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September 23, 2017

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

RE: Walter Monroe Lance Appeal

Please find enclosed for filing:

- Notice of Appeal
- 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:

Valerie Giovanoli, 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-42-4564

State of South Carolina,

Respondent,

v.

Walter Monroe Lance, # 00154185,

Appellant.

Notice of Appeal

Walter Monroe Lance appeals the order of the Honorable R. Ferrell Cothran, Jr., dated August 28, 2017. Appellant received written notice of entry of this order on August 28, 2017.

September 23, 2017

Sincerely,

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

cc:
Other Counsel of Record:

Valerie Giovanoli, Esq.
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PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
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APPEAL FROM SPARTANBURG COUNTY
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The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2014-CP-42-4564

State of South Carolina,

Respondent,

v.

Walter Monroe Lance, 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 September 23, 2017, addressed to its attorney of record, Valerie Giovanoli, Esq., SC Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211.

September 23, 2017

Sincerely,

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Walter Monroe Lance, #154185,	)	Case No.: 2014-CP-42-4564
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 filed November 10, 2014. Respondent made a Return on April 7, 2015. 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 Hall, 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, the pleadings, the return, and the exhibits introduced at the hearing. 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 January 2012, the Spartanburg County Grand Jury indicted Applicant for criminal sexual conduct, first degree (2012-GS-42-0201, Count I); assault with intent to commit criminal sexual conduct, first degree

(2012-GS-42-0201(A), Count II), strong arm robbery (2012-GS-42-0201(B), Count III); and kidnapping (2012-GS-42-0203). Robert Hall, Esquire, ("Counsel") represented Applicant.

On May 7-8, 2012, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty of assault with intent to commit criminal sexual conduct, first degree, strong arm robbery, and kidnapping, as indicted. The indictment for criminal sexual conduct, first degree was *nolle prossed.* Judge Cole sentenced Applicant to imprisonment for consecutive terms for a total of fifty years as follows: thirty years for assault with intent to commit criminal sexual conduct, first degree, fifteen years for strong arm robbery, and five years for kidnapping.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on January 22, 2014, pursuant to Anders v. California.[1] State v. Lance, Op. No. 2014-UP-021 (S.C. Ct. App. filed January 22, 2014). The Remittitur was returned to the circuit court on February 24, 2014.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel, in that counsel;
   a. Failed to object to impermissible photos entered into evidence,
   b. Failed to prepare for trial by failing to obtain a copy of the photo line-up used to identify Applicant at trial,
   c. Failed to investigate 911 records,
   d. Failed to call two alibi witnesses,
   e. Failed to investigate the crime scene where the stolen vehicle was recovered

[1] 386 U.S. 738 (1967).

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 their 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. 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.

Failure to Object

Applicant alleged Counsel failed to object to impermissible photos entered into evidence. He argued Counsel allowed the solicitor to introduce photographs of the victim's injuries and that these should not have been admitted because they were taken by her husband rather than law enforcement. He also testified the photos did not show any marks on her. Counsel testified, and the trial transcript reflects, that he objected to the admission of the photographs based on lack of foundation. However, the Court overruled his objection. Applicant failed to identify any other grounds on which Counsel could have objected to the photographs. Applicant also alleged that Counsel should have prevented the 911 phone call from being played. However, Counsel testified he had no grounds to object. Therefore, this Court finds Applicant has failed to demonstrate any deficiency in Counsel's performance with regard to his allegation that Counsel failed to object to the admission of the photographs or the 911 call. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments"). Applicant has likewise failed to satisfy his burden of showing that but for the alleged deficiency, the outcome of the proceeding would have been different. See State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011) (noting admission of evidence is within discretion of the trial judge and is reviewed under an abuse of discretion standard on appeal. (citing State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93

(2002))). Therefore, Applicant has failed to prove he received ineffective assistance of counsel and this allegation is denied and dismissed.

Failure to Investigate

Applicant alleged that Counsel failed to adequately investigate or prepare for trial. Specifically, Applicant alleged Counsel failed to prepare for trial by failing to obtain a copy of the photo line-up used to identify Applicant at trial, and that Counsel failed to investigate 911 records, failed to investigate the crime scene where the stolen vehicle was recovered, and failed to call two alibi witnesses. This Court finds Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with respect to this allegation.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation[.]" Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). To prevail on this claim, Applicant must also present evidence to show what counsel could have discovered had he been more fully prepared for the trial. Jackson v. State, 329 S.C. 345, 354, 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."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Reviewing courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]" Strickland, 466 U.S. at 689. Furthermore, "[A]pplicant's mere speculation" as to what an additional investigation would have shown "cannot by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995).

