he was involved. She testified that Applicant asked her to take him to Lexington to his mother's house, which she did. She testified that on the way to Lexington, Applicant made a statement to the effect that if someone were ever looking for him, he'd go to "Charleston, San Antonio, or something like that."

The jury heard testimony from Neil Haltiwanger, who was living in Lexington, S.C. with Applicant's mother at the time of the murder (they were not living together at the time of trial). He testified that several days after the murder, Applicant came by his house after having never been by there before. He testified that Applicant arrived with a female friend and that Applicant immediately asked if he could look on his computer for information about a crime in Greenville. Haltiwanger testified that the next morning, Applicant knocked on his bedroom door and asked if he come in and talk to him. Haltiwanger testified that Applicant told him he had gone into a man's house with some buddies looking for about \$10,000. Haltiwanger said Applicant told him that he "shot the guy" and that a bullet ended up in his shoe. Haltiwanger testified he told Applicant to turn himself in but that Applicant said he would not because he would not get a fair trial and that he might go to Arizona or Virginia. Haltiwanger testified that Applicant made a phone call and that he heard Applicant say to whomever he was talking that they needed to "get rid" of an

unnamed female "because she was talking". Haltiwanger testified that Applicant told him that he had given the gun he used in the murder to a friend so he could melt it down, and that he had given his clothes to a friend to burn.

Haltiwanger was cross-examined by both defense counsel and it was revealed that he was currently on probation for ABHAN and that he had been convicted of giving false information to the police.

As noted above, the jury heard testimony from Kristine Sterling that Applicant had been with her in Laurens at the time of the murder, and she and Iesha Scruggs testified Applicant had made a bail bond payment at or before 10:00 a.m. the day of the murder.

The jury also heard testimony from Jennifer Burnette that Dornberg admitted to her that he had killed the victim but then denied it the next day. The jury heard from Greenville County inmate Michael Antonio Williams that while he was in jail he had a conversation with Dornberg after Dornberg had been arrested. Williams claimed that Dornberg told him that he had shot the victim but that "everybody is saying [Applicant] did it. So I'm going to let him take the rap for it, and [Applicant] wasn't even there."

The court concludes that even though the evidence against Applicant was far from overwhelming, the jury was presented with starkly differing factual scenarios at trial. The jury sifted through the different scenarios and concluded that Applicant was guilty, either under the accomplice liability theory or under the theory that he actually shot the victim. Based on the totality of the trial evidence, the court concludes from a factual standpoint that Applicant has failed to establish the outcome of the trial would have been different if a witness such as Mr. Stewart had given the testimony at trial that he gave at the PCR hearing.

Failure to call Glenn Shannon to Testify

The Applicant claims trial counsel was ineffective for not locating Glenn Shannon and calling him to testify at trial. Shannon is the one-legged black man to whom Wendy Bridges allegedly delivered a gun at Applicant's arrest several days after the murder. Shannon testified at the PCR hearing that he does have one prosthetic leg. He stated that he frequented the Cadillac Motel in Laurens in 2010 and that he was the person around that had one leg. He testified that no one brought him a bag with a gun inside, and he testified that no one contacted him about testifying at trial. Shannon testified that he lived with Applicant's mother. Trial counsel confirmed at the PCR hearing that he did not look for the one-legged man.

The court concludes Mr. Shannon was not a credible witness and that his PCR testimony should be discounted. Even though the credibility of many trial witnesses, both for the State and for Applicant, was called into question, the court concludes that there is not a reasonable probability that Mr. Shannon's testimony would have altered the outcome of the trial.

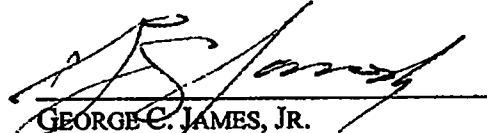
IV. CONCLUSION

Based on the foregoing, the court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application for post-conviction relief. Applicant failed to demonstrate that trial counsel's performance was unreasonable under prevailing professional norms or that even if it were, that there is a reasonable probability that the outcome of the trial would have been different. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

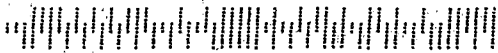
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

July 5
~~June~~ _____, 2017
Sumter, SC


GEORGE C. JAMES, JR.
Presiding Judge

 11

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