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July 1, 2019

RECEIVED

JUL 05 2019

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: Harold Lee Jackson, 334411 v State, 2012-CP-07-4116

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, in the above Beaufort County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc:

Sara Lee Gunton, Esquire
Harold Lee Jackson 334411
Beaufort County Circuit Court Clerk

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUL 05 2019

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Thomas A Russo, Circuit Judge

Case No.: 2012-CP-07-4116

Harold Lee Jackson 334411.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Harold Lee Jackson 334411 appeals the Honorable Thomas A Russo's June 11, 2019 Order of Dismissal. Undersigned counsel received notice of entry of the order on July 1, 2019. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

July 1, 2019

Sara E Gunton, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Clerk of Court- Beaufort CP
PO Box 1128
Beaufort, SC 29901

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas
Honorable Thomas A Russo, Circuit Judge

Case No.: 2012-CP-07-4116

Harold Lee Jackson 334411.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Sara A Gunton, Esquire Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Beaufort County Clerk of Court. I further certify that all parties required by Rule to be served have been served this July 1, 2019.



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JUL 05 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Harold Lee Jackson, #334411,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2012-CP-07-4116

ORDER OF DISMISSAL

FILED
CLERK OF COURT
JAN 26 2013
BEAUFORT COUNTY

Applicant submitted a post-conviction relief (PCR) application on December 2, 2012. This Court convened an evidentiary hearing into the matter on October 12, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, Donald Colongeli (Counsel), Esquire, and Applicant were present and testified. This Court had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the February 2007 term of the Beaufort County Grand Jury for murder (2007-GS-07-0174) and two counts of assault and battery with intent to kill (ABWIK) (2004-GS-07-0175, -0176). Applicant proceeded to trial and was convicted as indicted. On April 23, 2009, Applicant was sentenced by the Honorable Carmen T. Mullen to confinement for a

period of twenty years for ABWIK and fifty years for murder. The sentences are to be served concurrently.

Applicant subsequently filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals, State v. Jackson, No. 2012-UP-038 (S.C. Ct. App. January 25, 2012).

II. ALLEGATIONS

In his PCR application, Applicant alleged the following:

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel
3. Denial of a fair trial in violation of due process.

At the PCR hearing, Applicant presented no evidence to support allegations he was denied effective assistance of appellate counsel or his due process rights were violated, and they are, therefore, denied. Under ineffective assistance of trial counsel, Applicant asserted the following:

1. Ineffective assistance of trial counsel
 - a. Trial counsel should have hired DNA expert
 - b. Trial counsel should have called additional witnesses
 - c. Trial counsel should have advised Applicant to testify.

III. SUMMARY OF FACTS

On January 3, 2007, Harold Lee Jackson attacked and beat Nazarene Laurent with a baseball bat in her home. Nazarene suffered bruises to her legs and arms. A head injury she incurred during Jackson's attack required thirteen staples to close. Nazarene indicated at trial that she had not regained full use of her arms; she was only able to lift her arms enough to reach her back.

That same evening, Jackson attacked Josh Pringle from behind with the baseball bat in Nazarene's home. Jackson hit Josh in the head and his upper torso several times. The pathologist testified that Josh was struck at least three times on the head. Josh suffered several fractures in his skull and sinuses. He also received a laceration on his face above his right eyebrow, and a laceration to his back right shoulder. Josh experienced tremendous swelling of the brain, and a small amount of bleeding in the brain. He was placed on life support shortly after arriving at the hospital. Josh was declared dead on January 11, 2007 after he suffered a cerebral blood clot. The cause of death was listed as diffuse blunt trauma to the head with resulting multiple skull fractures; epidural, subdural, intercerebral, intercerebellar, and extensive subarachnoid hemorrhages due to being beaten with a baseball bat.

Jackson then chased Shella Laurent across the street. Jackson beat Shella with the baseball bat outside of Nazarene's neighbor's home. Jackson hit Shella with the bat three to four times in the head, and several times across the rest of her body. Shella sustained a head injury, a dislocated shoulder, and spinal fractures.

Nazarene and Jackson were dating at the time of the beatings and murder. She testified they were having problems. At the time, Jackson was estranged from his wife. Nazarene was divorced. Shella, Naz's step-daughter from her prior marriage, was engaged to Josh. Shella and Josh had a child who was approximately six months old when the beating occurred.

