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MAR 25 2019
S.C. SUPREME COURT

March 21, 2019

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

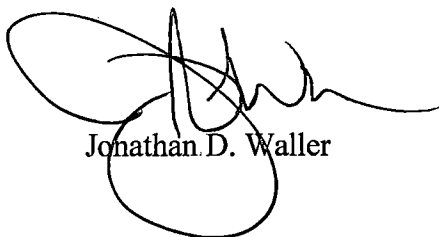
Re: Kristopher Block vs. State of South Carolina
C/A No:

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Block in this matter and am also enclosing a copy of the Order of Dismissal as well as the Certificate of Service from opposing counsel. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

2016-CP-40-01511

RECEIVED

MAR 25 2019

S.C. SUPREME COURT

Kristopher Block, # 355461,

Appellant,

v.

STATE OF SOUTH CAROLINA,-

Respondent.

NOTICE OF APPEAL

Kristopher Block, # 355461, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed April 18, 2018, and served on counsel by letter dated March 13, 2019, issued by the Honorable G. Thomas Cooper, Jr., Presiding Judge, Fifth Judicial Circuit.



Jonathan D. Waller
Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

March 21, 2019

Other Counsel of Record:
Lindsey A. McCallister, Assistant Attorney General
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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

2016-CP-40-01511

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S.C. SUPREME COURT

Kristopher Block, # 355461,

Appellant,

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STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.


Lindsay Murray

March 22, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4001511

Kristopher M #355461 Black		State Of South Carolina	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

2018 APR 18 PM 2:59
 Court Clerk

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2126	4/18/2018
	Judge Code	Date

For Clerk of Court Office Use Only

4/18/18

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

Kristopher M #355461 Black Kirkland Correctional Institution 4344 Broad River Road Columbia, SC 29210
Jonathan D Waller 1116 Blanding Street Suite 2B Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Jeanette W. McBride - Clerk of Court

Court Reporter

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), SCRCP.

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 RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

Kristopher Block, SCDC #355461,)

Case No. 2016-CP-40-01511)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

2018 APR 18 PM 2:55

This matter comes before the Court by way of an application for post-conviction relief filed on March 6, 2016, and amended on July 10, 2017, filed by Kristopher Block (Applicant). The State (Respondent) made its return on December 16, 2016. An evidentiary hearing into the matter was convened on July 21, 2017, at the Richland County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Jessica E. Kinard, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant and his plea counsel, Taylor Bell (counsel), testified at the hearing. The Court had before it a copy of the plea transcript, the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this action. After reviewing the record and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its July 2015 term, the Richland County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a

minor (2015-GS-40-3737). Subsequently, during its December 2015 term, the Richland County Grand Jury indicted Applicant for trafficking in persons-victim under 18 (2015-GS-40-6990). Taylor Bell, Esquire, represented Applicant. Senior Assistant Deputy Attorney General Heather S. Weise of the South Carolina Attorney General's Office prosecuted the case.

On January 12, 2016, Applicant appeared in the Richland County Court of General Sessions before the Honorable Clifton D. Newman, circuit court judge, where he pled guilty as indicted to trafficking in persons-victim under 18 and guilty pursuant to North Carolina v. Alford¹ to first-degree criminal sexual conduct with a minor. Pursuant to negotiations between Applicant and the State for concurrent sentence between ten to fifteen years imprisonment, Judge Newman sentenced Applicant to fifteen years' imprisonment for both offenses with the sentences to be served concurrently. Judge Newman also ordered that Applicant be subject to lifetime sex offender registry, lifetime GPS monitoring, and have no contact with the victim or victim's family. Applicant did not appeal his conviction or sentences.

SUMMARY OF GUILTY PLEA PROCEEDING

At the guilty plea proceeding, Applicant informed the court that he wanted to plead guilty to trafficking in persons-victim under 18 and was guilty of this offense, stating he promoted prostitution of a person under 18. Applicant then informed the court he wanted to plead guilty pursuant to Alford to first-degree criminal sexual conduct with a minor and that he understood this would mean the court would find him guilty based on a showing by the State. Applicant informed the court he understood his constitutional rights to proceed to trial and require the State to prove his guilt beyond a reasonable doubt, to present a defense, and to remain silent, and that he wanted to waive these rights to enter a guilty plea. He stated he had not been made any other promises beyond the negotiations he entered into with the State. Applicant informed the court he

¹ North Carolina v. Alford, 400 U.S. 25 (1970)

was satisfied with the services of counsel and had not been mistreated by law enforcement, the State, or anyone else involved with his case. Applicant informed the court he fully understood the nature of the charges and possible punishments he was facing.