Applicant alleges Counsel was ineffective for not challenging a witness's identification of Applicant through the use of a photographic line-up. Applicant testified Lisa Wofford testified at trial that Applicant was the person who assaulted the victim. Wofford testified at trial that she went to Milliken Park that day and saw a man dressed in all black. She stated that she watched Applicant watching the victim at the park and it made her feel uneasy. She testified he was lying on the grass and looked "out of it," which struck her as odd. She said he was watching everyone at the park and she made a point to walk her dogs at an angle away from him. Applicant testified that Counsel did not obtain a copy of a photo line-up, or show the photo line-up to the jury. However, Wofford gave an in-court identification of Applicant at the trial, but had not actually identified him in the line-up that police had shown her. Counsel cross-examined Wofford about the identification and her failure to identify him in the photo line-up. Further, the victim testified prior to Wofford and identified Applicant as her assailant. In addition, a cutting from the victim's underwear was taken and tested. The cutting was positive for the presumptive test for semen. The DNA profile developed from the semen on the cutting from the victim's underwear matched the DNA profile of Applicant. Tr. p. 189, lines 4-8.

Applicant alleged Counsel failed to call two witnesses—Stephanie Martin and her husband—to testify. He argued that if Counsel had called them to testify, they would have "cleared" him. However, Applicant failed to produce these individuals as witnesses. In addition, Counsel testified he had reviewed their statements, which were part of discovery, and did not think they would have been helpful to the defense.

Applicant also stated Counsel never went to the area where the victim's car was found to try to find any witnesses. When asked what these witnesses could have said, Applicant said he did not know, but they could have seen who got out of the vehicle. Counsel testified he

investigated the scene where the victim's vehicle was recovered. Counsel also testified that he and the investigator tracked down every potential witness. Counsel stated his theory was to point out the weaknesses in the State's case by showing, for example, that the State took shortcuts and focused on Applicant, and that there was no evidence in the vehicle. The victim testified at trial that after the man assaulted her in the park, he told her he wanted her to drive him to Boiling Springs, but then demanded that she give him the keys to her vehicle instead and threatened to kill her if she called 911. The victim identified Applicant in court as her attacker. Officer Dan Piggins testified he recovered the victim's vehicle in front of a church in the Una-Saxon-Fairforest area of Spartanburg County. Officer Justin Horton testified that he located Applicant in the Una area about 800 meters or less than half a mile from the location where the car was found. Applicant was dressed in a black shirt, black jacket, and dark colored pants when he came outside to speak with Officer Horton. Counsel cross-examined the officers to highlight the lack of forensic evidence from the vehicle. Counsel also argued in closing that there was no forensic evidence obtained from the vehicle to connect it to Applicant. Trial Trans. pp. 244-52.

Applicant has failed to show deficiency with respect to his allegations that Counsel failed to investigate. This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). See also Strickland, 466 U.S. at 688 ("The proper measure of attorney performance remains simply reasonableness under prevailing professional norms."). Counsel testified he filed discovery motions, reviewed all discovery, and went over everything with Applicant and discussed the important issues of the case with Applicant. Counsel testified that included in the discovery were incident reports, photographs, statements, DNA results, and the Victim's hospital records. In

addition, Counsel also went to the site where the vehicle was found and to Milliken Park and gathered what information he could from those locations. This Court finds Counsel conducted an investigation that was reasonable under the circumstances. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga. 2009)).

Further, Applicant failed to produce any witnesses that he alleged Counsel failed to call, and Counsel testified he did not call Martin or her husband because, as evidenced by their statements, their testimony would not have been helpful. Therefore, Applicant has failed to show any deficiency or prejudice regarding his allegation that Counsel failed to call certain witnesses to testify. 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))). See also Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("[Where] 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. 113, 417 S.E.2d 529 (1992))). Accordingly, this Court finds Applicant failed to show any deficiency with regard to his allegation that Counsel failed to investigate.

Further, Applicant has failed to produce any evidence to show what additional investigation Counsel could have done or what facts such investigation would have revealed. Moreover, Applicant's DNA was found on the victim's underwear. Therefore, this Court finds Applicant has also failed to show any prejudice with respect to this allegation. 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."); see also Cherry 300 S.C. at 117-18, 386 S.E.2d at 625 (holding applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."). Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel, and 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.

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 23 day of Aug, 2016~~6~~17.

THE HONORABLE R. FERRELL COTHRAN, JR.
Presiding Judge

Manning, South Carolina

CLERK OF COURT SPARTANBURG COUNTY
2017 AUG 28 AM 10:16
M. HOPE BLACKLEY

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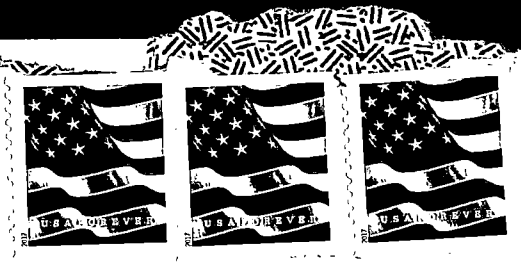

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