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RECEIVED

MAR 01 2016

February 25, 2016

S.C. SUPREME COURT

**Via Regular Mail**

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re:** ALFRED BERNARD BLUFORD v. State

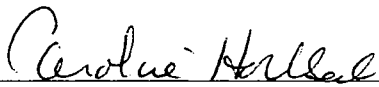
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,

  
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General  
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

RECEIVED

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
THE HONORABLE Perry H. Gravley

MAR 01 2016

S.C. SUPREME COURT

CA No. 2014-CP-23-2562

ALFRED BERNARD BLUFORD,  
APPELLANT,  
vs.  
STATE OF SOUTH CAROLINA  
RESPONDENT.

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2016 FEB 25 PM 3 38

NOTICE OF APPEAL

Appellant ALFRED BERNARD BLUFORD, appeals from the Order of the Honorable Perry H. Gravely, Circuit Court Judge clocked February 2, 2016.

Respectfully submitted,

*Caroline Horlbeck*

Caroline M. Horlbeck, Esq.  
101 Whitsett St  
Greenville, SC 29601

Date: February 25, 2016

Other Counsel of Record: Karen Ratigan, Esq.  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE SUPREME COURT

Alfred Bernard Bluford )  
 )  
 )  
Appellant, )

C.A. No. 2014-CP-23-2562

-vs- )

CERTIFICATE OF SERVICE

State of South Carolina, )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Appellant, and that I have this day caused to be served upon the person(s) named below Appellant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French  
S.C. Office of Appellate Defense  
P.O. Box 11433  
Columbia, SC 29211

Karen Ratigan, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

**RECEIVED**

MAR 01 2016

**S.C. SUPREME COURT**

*Caroline Horlbeck*  
\_\_\_\_\_  
Caroline M. Horlbeck

Greenville, South Carolina

Feb. 25, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Alfred Bernard Bluford, )  
 S.C.D.C. No. 220219, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2014-CP-23-2562

FILED IN THE COURT  
 OF COMMON PLEAS, S.C.  
 PAUL P. WILKINSON  
 2016 FEB 2 PM 2 08

**ORDER OF DISMISSAL**

ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 7, 2014. The Respondent made its return on October 21, 2014. An evidentiary hearing was held on December 15, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.<sup>1</sup>

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Jake Erwin, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibits 1-3.<sup>2</sup>

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

<sup>1</sup> The Applicant requested a continuance at the start of the hearing, arguing his PCR attorney had not obtained records or verified certain information. This Court denied this motion, noting the matter had already been continued three times at the Applicant's request and that an order of continuance filed November 5, 2015 directed the matter must be heard during this term of court.

<sup>2</sup> This Court denied PCR counsel's request to hold the record open in order to obtain additional records.

*PH*

at the March 2011 term of the Greenville County Grand Jury for first-degree assault and battery (2010-GS-23-7905), armed robbery (2010-GS-23-7906, count 1), and possession of a weapon during commission of a violent crime (2010-GS-23-7906, count 2). He was represented by Jake Erwin, Esquire.

After the State called the case to trial on the charges of first-degree assault and battery and armed robbery, the Applicant was found guilty. On July 10, 2012, the Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 10 years for first-degree assault and battery and 12 years for armed robbery.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders<sup>3</sup> brief. The Court of Appeals dismissed the appeal. State v. Bluford, Op. No. 2013-UP-454 (S.C. Ct. App. filed Dec. 11, 2013). The remittitur was sent on December 30, 2013.

### ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
  - a. Failed to conscientiously discharge his professional responsibilities.
  - b. Failed to effectively challenge the arrest and seizure.
  - c. Failed to give the Applicant his complete loyalty.
  - d. Failed to have the Applicant's best interest at heart. Counsel represented the Applicant 2 months when he his prior attorney had the case 20 months.
  - e. Neglected the necessary investigation and preparation of the case.
  - f. Failed to have witnesses at trial.
  - g. Failed to serve the case in good faith.
  - h. Failed to do necessary research.

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<sup>3</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

- i. Failed to conscientiously gather information to protect the Applicant's rights. No asportation occurred so the armed robbery conviction violated due process.
  - j. Failed to advise of all right or take any actions necessary to preserve them.
  - k. Failed to consult with the Applicant about the case. Was not allowed to watch the two videos before trial. Was persuaded not to testify at trial.
  - l. Failed to subpoena the Honorable E.C. Burnett, III or Daniel Farnsworth, Sr., Esquire.
2. Lack of jurisdiction.
  3. "Charged with felony instead of misdemeanor."