The State presented the following facts in support of both convictions:

These incidents occurred on or about December 4th, 2014, at the Days Inn on Park Lane Road, which is in Richland County. That was the day that the victim was located. The victim had been missing and reported missing by her mother . . .

The victim is 14 years old and had gotten mad at her mom, left the home in the middle of the night. Contacted someone she knew from school and was headed out and ended up in the middle of something totally different from what she ever could have expected. She ended up over in the Park Lane Road area, got with some people that she thought were being friendly, hung out with them. She was spending time with them and that's where she came in contact with Kristopher Block as well as one of the other codefendants, Devonte Maze-Wise, who is still charged with these same offenses, Your Honor.

She was talking to them. They went over to the Days Inn. At some point, the third codefendant in this case, who was Jim Stevenson, came up. She didn't know who he was. This Defendant went over to the car, talked to him and Stevenson went inside the Days Inn and paid for the room that Mr. Block, Mr. Maze-Wise, Mr. Stevenson and the victim all went up to. Mr. Stevenson stayed there for a little while and then he left.

After he left, then Mr. Block had sex with the victim . . . According to the victim, he had sex with the victim and then he took pictures of her with his cell phone. Posted those pictures and advertised her for sale to other men. At that time, other men came to the door. She said that she ended up having sex with three black males and one white male who responded to the ad. She was advertised on Craig's List. She showed a Craig's List ad where he had posted her. And when she initially indicated she didn't want to participate, he hit her and told her she was going to take off her clothes. And that's when everything began. She wanted to leave and that was not an option until she had made some money.

She was able -- so basically, Mr. Block indicated it was time -- they were going to go to a different hotel to try to get some more



clients. He walked out of the hotel with her, at which time, law enforcement had been able to locate her due to some information they had got from her mom. They were able to locate her and saw her as she was walking out with Mr. Block. They got her, separated her from Mr. Block and were able to detain him.

He gave -- he did confess -- he did not confess to having intercourse with her, but he did confess to being a part of advertising her for sale, being part of the prostitution. He claimed he did not know how old she was; however, one, that doesn't matter, and two, the victim indicates that she told him how old she was, that this was not something she wanted to participate in.

Applicant disputed that he knew the victim's age, but otherwise agreed with the facts as presented by the State. Applicant's prior record included North Carolina convictions for indecent liberties with a child, which resulted in him being placed on the sex offender registry. The court reviewed the possible punishments for each offense and the classifications, and Applicant confirmed he knew the penalties and classifications for each. Applicant asked the court to accept his guilty plea.

Counsel presented mitigation on Applicant's behalf, including informing the court that Applicant was apologizing for his actions and was accepting responsibility by entering this guilty plea. Applicant then apologized to the victim and her family. The court then sentenced Applicant in accordance with the plea negotiations to a term of imprisonment for fifteen years.

ALLEGATIONS

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

1. Counsel was ineffective for failing to properly advise Applicant that his sentence would be served day for day. Counsel specifically told Applicant and others that his sentence was not day for day.
2. Counsel was ineffective for failing to procure results of DNA testing as a potential defense.

3. Counsel was ineffective for failing to conduct a complete and thorough investigation into the full facts and circumstances of Applicant's case.
4. Counsel was ineffective for failing to ensure that the plea agreement was followed in that Applicant pled guilty on the condition that other pending charges would be dismissed. Upon information and belief, those charges are still pending and have not been dismissed, causing Applicant's custody status within the Department of Corrections to be negatively impacted.

Allegation (4) was withdrawn at the start of the hearing. (PCR Tr. 5)

SUMMARY OF TESTIMONY FROM EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was originally charged with promoting prostitution and criminal sexual conduct with a minor when arrested. He testified he was later charged with trafficking in persons-victim under 18. He testified he was originally represented by another public defender before counsel Taylor Bell was appointed. He testified he first met counsel three to four months before his plea and met with him a total of two to three times. Applicant testified counsel spoke with his mother on a regular basis. He testified the first meeting was before he or counsel had any discovery. He testified his case was originally prosecuted by the solicitor's office, but was eventually handled by the Attorney General's Office.

Applicant testified counsel had received some discovery material by the second time they met, but never provided him with a complete copy of all materials. He testified he believes results from DNA testing were missing from his discovery materials and he thinks he asked counsel to try to obtain these. He testified he wanted to review the DNA results to disprove the allegation that he had sexual intercourse with the victim. He testified the victim gave statements and he did not "really" discuss these statements with counsel. He elaborated they discussed the



victim's claims and allegations, but they "didn't go into it as [they] should." He stated the victim's statements were conflicting and did not make sense to him. He testified he and counsel discussed highlighting these inconsistencies as a defense, but they did not discuss any other possible defenses. He testified he pled guilty less than a year-and-a-half after he was arrested.