Shella, Josh, and their son stayed with Nazarene during the holiday season of December 2006/January 2007. While Shella and Josh had their own place in Beaufort, Shella testified that she and Josh stayed at Nazarene's house for the four days before Christmas and the four days after Christmas. Nazarene testified that they had moved in early December 2006.

On January 3, 2007, Nazarene received several text messages from Jackson while she was at work. Some of the messages were positive. Others were not. Nazarene requested Jackson stop sending her text messages because Shella was holding on the Nazarene's cell phone for the day.

Nazarene first saw Jackson that evening when he picked her up from work. She indicated that Jackson was argumentative in the parking lot. Nazarene was not interested in engaging in an argument with Jackson because she was not feeling well. When the couple arrived at Nazarene's home, Jackson continued arguing. Nazarene testified that she went to her bedroom because she did not want to hear him. At one point, Nazarene went into her bathroom so she would not hear Jackson talking. While she was in the bedroom and bathroom, Shella and Josh arrived at her home. Later that evening, Nazarene left her home via the sliding door in her bedroom. She testified that she only planned to walk to her mother's house down the street. She also carried a wooden stick with her. As Nazarene started walking up the road, she saw Jackson standing in her front yard. When Jackson spotted Nazarene, he ran up to her, grabbed her cell phone, and split the phone in half. Then Jackson started asking Nazarene for his keys. Nazarene informed him that she did not have his keys. She told him that she would go back with him to her home and she would dump her purse in front of him so that he could see that she did not have his keys. They walked back to her home, and she showed Jackson that she did not have his keys.

Meanwhile, Shella and Josh were putting away groceries they had transported to Nazarene's from their apartment. Shella also indicated that they were retrieving laundry they left at Nazarene's home during the holidays. Shella testified that Nazarene and Jackson were arguing when she and Josh arrived. Shella recalled Jackson asking Nazarene for his keys. Nazarene denied having his keys. Jackson threatened to sic his dog on Nazarene if she did not give him his

keys. At that point, Shella and Josh went upstairs to retrieve the laundry they had left the night before.

When Shella and Josh went upstairs, Nazarene and Jackson were in the den. Shortly thereafter, Nazarene heard something ping on the floor. Jackson started saying, "I'm going to kill you. You're not going to have to worry about God, your mama, your friends, or nobody no more. I'm going to kill you." Nazarene left the den and went to check email in her study. Jackson came into the study later, and he shut the door. When Nazarene attempted to open the door to get out of the room, Jackson started pushing her towards the bedroom. Nazarene held onto the door for a short period. She fell. Nazarene stated, "when I fell, he started working on me with the bat... I mean, just hitting me, just hitting, and just hitting me, and just wouldn't stop... I mean just kept hitting me. He just kept hitting me."

Nazarene started screaming for Shella, yelling that Jackson was trying to kill her. Shella testified that she heard Nazarene cry out for help. Josh told Shella that he did not want her to go downstairs. He then went downstairs. When Josh came down, he walked into the room, and he grabbed the bat away from Jackson. Shella came downstairs minutes later. Nazarene noted there was no physical confrontation or argument between Josh and Jackson. Josh started asking Jackson to stop and think about what he was doing, and what he was thinking. Jackson started holding his head, and he started saying "what did I do?"

At some point, Josh set the bat down. Shella and Josh saw that Nazarene was injured, and they encouraged Nazarene to leave and go seek medical attention. They also told Nazarene that they would help Jackson find his keys so that he could leave. While Nazarene initially hesitated, she did leave the home to seek help.

When Nazarene finally left the house, Jackson walked towards the door as if he was going after her. Jackson kept hesitating back and forth. Shella started to call her dad at Jackson's insistence. However, when she started to dial his number, Jackson knocked the phone out of her hand. Jackson then left the house through the front door. He had the baseball bat in his hand by that point. Shella and Josh debated about what they should do at that point. They were not sure where Jackson was, and they did not know if they could go upstairs, retrieve their son, and leave before Jackson returned to the home. They tried to figure out where Jackson was outside, but they could not determine his location because it was dark.