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This 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 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the

result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated his original attorney had his case for two years but trial counsel only handled his case for thirty days before the trial. The Applicant stated he had two meetings with trial counsel at the jail but that they did not review the discovery materials. The Applicant stated this case was always scheduled for trial. The Applicant stated trial counsel would not pursue DNA evidence to prove there was no blood on the knife. The Applicant stated trial counsel failed to or call potential witnesses for trial (former Supreme Court justice E.C. Burnett, III, his first trial attorney, and a person of interest in the surveillance video). The Applicant stated Burnett and his first trial attorney would have been “technical” witnesses. The Applicant stated trial counsel should have found the man in the video (because he tried to intervene in the incident) but admitted he did not know this person’s identity. The Applicant stated he also wanted trial counsel to interview the cashier and customer service clerk but counsel did not do so. The Applicant stated trial counsel did not contact Deanne Tyler (the victim’s former co-worker). The Applicant stated trial counsel also failed to subpoena the victim’s personnel records.

Trial counsel confirmed he was the second attorney on this case and explained it was because the first attorney had medical issues. Trial counsel testified the case was already close to trial when he became involved and that discovery had already been received. Trial counsel testified he met with the Applicant 2-3 times at the jail and that they reviewed: the discovery materials, the video, the elements of the charges, the sentence ranges, and the Applicant’s

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version of events. Trial counsel testified he did not consider DNA testing because the incident was on video and a DNA test would not change what the jury saw. Trial counsel that Applicant insisted that he call retired Justice Burnett as a witness, but trial counsel did not see any basis for calling him as a witness. Trial counsel testified he discussed this case with the Applicant's first trial attorney for 1-1.5 hours. Trial counsel testified he attempted to contact Deanne Tyler but could not find her. Trial counsel testified he could not recall whether the Applicant asked him to obtain the victim's personnel records but that they would not have added to the defense because of the video.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him to review his case. Trial counsel testified he reviewed the discovery materials (including the video) with the Applicant. Trial counsel testified they also discussed the elements of the charges, sentencing ranges, and the Applicant's version of events. This Court finds trial counsel's testimony is credible. This Court finds the Applicant has failed to articulate how additional meetings with trial counsel would have impacted his case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). This Court finds trial counsel was prepared for the Applicant's trial (and that his trial preparation included discussions with the first attorney) and that the Applicant has failed to demonstrate his brief representation (when compared to his first attorney) rendered his performance deficient. See Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659

S.E.2d 140, 145 (2008)) (“The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.”).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not interview and subpoena potential witnesses. The Applicant argued trial counsel should have contacted and/or subpoenaed the following: former Supreme Court justice E.C. Burnett, III, his first attorney, a person of interest in the video, the cashier and customer service clerk from the store, and Deanne Tyler. The Applicant, however, did not provide names for the person of interest, cashier, and customer service clerk. Trial counsel testified he spoke to Burnett and the Applicant’s first attorney but indicated that they were not to be witnesses. Trial counsel testified he was unable to locate Tyler. This Court finds trial counsel’s testimony is credible. This Court finds the Applicant failed to meet his burden of proof because, as these alleged witnesses did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original). Regarding the individual the Applicant described as a person of interest in the surveillance video, this Court finds trial counsel committed no error in not investigating further. Trial counsel testified the video of the incident was clear and he did not think witnesses would add to it. Trial counsel also testified his trial strategy was to argue the video showed the Applicant was the one who was assaulted. This Court finds trial counsel’s testimony is credible and that he articulated a valid reason why additional witnesses – such as this anonymous person of interest – were unnecessary. While the law requires that defense

attorneys conduct a reasonable investigation, the law does not require attorneys interview “every potential witness” when they can articulate reasonable grounds not to do so. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a DNA test on the knife. The Applicant failed to present either a DNA report or expert testimony to support his theory that there was no blood on the knife. In the absence of such, the Applicant cannot meet his burden of proof. See, e.g., Dempsey 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”). Regardless, this Court finds such evidence would not have changed the outcome of this case, as the jury viewed the clear video evidence and found the Applicant was guilty.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have obtained the victim’s personnel records. Trial counsel testified he did not believe these records would have aided the defense case because of the clear video evidence. This Court agrees. The Applicant has failed to demonstrate the victim’s personnel records would have had an impact upon the defense case. See Jackson, 329 S.C. at 349-50, 495 S.E.2d at 770 (finding applicant failed to prove prejudice from counsel’s failure to investigate criminal backgrounds of victims and witnesses when he failed to substantiate at the PCR hearing that the victims and witnesses had criminal records). While the Applicant alleged the victim was the aggressor in the incident, whether or not the victim had prior incidents in his personnel file would not have changed the clear video evidence in this case.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### 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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

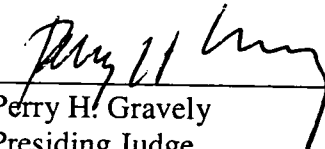
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

A handwritten signature in black ink, appearing to be 'F. J. [unclear]', is located at the bottom center of the page.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 29<sup>th</sup> day of January, 2016.

  
\_\_\_\_\_  
Perry H. Gravely  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

CAROLINE M. HORLBECK

*Attorney At Law*

101 WHITSETT ST.  
GREENVILLE, SOUTH CAROLINA 29601



**Via Regular Mail**

Mr. Daniel E. Shearouse  
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