

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
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November 22, 2016

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

RECEIVED

NOV 28 2016

S.C. SUPREME COURT

RE: Shonta Helton, #326415, v. State of South Carolina
2014-CP-43-2068

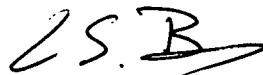
Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal pursuant to *White v. State* in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Ms. Helton in her PCR proceeding, I anticipate that the Office of Appellate Defense will represent Ms. Helton in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG
Loriene French, OAD
Shonta Helton, #326415

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

NOV 28 2016

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 14-CP-43-2068

Shonta Helton, #326415,.....Petitioner,


v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Now comes the Petitioner, by and through her undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable George C. James, Jr., which granted a *White* review of the Petitioner's trial held April 14-17, 2014 (2013-GS-43-239). The Final Order denied Petitioner's remaining allegations. The Petitioner received written notice of the Final Order granting a *White* review and denying Petitioner's remaining allegations on November 10, 2016. A copy of the Final Order is attached herewith.

Respectfully submitted,



Lance S. Boozer
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Tele: 803-608-5543

Columbia, South Carolina
November 22, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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NOV 28 2016

S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 14-CP-43-2068

Shonta Helton, #326415,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 22nd day of November, 2016.



Lance S. Boozer
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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2014-CP-43-2068
SOUTH CAROLINA

Shonta Helton, #326415,

Applicant,

v.

State of South Carolina,

Respondent.

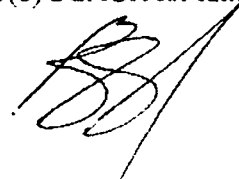
ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 24, 2014. Respondent submitted its return on January 6, 2015. An evidentiary hearing into the matter was convened on April 16, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the February 2013 term of the Sumter County Grand Jury for accessory before the fact of murder (2013-GS-43-0239). Shaun Kent, Esquire represented Applicant. Applicant proceeded to trial on April 14-17, 2014. Applicant was found guilty as indicted. The Honorable W. Jeffrey Young sentenced Applicant to a thirty-five year term of imprisonment.

A Notice of Appeal was filed on Applicant's behalf. By Order filed August 21, 2014, the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 263(b) SCACR for failing



to timely serve the notice of appeal on opposing counsel. The Remittitur was issued on September 8, 2014.

II. ALLEGATIONS

In her current Application, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
 - a. Attorney failed to suppress hearsay evidence.
 - b. Failing to file a direct appeal.
 - c. Denied discovery motion.
 - d. Counsel failed to pursue a motion to sever Applicant's case from co-defendant's case.
 - e. Counsel failed to pursue a motion to recuse the trial Judge where the trial Judge was the victim in a criminal case involving Applicant's brother as the Defendant.
 - f. Counsel failed to object or prevent co-defendant's letters from being entered into evidence or otherwise properly redacted.
2. "6th amendment entrapment statute."
 - a. "Convicted on theory of co-defendants."
3. "Hearsay testimony."
4. "No DNA evidence or scientific proof to connect me with the..."
 - a. "actual innocence/no DNA evidence."
5. "excessive sentence in violation of the 14th amendment U.S.C.A."

III. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered



adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption 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. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

A handwritten signature in black ink, appearing to be 'D. J. B.', located in the bottom right corner of the page.

Ineffective Assistance of Counsel

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice.

Failure to move to suppress Tajuana Davis's statement

Applicant alleges that Trial Counsel was ineffective for failing to move to suppress the statement of Tajuana Davis. This allegation is meritless because there was no basis to suppress this statement. Based on the trial transcript and the testimony presented at the PCR hearing, this Court finds that Applicant failed to present any basis on which the statement should have been suppressed and therefore has failed to meet her burden of proof. Thus, this allegation is dismissed with prejudice.

Failure to review discovery with Applicant

At the evidentiary hearing, Applicant testified that Trial Counsel never reviewed discovery with her. Applicant alleged that he was ineffective for failing to do so. This allegation is meritless and should be dismissed.

Trial Counsel testified that, while he does not specifically recall reviewing the discovery with Applicant, it is his practice to always share discovery with his clients. This Court finds this testimony credible. Furthermore, even if he did not review discovery with Applicant, there is nothing in the record to establish that the failure to do so prejudiced Applicant in any way. Therefore, Applicant has failed to meet the burden of proof of either prong of the Strickland test and this allegation is dismissed with prejudice.

Failure to move for trial court judge's recusal

Applicant alleges that Trial Counsel was ineffective for failing to pursue a motion for the trial court judge to recuse himself from her case where the trial judge was a victim in a criminal



case where Applicant's brother was a defendant. The trial transcript and testimony presented show that Trial Counsel did make a motion for the trial judge to be recused, but it was denied. Therefore, Trial Counsel was not ineffective and this allegation is dismissed with prejudice.