The couple eventually decided that Shella would go upstairs to get the baby, and then they would leave. As Shella turned to head up the stairs, she saw Jackson behind Josh. Jackson was walking towards Josh with the bat raised in the air. Shella froze. As Josh started to turn towards Jackson, Jackson started beating Josh with the baseball bat. Jackson did not say anything. He just started swinging. Shella indicated that Jackson hit Josh approximately six or seven times. The first strike caught Josh halfway on the side of his face because Josh had started to turn as Jackson started swinging. Shella described Jackson as hitting Josh harder and harder until he went down. Josh did not put up a fight because he was caught off guard. Josh did not have a weapon.

Shella noted that at no point in time did she see either Nazarene or Josh hit Jackson. She also testified that Josh never threatened Jackson. Shella never saw Josh or Nazarene with a stick. Shella also testified that she did not have a stick when Jackson attacked her, and Josh did not have a stick when Jackson attacked him.

Shella did not decide to move until after Jackson came back up after beating Josh. She thought that Jackson might chase her if she ran, so she took off towards the front door. Shella ran

straight across the street and attempted to get to a neighbor's house. Jackson gave chase, and as Shella made it to a neighbor's trailer, Jackson caught up with her. Shella knocked on the side of the trailer and started screaming for help. She then lay down and started begging Jackson for her life. Jackson then started beating Shella with the bat. Shella testified that she balled up in a corner. She took three or four hits to her head. The rest of the hits connected all over her body. Shella recalled begging for her life, but she did not recall Jackson saying anything. Jackson just kept hitting Shella very hard. Shella did not know when Jackson stopped hitting her because she blacked out.

In processing the scene, law enforcement found a stick in the master bedroom. It was the only object found by law enforcement that they believed could have been used as a weapon. Deputy Eric Calendine, who assisted in processing the scene, did not recall seeing any items that could have been considered a weapon near Josh's body. Calendine noted the stick did have blood on it when it was collected. He also noted that the entertainment center in the master bedroom appeared to have blood on it as well.

Jackson turned himself into police in Jasper County. According to the report issued by the officer who arrested Jackson, Jackson's cousin told him that Jackson had told her that people were trying to kill them, that he had hit them with a bat, and he was not sure if they were dead. Law enforcement did not recover the baseball bat that was used by Jackson in the attacks.

IV. SUMMARY OF RELEVANT TESTIMONY

Counsel testified that he met with Applicant upwards of two dozen times. Counsel testified that he reviewed the discovery with Applicant. Counsel testified that he reviewed Applicant's right to testify and went over the pros and cons with him. Counsel testified that after reviewing Applicant's right to testify Applicant decided knowingly and voluntarily to not testify. Counsel testified that he was not concerned about Applicant's criminal record on cross, but rather that he did not believe that Applicant would be a good witness to present to the jury. Counsel testified that he did not hire a DNA expert because he did not feel it was necessary in this case. Counsel testified that he did not think that this was a forensic case, as there was never a doubt as to who was in the house that night. Counsel testified that he did not call other witnesses in the case because he did not feel that they would have been helpful to the defense. Counsel testified that he felt that he got what he needed out of the State's witnesses on cross examination.

Applicant testified that he does not remember counsel meeting with him that many times, he feels it was closer to eight times. Applicant testified that counsel did not review all of the discovery with him. Applicant testified that counsel discussed with him his right to testify, but that Counsel essentially told him not to testify. Applicant feels that he should have testified at trial in an effort to better explain to the jury his theory as to why it was self-defense. Applicant testified that he wanted counsel to hire a DNA expert to test the blood that was on the stick found at the scene and the blood that was on his t-shirt. Applicant testified that the DNA expert could have proved that the blood found on the stick and the shirt was Applicant's, thus supporting his theory of self-defense. Applicant testified that there were a number of other witnesses that he wanted called at trial. Applicant felt that a number of the investigating officers should have

testified and that they would have brought issues to light that could have helped swing the jury in his favor.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant has failed to satisfy his burden to prove that Counsels were deficient or that he was prejudiced by Counsels' alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 1985. Where the application alleges ineffective assistance of counsel as a ground for relief, 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 v. Washington, 466 U.S. 668 1984. The proper measure of performance is whether Counsels provided representation within the range of competence required in criminal cases. Id.

This Court finds Applicant's testimony lacked credibility and Counsel's testimony was credible. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Trial Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's

performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 1989. The proper measure of performance is whether the 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. 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 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. “[E]very effort be made to eliminate the distorting effects of hindsight” and to evaluate counsel’s decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel’s tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 1992.

