

**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM YORK COUNTY
Court of Common Pleas**

The Honorable R. Lawton McIntosh, Presiding in York County

Case No. 2017-CP-46-00698

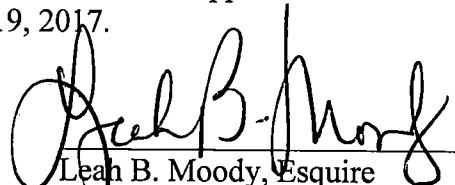
David Dover, #362139, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

David Dover appeals the order of the Honorable R. Lawton McIntosh, dated September 12, 2017 and mailed on September 18, 2017. Appellant received written notice of entry of the final order on September 19, 2017.



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**IN THE STATE OF SOUTH CAROLINA
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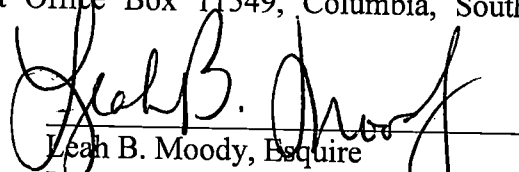
David Dover, #362139, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin Hunter by depositing a copy of it in the United States Mail, postage prepaid, on September 20, 2017, addressed to its attorney of record, Justin Hunter, Post Office Box 11549, Columbia, South Carolina, 29211-1549.


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September 20, 2017

Cc David Dover
Justin Hunter, Esq.
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

This judgment was entered on September 15, 2017, and a copy mailed first class or placed in the appropriate attorney's box on September 15, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock Hill, SC 29730

Justin James Hunter PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 David Dover,)
 S.C.D.C. No. 362139,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-0698

ORDER OF DISMISSAL

FILED-RECEIVED
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 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 6, 2017. Respondent made its Return on or about June 8, 2017. An evidentiary hearing into the matter was convened on August 2, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant’s trial counsel, Mindy Lipinski, Esquire, also testified. This Court had before it a copy of Applicant’s records from the York 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 confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In May 2014, the York County Grand Jury indicted Applicant for burglary in the second degree (2014-GS-46-1522) and petit larceny (2014-GS-46-1523). Assistant Public Defender Mindy Lipinski, Esquire represented Applicant. Assistant Solicitors Jennifer Desch and Chris Jones, Esquires prosecuted the case. On

November 13, 2014, Applicant proceeded to trial before the Honorable Lee S. Alford. The jury found Applicant guilty as indicted for burglary in the second degree and not guilty for petit larceny. Judge Alford sentenced Applicant to imprisonment for eight years for burglary in the second degree.

Applicant filed a timely notice of appeal. Lara Caudy, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 22, 2016. State v. Dover, Op. No. 2016-UP-319 (S.C. Ct. App. filed June 22, 2016). The remittitur was returned to the circuit court on July 15, 2016.

PCR Application

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. "Trial counsel was ineffective for not informing [Applicant] that in order to have his statements to law enforcement admitted and made part of the record, [Applicant] must testify and present his version of events and be subject to cross examination."
 - b. "Trial counsel was ineffective for not raising and arguing the issue of the alleged victim's credibility, which was the cornerstone to the [Applicant's] defense."
 - c. "Trial counsel was ineffective for comparing [applicant's] case with State v. Burton, which is totally different from [Applicant's] situation. This caused the trial court to view and rule contrary to the facts presented at trial."
 - d. "Trial counsel was ineffective for not objecting to the State's repeated characterization of [Applicant] as being aggressive, emotional, and inconsistent to the jury, thereby allowing the State to continuously tarnish [Applicant's] character without any supporting testimony or documentation."
 - e. "Trial counsel was ineffective for not arguing and challenging the [alleged] victim's many and numerous inconsistent testimonies regarding the events that transpired based upon the official reports and photographs

as well as evidence from the from the crime scene which is contrary to the [alleged] victim's version of events."