Applicant testified he had two other co-defendants, but he did not discuss them with counsel until the day of his plea. He testified he learned one of his co-defendants had been released. Applicant testified he wanted to proceed to trial, but elected to plead guilty because he felt like he did not have an attorney and it would "be worse" if he went to trial. He testified he told counsel early in his representation that he wanted to proceed to trial. He testified he pled guilty because he wanted to accept the State's plea offer for ten to fifteen years imprisonment so he could be released from imprisonment by the time his son was 18 years old. He testified he understood the terms of the plea agreement, including the sentencing range and GPS monitoring. He testified counsel advised him to plead guilty because a trial was not a good idea. He testified he pled guilty because he trusted his counsel and he thought the negotiated term was preferable to the sixty years he was facing if convicted at trial.

He testified he was shown a statement that he allegedly wrote, but he denied writing it and wanted counsel to investigate the statement. He testified he thinks counsel should have investigated more, including credibility issues with the victim, and he feels counsel rushed him to enter a guilty plea. He testified he believes he would not have pled guilty had counsel properly investigated his case. He testified counsel should have reviewed store surveillance footage, his sister's phone, and other phones to establish he was not with the victim. Applicant testified he was also misadvised about parole or early release eligibility, stating he thought he would have to serve eighty-five percent of his sentences, not day-for-day. Applicant testified he has since been

advised by the Department of Corrections that he will have to serve his sentence day-for-day and that he would not have pled guilty if he had known this.

Counsel testified next. He testified he was appointed to represent Applicant while employed at the Richland County Public Defender's office following Applicant's original counsel departing the public defender's office. Counsel testified he filed the appropriate discovery motions with the Attorney General's Office and received discovery materials. He testified the discovery did not contain DNA results, which he discussed with Applicant. He testified he reviewed the list of items that had been swabbed for DNA by law enforcement, as well as explained to Applicant that the State may not have tested every swab, which he could use to his benefit on cross-examination if Applicant wanted to proceed to trial. He acknowledged that in this case, the State had not tested any of the swabs by the time Applicant entered his guilty plea. He testified Applicant never stated he did not want to enter his guilty plea without reviewing the DNA results. He also testified that Applicant never denied being at the hotel with the victim, so he did not feel the DNA results from the collected swabs was critical to Applicant's decision to plead guilty. He testified there were also videos of the victim dancing provocatively on Applicant.

Counsel testified that Applicant never wanted to proceed to trial, but rather, his primary concern was negotiating the best possible plea offer and getting out of Richland County and on to SCDC as soon as possible. Counsel testified he was able to negotiate a sentence of ten to fifteen years imprisonment with the State, which he believed was a favorable plea offer based on the mandatory ten years up to sixty years that Applicant was facing if convicted at trial. He testified he discussed the elements of the charged offense with Applicant. Counsel testified Applicant did not give him any potential leads or witnesses to investigate and Applicant never

told him he was not present or had an alibi. He testified he did not recall Applicant asking him to look at his sister's phone or store surveillance video to account for his whereabouts, and if Applicant had asked him to do so, he would have. He testified he thinks he did a thorough investigation.

He testified he spoke with Applicant's mother by phone several times. He testified it was in Applicant's best interest to plead guilty. He testified he never had any communication issues with Applicant and Applicant expressed any concerns to him well. He testified he never had competency concerns about Applicant. Counsel testified Applicant's first public defender had him evaluated for sexual deviancy and forensic psychology and the results were not beneficial to Applicant. He testified Applicant wanted to plead guilty pursuant to Alford for the criminal sexual conduct with a minor charge because he acknowledged there was enough evidence to convict him but did not want to admit to having sexual intercourse with the victim. He testified it was solely Applicant's decision to plead guilty.

Counsel testified he advised Applicant that he would likely have to serve eighty-five percent of his sentence before being eligible for any type of early release because of the classification of the first-degree criminal sexual conduct with a minor offense.

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 the witnesses 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.

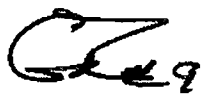
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Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Based on the foregoing, this Court finds as below to each specific allegation of ineffective assistance of counsel:

Allegation: Failure to properly advise Applicant that his sentence would have to be served day-for-day

Applicant alleges trial counsel improperly advised him that he would be eligible for early release after serving eighty-five percent of his sentence. However, he asserts SCDC has advised him that he is now required to serve his sentence day-for-day and that he is not eligible for early release.² Counsel testified he advised Applicant he would be required to serve eighty-five percent of his sentence before being eligible for any early release. This Court finds Counsel properly advised Applicant, as he is eligible for early release after serving at least eighty-five percent of his sentence.