1. Failure to hire a DNA expert

Applicant alleges that counsel was ineffective for failing to hire a DNA expert to test the blood on the stick found at the scene and on Applicant’s shirt. Testimony from counsel at the evidentiary hearing was that he did not feel a DNA expert was necessary as this was not a forensic evidence case. Counsel testified that it was never in dispute as to who was in the house that night and felt that hiring a DNA expert would not have helped the defense. Applicant also failed to show what a DNA expert would have shown had one been hired, there was no evidence presented to this Court outside the speculation of the Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to hire a DNA expert. This Court also finds Applicant failed to prove he was prejudiced by

Counsel's failure to hire a DNA expert such that there was a reasonable probability the result of the trial would have been different had the witnesses been called. Accordingly, this Court denies and dismisses this allegation.

2. Failure to call additional witnesses.

Applicant failed to show how what the testimony of the witnesses Applicant alleged Counsel would have been or that it would have benefited Applicant at trial. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "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." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant, whose testimony was found to lack credibility.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to call witnesses. This Court also finds Applicant failed to prove he was prejudiced by Counsel's failure to call witnesses such that there was a reasonable probability the result of the trial would have been different had the witnesses been called. Accordingly, this Court denies and dismisses this allegation.

3. Failure to advise Applicant to testify.

Applicant alleges that counsel was deficient for improperly advising him not to testify at trial. Counsel testified at the evidentiary hearing that he advised Applicant of his right to testify, the pros and cons of testifying, and ultimately left the decision up to Applicant. Counsel testified that he did advise Applicant that he did not think it was a good idea for Applicant to testify, but that it was ultimately his decision. The trial transcript also indicates that Applicant made a knowing waiver of his right to testify in a colloquy with Judge Mullen.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for advising him not to testify at trial. This Court also finds Applicant failed to prove he was prejudiced by Counsel's advice not to testify such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

VI. CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from 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 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf.

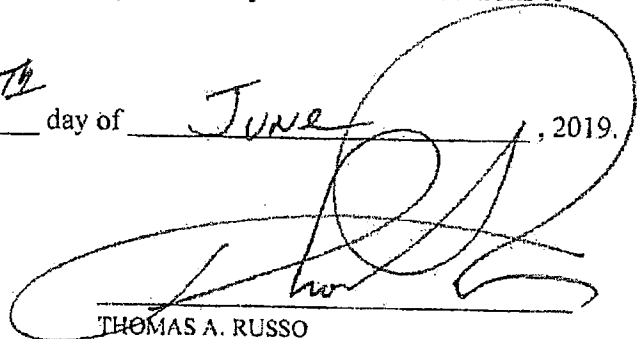
Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

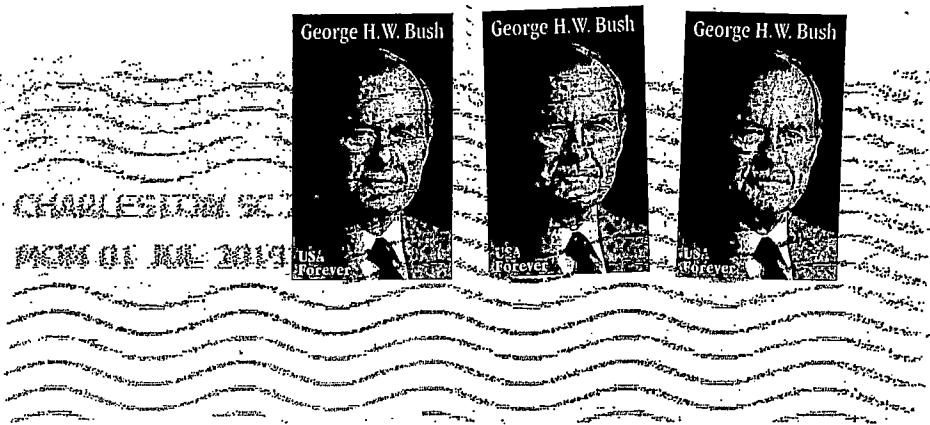
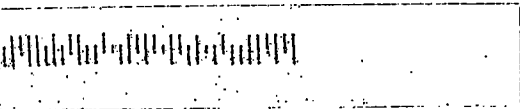
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11th day of JUNE, 2019.



THOMAS A. RUSSO
Presiding Judge
Fourteenth Judicial Circuit

Florence, South Carolina



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Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211