- f. "Trial counsel was ineffective for not challenging and objecting to the [alleged] victim's perjured testimony."
- g. "Trial counsel was ineffective for not presenting and arguing that the evidence shows no sign of a struggle, even though the alleged victim stated that there was a struggle."
- h. "Trial counsel was ineffective for not requesting and obtaining an analysis of the [fingerprints] found on the TV. [The alleged] victim stated under oath that [applicant] handled the TV and [the alleged] victim made the [applicant] carry the TV back inside."
- i. "Trial counsel was ineffective for failing to preserve her numerous objections though out trial."
- j. "Trial counsel was ineffective by not objecting and bringing to the Court's attention that [the solicitor] informed the Court and jury that the [Applicant's] [fingerprints] were on the TV during [closing statements]."
- k. Failure to investigate

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 reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the 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. This Court finds that Applicant's testimony was not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Trial counsel was ineffective for not informing Applicant that in order to have his statements to law enforcement admitted and made part of the record, Applicant must testify and present his version of events and be subject to cross examination.

Applicant alleged that Counsel was ineffective for not informing Applicant that he must testify to have his statements to law enforcement made part of the trial record. He alleged that he

would have testified if he had known that this was required to present his statement and version of events. Applicant testified that Counsel told him not to testify. He testified that the State wanted to use his statement pre-trial but later did not want to enter it at trial.

Counsel testified that she could not predict how the version of events surrounding Applicant's statement would play out at trial. She testified that, shortly after the incident, Applicant talked to a detective and gave a statement. She testified that the solicitor originally wanted to use the statement but changed her mind during trial. She testified that the solicitor eventually objected to Applicant's statement as self-serving hearsay. Counsel testified that she discussed Applicant's statement with him and that he would have to testify for it to be entered into evidence. She testified that she tried to get his statement in but the trial court denied her request. Counsel further testified Applicant wanted her to move for a dismissal based on his theory that the incident was a drug deal gone wrong; however Counsel testified that a dismissal of this sort was not a legal remedy for her.

This Court finds that Counsel was not deficient for failing to consult with Applicant regarding his statement. This Court finds that Counsel provided credible testimony that she and Applicant did discuss his statement and the fact that he would have to testify for it to be entered into evidence. This Court finds that Counsel did not act unreasonably and argued extensively with the trial court to allow Applicant's statement into evidence. Ultimately, the trial court ruled that the defense would not be allowed to enter the statement into evidence as it was not hearsay but was self-serving. The trial court ruled that Applicant could not enter a self-serving statement through a State's witness, but notified Applicant that there was "nothing to prevent [Applicant] from testifying or putting up any witnesses he may have to support his defense..." Trial Transcript p. 80-81. This Court finds that even if Counsel did not inform Applicant that he would

have to testify to enter his statement in evidence, Applicant was not prejudiced by the lack of advice because the trial court gave the same information to Applicant during the pre-trial motion stage. This Court finds that any lack of advice from Counsel was cured by the trial court prior to opening statements. Applicant has failed to meet his burden of proving that Counsel was deficient and that he was prejudiced as a result of her actions, and accordingly, this allegation must be dismissed.

Trial counsel was ineffective for not raising and arguing the issue of the alleged victim's credibility, which was the cornerstone to the Applicant's defense

Applicant alleged that Counsel was ineffective for failing to raise, under Rule 608 of the Rules of Evidence, the issue of the victim's credibility. He alleged that the victim's untruthfulness and motive to misrepresent the facts made the victim's actions appear to be that of a victim. Applicant testified that the victim has been "locked up several times." He testified that he told Counsel about this and that the incident was a drug deal gone wrong.

Counsel testified that she attacked the victim's credibility on cross examination by attacking the inconsistencies in his emotions surrounding the crime. She testified that the victim did not have any prior convictions on the public index and his rap sheet revealed arrests but no convictions.

This Court finds that Counsel was not ineffective for failing to raise and argue the issue of the victim's credibility. This Court finds, and the record reflects, that Counsel attacked the victim's credibility and inconsistencies on cross-examination. Cross-examination is a matter of trial strategy, and as such, this Court must presume that Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting

effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S.at 689. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "[applicant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id.