Applicant pled guilty to trafficking persons pursuant to S.C. Code Ann. § 16-3-2020, which reads in pertinent part:

A) A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons.

...

(C) For a first offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

² Applicant presented no evidence or testimony from anyone at SCDC to support this assertion.

Cherry 10

...

(F) If the victim of an offense contained in this section is under the age of eighteen, an additional term of fifteen years may be imposed in addition and must be consecutive to the penalty prescribed for a violation of this section.

S.C. Code Ann. § 16-3-2020. Pursuant to the plea agreement entered into between Applicant and the State, Applicant was not sentenced the permissive additional consecutive term as proscribed in section (F). Trafficking in persons is a class D felony (S.C. Code Ann. § 16-1-90), and therefore is not a no-parole offense as set forth in S.C. Code Ann. § 24-13-100.

Applicant also pled guilty to first-degree criminal sexual conduct within a minor pursuant to S.C. Code § 16-3-655(A)(2) because the victim was under 16 years of age and he had a prior conviction requiring him to be placed on the sex offender registry. First-degree criminal sexual conduct with a minor is a no-parole offense as set forth in S.C. Code Ann. § 24-13-100. Therefore, Applicant must serve eighty-five percent of his sentence before being eligible for any form of release. S.C. Code Ann. § 24-13-150.

Therefore, Applicant is eligible for release after serving at least eighty-five percent of his sentence and counsel properly advised him. Counsel's performance was not deficient and this allegation is denied and dismissed.

Allegation: Failure to procure results of DNA testing as a potential defense

Applicant alleges counsel was ineffective for advising him to plead guilty without procuring the DNA results for various items or areas swabbed by law enforcement during the course of the investigation. Applicant testified he asked counsel to obtain these results prior to his guilty plea, but counsel failed to do so. Applicant did not present any evidence to show what the DNA testing would have established.




In response to this allegation, counsel testified none of the DNA swabs had been tested prior to Applicant's guilty plea, and he explained this to Applicant and how it could be used to his benefit at trial. He testified Applicant never told him he did not want to plead guilty without reviewing the DNA results, but rather, was interested in counsel securing him a favorable plea deal as quickly as possible so he could leave Richland County and get to SCDC to serve his sentence. Additionally, counsel also testified that Applicant never denied being at the hotel with the victim, so he did not feel the DNA results from the collected swabs was critical to Applicant's decision to plead guilty.

This Court finds Counsel's testimony as to this allegation is credible and should be afforded great weight and finds Applicant's testimony as to this allegation lacks credibility. Moreover, Applicant failed to present any evidence to show what potential benefit could have been realized from the DNA results. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (applicant's allegations and mere speculation, will not support a finding of prejudice when applicant claims counsel was ineffective for failing to investigate witnesses; instead, applicant must show the results of an investigation would have resulted in a different outcome at trial). Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Failure to conduct a complete and thorough investigation into the full facts and circumstances of Applicant's case.

Applicant alleges counsel was ineffective for failing to fully investigate his case. At the hearing, Applicant testified he wanted counsel to retrieve video footage and pictures from stores and his sister's cell phone to establish he was not with the victim on the day of the offenses were committed. Applicant did not present any photographs, videos, or additional witnesses to support this allegation.

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Counsel refuted these claims and testified Applicant did not give him any potential leads or witnesses to investigate and Applicant never purported to have an alibi to him. He testified he did not recall Applicant asking him to look at his sister's phone or store surveillance video to account for his whereabouts, and if Applicant had asked him to do so, he would have.

This Court finds Counsel's testimony as to this allegation is credible and should be afforded great weight and finds Applicant's testimony as to this allegation lacks credibility. Moreover, Applicant failed to present any evidence to show what potential benefit could have been realized from additional investigation. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (finding applicant failed to meet his burden of proof for his claim of ineffective assistance of counsel for failure to conduct an independent investigation where the allegation is supported only by mere speculation as to result). Therefore, this Court finds this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds 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.

This Court notes Applicant must file and serve a notice of appeal within thirty 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.

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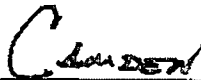
IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of April, 2018.



G. THOMAS COOPER, JR.
Presiding Judge
Fifth Judicial Circuit



, South Carolina



1116 Blanding Street, Suite 2B
Columbia, SC 29201

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