Failure to object and request curative instruction regarding Gary Dargan's letters

Applicant alleges that Trial Counsel was ineffective for failing to object to Gary Dargan's letters and for failing to ask for a curative jury instruction that the letters could not be used against her. This Court has reviewed these letters in detail. As redacted, they do not implicate Applicant in the murder. The mentioning of Applicant's name during the reading of one letter (See page 460 of the transcript) does not implicate Applicant in the murder.

Although Trial Counsel should have requested a curative instruction, this failure was harmless because the letters do not directly or indirectly implicate Applicant in the murder in the first place. In addition, any failure to pursue further redaction or a curative charge was harmless.

The testimony of Tajuana Davis was critical to the State's case. She testified that the applicant asked Gary Dargan to come kill the victim (see pages 105-107 and page 140 of the transcript) after the victim put his hands on her. Betty Welch testified that Applicant told Dargan that "you need to come get this m.f." (page 163). Testimony of Applicant's argument with the victim is corroborated by Kenyardo Bolden (page 229) and Danielle Govan (pages 209, 211-212). The court concludes the guilty verdict did not stem from any Bruton violations arising from the Gary Dargan letters.

Therefore, because Trial Counsel's failure to request a curative instruction regarding these letters was not prejudicial, Applicant has failed to satisfy the second prong of the Strickland test, and this allegation must be denied and dismissed with prejudice.

Failure to move for severance

Applicant alleges that Trial Counsel was ineffective for failing to move to sever the case from her co-defendant's case. This Court finds that there was no basis for severance and this allegation is meritless. This Court concluded above that there was no Bruton violation, so Trial Counsel could not be found ineffective for failing to move for severance on the grounds of concerns of a Bruton violation.

Because there were no grounds to move to sever, Applicant can satisfy neither prong of the Strickland test for ineffective assistance of counsel, and this allegation must be denied and dismissed.

Failure to State a Claim

Applicant claims she is entitled to post-conviction relief based on several other allegations, including a Sixth Amendment entrapment statute, hearsay testimony, lack of DNA evidence, and an excessive sentence. This Court finds that these allegations are meritless and should be denied and dismissed with prejudice.

In regards to Applicant's claim that her conviction was unconstitutional based on an absence of her DNA at the scene of the murder, this Court finds that this argument is irrelevant since the State never contended that she was present at the murder scene. Therefore, this allegation is meritless.

Applicant claims that her sentence is excessive and thus unconstitutional. This Court finds that her sentence is not unconstitutional as it is within the statutory range of sentences for these convictions and this allegation is dismissed.



Applicant claims that the trial court judge should have moved to recuse himself from her case. This Court finds this allegation is meritless because Trial Counsel made a motion to recuse the judge from the case and it was denied.

Furthermore, these allegations should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An

Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that



could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, these allegations are dismissed as they are meritless and they are not proper in a post-conviction relief action.

Belated Direct Appeal

Applicant alleges that trial counsel failed to file a direct appeal on her behalf. Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000).

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

The State consents to allow Applicant a belated direct appeal. Since all parties are in agreement, this Court finds that Applicant is entitled to a belated direct appeal under White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

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.

V. CONCLUSION

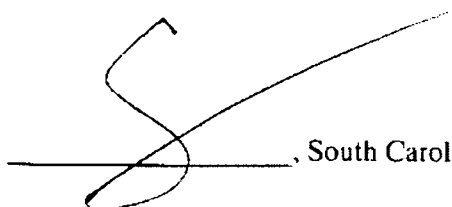
Based upon the foregoing, this Court concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

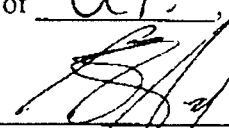
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations except a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974); and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Oct., 2016.


_____, South Carolina



GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF (Select one.)
COUNTY OF) COMMON PLEAS FAMILY COURT

2014 OCT 21 11:03 AM

Shonta Helton # 320415) JUDICIAL CIRCUIT
CLERK OF COURT)
SUMTER COUNTY, S.C.) CASE NO.: 2014 CP-43 - 2068

Plaintiff(s),) APPOINTMENT OF COUNSEL OR GAL

-vs-

(Select one.) CERTIFIED TRUE COPY OF ORIGINAL FILED

State of South Carolina) ORDER

Defendant(s).) AMENDED ORDER

Shonta Helton
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

It appears that *Shonta Helton*, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

Other: *Lance Boozer*
1331 Park St
Columbia SC 29201

counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that *Boozer*, hereby is appointed as (Select one.) for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

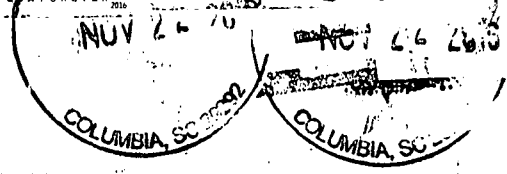
(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS *21st* DAY OF *Oct*, 20 *14*.

BOOZER LAW FIRM, LLC

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olumbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211