Counsel provided credible testimony, and the record reflects, that she cross-examined the victim to attack his credibility and inconsistencies in his version of events. Any inconsistent testimony was an issue of credibility to be resolved by the finder of fact. See e.g., State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 830 (2001) (witness's credibility an issue for the jury's consideration). Counsel also testified that the victim had no prior felonies so she could not cross-examine him on a prior record, despite Applicant's assertion that the victim had been "locked up" multiple times. This Court finds Counsel adequately cross-examined the victim and pointed out inconsistencies in his testimony. Applicant has failed to produce any evidence regarding what information Counsel could have uncovered had she cross-examined the victim more extensively, or how it would have changed the outcome of his trial. Therefore, Applicant has failed to produce any evidence to substantiate his claim that there would have been a different outcome if counsel had been "more vigorous" in her cross-examination of the witness. As a result, this Court "can only speculate whether a 'better' cross examination would have helped [Applicant]." Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997). Applicant has failed to meet his burden of proving that Counsel's performance was deficient and that he was prejudiced by her performance. Accordingly, this allegation must be dismissed.

Trial counsel was ineffective for comparing Applicant's case with State v. Blurton, which is totally different from Applicant's situation

Applicant testified that Counsel was ineffective for arguing to the trial judge that Applicant's case was similar to State v. Blurton, 342 S.C. 500 (2000). He alleged that Counsel's reference to Blurton caused the trial court to rule contrary to the facts presented at trial. He testified that this case allowed a defendant's statement to come in without the defendant testifying but allowed the State to have a stronger argument.

Counsel testified that she argued to the trial court that Applicant's statement to police should come in based on State v. Blurton, where the defendant's statement was allowed to come in without the defendant testifying because it was not used for the truth of the matter asserted.

This Court finds that Counsel was not deficient in arguing Blurton to the trial court after the trial court had already made its ruling about Applicant's statement. Counsel admitted in her argument to the trial court that Blurton was a bizarre case, however her argument centered around Blurton's holding that a defendant's taped conversation should be let in to show that the defendant lacked the mens rea to commit the crime and not for the truth of the matter asserted. This Court finds that Counsel was not deficient in arguing to the court that it should follow Blurton and allow Applicant's conversation in evidence for purposes other than for the truth of the matter asserted.

Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's argument concerning Blurton because he has failed to show that the outcome of his trial would have been different. The record reflects that the trial court had already made its ruling that Applicant's self-serving statement could not come in through the State's witness and Counsel's Blurton argument was simply additional persuasive argument by Counsel on the issue. This Court finds that Applicant has failed to show that Counsel was deficient in making this

argument and that he was prejudiced by her actions. Accordingly this allegation must be dismissed.

Trial counsel was ineffective for not objecting to the State's repeated characterization of Applicant as being aggressive, emotional, and inconsistent to the jury, thereby allowing the State to continuously tarnish Applicant's character without any supporting testimony or documentation

Applicant alleged that Counsel was ineffective for failing to object to the State's repeated negative characterization of Applicant. He alleged that the State tarnished his character without supporting documentation by making him seem aggressive, emotional, and inconsistent. Applicant testified that the State improperly attacked his character by using pictures of him from the Justice Center. Counsel testified that she believed the testimony elicited from the State concerning Applicant's character was not objectionable but simply disparaging. She further testified that she did not believe the State's characterization of Applicant during its closing argument was objectionable.

This Court finds that Applicant has failed to show that Counsel was ineffective for failing to object to the State's characterization of Applicant. This Court agrees with Counsel that none of the testimony elicited from the State characterizing Applicant as aggressive, emotional, and inconsistent was objectionable under the Rules of Evidence. As this testimony was not objectionable, Counsel was not deficient for failing to object. Furthermore, Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show that the outcome of the trial would have been different had Counsel objected to the testimony at issue. Furthermore, Applicant's allegation that the State improperly attacked his character by using his picture from the Justice Center is without merit. Counsel successfully argued to the trial court during the Neil v. Biggers¹ hearing that the State should make the jury aware that the photos of Applicant came

¹ 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972).

from DMV records, and the State's witness testified accordingly. See Trial Transcript p. 165; 324. As Applicant has failed to show that Counsel was deficient for failing to object or that he was prejudiced by her actions, this allegation must be dismissed.

Trial counsel was ineffective for not arguing and challenging the victim's many and numerous inconsistent testimonies regarding the events that transpired based upon the official reports and photographs as well as evidence from the crime scene which is contrary to the victim's version of events

Applicant alleged that Counsel was ineffective for failing to challenge the victim's inconsistent testimony regarding the incident. He argued that Counsel should have challenged the victim's testimony based on reports, photographs, and evidence from the crime scene which was different than the victim's version of events. He argued that the victim gave inconsistent testimony about the television including testimony about Applicant breaking into the victim's home and the victim forcing Applicant to carry the television inside the victim's house. Applicant testified that there were multiple statements from the victim that were not put into evidence at trial.

Counsel testified that the victim called 911 and gave his version of the incident. She testified that she was able to bring out the victim's inconsistencies on cross-examination.

This Court finds that Counsel was not deficient for failing to challenge the victim's inconsistent testimony. This Court finds that Counsel provided credible testimony that she attacked the victim's inconsistencies regarding his version of events. The record reflects that Counsel was not deficient as she effectively brought out these inconsistencies on cross-examination and during her closing argument. Furthermore, Applicant has failed to produce any evidence to substantiate his claim that there would have been a different outcome if counsel had been cross-examined the victim differently. As a result, this Court "can only speculate whether a 'better' cross examination would have helped [Applicant]." Skeen, 325 S.C. at 216-17, 481

S.E.2d at 133. As Applicant has failed to show how the outcome would have been different, he has failed to show that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Trial counsel was ineffective for not challenging and objecting to the victim's perjured testimony

Applicant alleged that Counsel was ineffective for not objecting to the victim's perjured testimony. He alleged that the victim committed perjury when he testified that he did not know Applicant. Applicant alleged that the victim does know him. Counsel testified that the victim did not commit perjury because his statements in the 911 calls were not under oath.

This Court finds that Applicant's allegation must be dismissed. Applicant has failed to provide evidence that the victim perjured himself during his testimony. Testimony from the victim that he did not know Applicant is not material to Applicant's guilt or innocence and is simply a credibility question for the jury. Counsel cross-examined the victim about whether he knew Applicant or if they had friends in common. This Court finds that Counsel was not deficient as she credibly testified that the victim did not commit perjury and did not have a reason to object. This Court further finds that Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show actual perjury and that an objection by Counsel would have been sustained. As Applicant has failed to show that Counsel was deficient or that he was prejudiced by her actions, this allegation must be dismissed.

Trial counsel was ineffective for not presenting and arguing that the evidence shows no sign of a struggle, even though the alleged victim stated that there was a struggle

Applicant alleged that Counsel was ineffective for failing to argue that there was no sign of a struggle at the scene of the crime. He argued that the evidence showed no signs of a struggle, contrary to the State's testimony from Sergeant Robert Ellis. Counsel testified that she

cross-examined the police officers about how they processed the crime scene and the lack of signs showing a struggle between Applicant and the victim.

This Court finds that Counsel was not deficient for failing to argue that there were no signs of a struggle at the crime scene. On the contrary, this Court finds that Counsel effectively cross-examined Sergeant Robert Ellis, Investigator Cheryl Gregory, and Detective Kelly Lovelace about the crime scene and the lack of evidence showing a struggle. Trial Transcript pp. 191-192; 244; 323. Furthermore, Counsel argued in her closing argument that there was no evidence of a struggle at the victim's house and that the officers were deficient in investigating this fact. Trial Transcript p. 360. As Counsel did effectively cross-examine the State's witnesses and argue during her closing argument concerning the lack of evidence showing signs of a struggle, her performance was not deficient. Furthermore, Applicant has failed to show that he was prejudiced as he has failed to show what further actions Counsel should have taken and that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Trial counsel was ineffective for not requesting and obtaining an analysis of the fingerprints found on the TV

Applicant alleged that Counsel was ineffective for not requesting a fingerprint analysis of the fingerprints found on the television. He argued that this would counter the victim's testimony that Applicant handled the television and was forced by the victim to carry it back in the victim's house. Applicant testified that there was an extra fingerprint on the television that was unidentified and could have belonged to a friend named Jennifer. He testified that he wanted Counsel to hire an expert to analyze the fingerprints on the television and pictures of the driveway.

Counsel testified that she did not hire her own expert to analyze the fingerprints on the television. She testified that she did not find anything wrong with the State's experts' analyses of the fingerprints. She testified that because this was a household item, it could have multiple fingerprints on it from other people. She testified that even if she could show that Applicant's friend named Jennifer had a fingerprint on the television, she would not be able to compel Jennifer to come to trial. Counsel testified that there was nothing else on the television for a separate expert to analyze and hiring one would not have changed the outcome. Counsel further testified that she received her own pictures from the driveway and did not need an expert to analyze them.

This Court finds Applicant has failed to meet his burden of proving that Counsel was deficient for failing to procure her own expert witness to analyze the fingerprint evidence. Counsel provided credible testimony that she did not need to hire her own expert because there was nothing wrong with the State's experts' analyses of the fingerprints. Further, Counsel vigorously cross-examined Investigator Cheryl Gregory about her reports and the locations in the house that she chose not to analyze for fingerprints. Counsel also cross-examined Investigator Brian Bagwell concerning the fingerprints and potential mistakes that were made. Counsel's failure to procure expert witnesses does not render their representation deficient when counsel vigorously cross-examines the State's witnesses and attacked the accuracy of the evidence. Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008). See also Frasier v. State, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991).

Furthermore, Applicant can show no prejudice due to Counsel's failure to obtain a fingerprint expert's testimony at trial. Notably, Applicant failed to produce any expert testimony on this very issue at the PCR hearing. As a result, this Court will not speculate as to what

potential testimony could have been elicited from such an expert. See Dempsev v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”). As a result, this Court finds Applicant’s allegation must be denied and dismissed.

Trial counsel was ineffective for failing to preserve her numerous objections though out trial

Applicant testified that Counsel was ineffective for failing to preserve her objections throughout the trial. Counsel testified that she made the proper motion for a directed verdict and although her motion was denied, it was not denied based on any preservation issues.

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective for failing to preserve her objections. This Court finds that Applicant has failed to point out specifically which objections were not preserved and he has failed to show that Counsel was deficient in this regard. Furthermore, this Court finds that Applicant has failed to prove that he was prejudiced by Counsel’s actions as he has failed to show that the outcome of his trial or appeal would have been different had Counsel preserved her objections. Applicant’s appeal was not dismissed for preservation issues and there is no indication that a lack of preserving Counsel’s objections harmed Applicant’s case in any way. Applicant has failed to meet his burden of proving Counsel was ineffective and this allegation must be dismissed.

Trial counsel was ineffective by not objecting and bringing to the Court’s attention that the solicitor informed the Court and jury that the Applicant’s fingerprints were on the TV during closing statements

Applicant alleged that Counsel was ineffective by not objecting to the Assistant Solicitor’s closing argument where she argued to the jury that Applicant’s fingerprints were found on the television. As stated above, Counsel testified that she did not find anything wrong with the State’s expert’s analysis of the fingerprints found on the television, which showed two

prints belonged to Applicant. She testified that because this was a household item, it could have multiple fingerprints on it from other people.

Applicant has failed to meet his burden of proving that Counsel was deficient for failing to the Assistant Solicitor's mention during closing argument that Applicant's fingerprints were found on the television. This Court finds that Counsel was not deficient as the record shows the State produced evidence showing that two fingerprints lifted from the victim's television matched Applicant's fingerprints. This is a factual question for the jury and is not objectionable. Furthermore, Applicant has failed to show that he suffered prejudice as he has failed to show that such an objection during the State's closing argument would have been sustained or that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Failure to investigate

Applicant alleged that Counsel failed to investigate his case. He testified that Counsel was rushing him and did not conduct an independent investigation prior to trial. He testified that Counsel discussed the elements of burglary but he believed the State could not prove the elements of burglary.

Counsel testified that she was originally appointed to only Applicant's burglary charge, but when his petit larceny charge went to General Sessions, Applicant said he had no objection to her representation on both charges. Counsel testified that she met with Applicant many times and went over his version of events. She testified that she received the discovery which included his statement. She testified that she negotiated plea offers with the State and wanted him to take the offer. Counsel testified that Applicant did not agree with the burglary charge but she discussed with him the elements of second-degree burglary many times. She testified that she told Applicant that one can still be charged with burglary even if he was not guilty of the petit larceny and put the items back where he found them. Counsel testified that she explained to

Applicant that the intent to commit a crime was important for a burglary charge. She further testified that she told Applicant that she believed his statement that the incident was a drug deal gone bad was dangerous because the jury could hold that against him.

"[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." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "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)). This Court finds that Counsel undertook reasonable investigation, met with Applicant many times prior to the trial, and discussed the State's evidence and Applicant's version of events. This Court finds that Applicant has failed to show how Counsel's investigation was deficient. Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show how the outcome would have been different had Counsel undertaken different investigation. Accordingly, this allegation must be dismissed.

IV. CONCLUSION

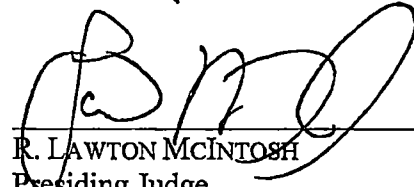
Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). 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), SCRCR, 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of Sept, 2017.



R. LAWTON MCINTOSH
Presiding Judge
Sixteenth Judicial Circuit

Anders, South Carolina

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September 20, 2017

Mr. Daniel E. Shearouse
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SEP 26 2017

S.C. SUPREME COURT

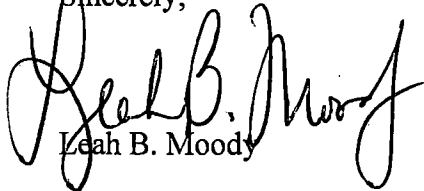
**RE: David W. Dover, #362139, vs. State of South Carolina
C.A. No.: 2017-CP-46-00698**

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent David Dover in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal and Proof of Service in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope. Also enclosed is a copy of the Order Dismissing Post-Conviction Relief Application.

Thank you for your assistance with this matter.

Sincerely,


Leah B. Moody

LBM/emb

Enclosures

Cc David Dover
Justin Hunter, Esq.
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

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SEP 26 2017

S.C. SUPREME COURT

September 20, 2017

Sharon Graham
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211-1433

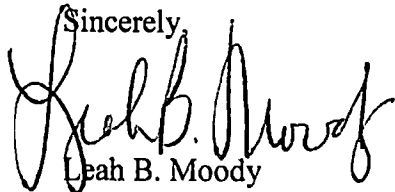
**RE: David W. Dover, #362139, vs. State of South Carolina
C.A. No.: 2017-CP-46-00698**

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent David Dover in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/emb

Enclosures

Cc David Dover
Justin Hunter, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

September 20, 2017

The Honorable David Hamilton
York County Clerk of Court
Post Office Drawer 649
York, South Carolina 29745

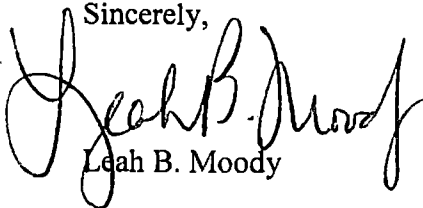
RE: David W. Dover, #362139, vs. State of South Carolina
C.A. No.: 2017-CP-46-00698

Dear Mr. Hamilton:

The York County Court of Common Pleas appointed my office to represent David Dover in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/emb

Enclosures

cc David Dover
Justin Hunter, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

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September 20, 2017

Justin Hunter, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

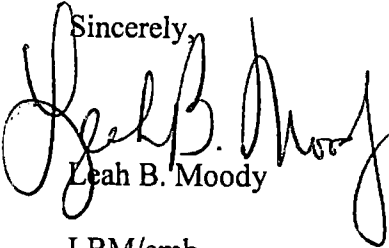
RE: David W. Dover, #362139, vs. State of South Carolina
C.A. No.: 2017-CP-46-00698

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent David Dover in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/emb

Enclosures

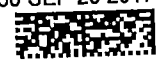
Cc David Dover

Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

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Daniel Shearouse
The Supreme Court of South Carolina
PO Box 11330
Columbia SC 29211-1330