RICHEY AND RICHEY

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

January 15, 2020

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

RE: Rashawn Tremayne Carson, SCDC# 370192 vs. The State of South Carolina
Case No: 2017-CP-42-3717

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

Rodney Richey

RWR/
Enclosures
cc: Valerie Garcia Giovanoli
, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE MICHAEL G. NETTLES

2018-CP-42-3717

RASHAWN TREMAYNE CARSON, SCDC# 370192

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Rashawn Tremayne Carson appeals the denial of his Post- Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Michael G. Nettles, Circuit Judge on February 20, 2018 an Order issued on June 13, 2018 and filed on June 23, 2018. The Appellant received notice of the judgment on January 6, 2020.

Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

Other Counsel of Record:
Valerie Gracia Giovanoli, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE MICHAEL G. NETTLES

2017-CP-42-3717

RASHAWN TREMAYNE CARSON, SCDC# 370192

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 14, addressed to their attorney of record, Valerie Garcia Giovanoli, Esquire Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: January 14, 2020

Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Rashawn Tremayne Carson, #370192, Applicant, v. State of South Carolina, Respondent.	2017-CP-42-3717 **ORDER OF DISMISSAL WITH PREJUDICE**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Rashawn Tremayne Carson (Applicant) on October 12, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 20, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Andrea Price, Esquire, (Trial Counsel) and James Cheek (Plea Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently incarcerated pursuant to orders of commitment of the Spartanburg County Clerk of Court. In January 2016, the Spartanburg County Grand Jury indicted Applicant for two counts of contributing to delinquency of a minor (2016-GS-42-0021, -0022). Applicant was subsequently arrested for second-degree criminal sexual conduct ("CSC") with a minor (2016-GS-42-4459) and incest (warrant no. 2015A4210104644). The contributing to the delinquency of a

minor charges resulted from Applicant providing alcohol to his 14-year old daughter and her 13-year old friend. (Tr. p. 13-14). The CSC and incest charges arose from Applicant impregnating his 15-year old daughter (victim). After the victim gave birth, a DNA analysis revealed Applicant was the biological father of the child. (Tr. p. 15). The victim disclosed Applicant had been having sex with her regularly since she was 14 years old. (Tr. p. 14).

Andrea L. Price and James A. Cheek, Esquires, represented Applicant. Assistant Solicitor Hillary C. Welborn represented the State. On October 17, 2016, Applicant pleaded guilty to two counts of contributing to delinquency of a minor and second-degree CSC with a minor before the Honorable J. Mark Hayes, II. The State dismissed the warrant for incest in exchange for Applicant's guilty pleas. The State also recommended concurrent sentencing. Judge Hayes sentenced Applicant to imprisonment for twenty years for CSC and three years for each count of contributing to delinquency of a minor, to be served concurrently. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
   a. "failed to advocate"
   b. "failed to investigate"
   c. "failed to obtain lawyer/client relations"
      i. "did not visit me"
   d. "failed to suppress prejudicial evidence"
   e. "failed to object to the indictment"
   f. "failed to ask for a mental evaluation"
   g. "failed to allow Applicant all evidence"
   h. "failed to provide fundamental fairness"
2. "Due process violations and prosecutorial misconduct"
   a. "The State failed to send all related information pertaining to case"
3. Involuntary guilty plea
   a. "Applicant has history of mental disturbances."

4. "Accumulation of errors, in conflict with the Constitution"

At the start of the hearing, Applicant informed this Court he would be proceeding on his allegations that Counsel failed to investigate, failed to visit him, failed to review with him all of the evidence against him, and failed to object to his indictments.

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified Price ("Trial Counsel") was his first attorney and then Cheek ("Plea Counsel") was his attorney for his guilty plea. Trial Counsel never investigated witnesses. Trial Counsel never gave him his discovery and Applicant did not see his discovery until he got to the Department of Corrections. Trial Counsel never visited him except at his preliminary hearing, which was waived. At the preliminary hearing, Trial Counsel told Applicant she had no discovery, but that when she received it, she would review it with him and give it to him.

Applicant testified Plea Counsel met with him one time and came to his guilty plea. No one showed him the paternity test, but instead only told him the results. Trial Counsel was present when they took a swab from Applicant to use in the paternity test, but she never told him the results of the test – Plea Counsel told him the results. Applicant believed his indictment was not valid and either counsel should have objected to it. When asked why it was invalid, Applicant simply stated no one had ever explained to him how it was valid.

II. Trial Counsel testified to the following:

Trial Counsel is an Assistant Public Defender with Spartanburg County. She has been practicing criminal law for eleven years. Trial Counsel was assigned Applicant's CSC and incest case after she had previously been assigned to represent Applicant on his previous two contributing to delinquency of a minor charges. Trial Counsel reviewed the indictments and did not notice any

defects in the indictments. Trial Counsel also reviewed the discovery and met with Applicant to review it. Trial Counsel reviewed the SLED paternity test with Applicant, but did not give him his own copy. Trial Counsel's reason for not giving him a copy of his discovery was that Applicant was in custody at the county jail and felt that the seriousness of the allegations against him and evidence contained in the discovery would be dangerous for Applicant to have in his possession in jail.

Applicant never expressed a desire to pursue a jury trial, even though Trial Counsel advised him of his right to one. Since Applicant wanted to plead guilty, she forwarded the case to Plea Counsel, who assists her office in representing their clients for guilty pleas. Trial Counsel's investigation of the case included reviewing all the discovery, including the CAC videos and reports, the statements of the victim, and the SLED paternity test. Counsel did not interview the victim.

Trial Counsel recalled her first meeting with Applicant was while he was out of jail on bond from the contributing charges. After he was arrested for the CSC and incest charges while out on bond, a bond revocation hearing was scheduled. However, Applicant waived the hearing and did not oppose the bond revocation after Trial Counsel explained that the allegations against him would be presented to the bond court, before a courtroom full of people including many jail inmates. Later, Trial Counsel also visited Applicant in jail at which time she reviewed the discovery with him. Trial Counsel met with Applicant at least three times, not including the times Applicant met with Plea Counsel.

III. Plea Counsel testified to the following:

Plea Counsel has practiced criminal law for 37 years. He is an Assistant Public Defender in Spartanburg County. His position with the Public Defender does not require him to try cases, but rather to assist representation of criminal defendants who wish to plead guilty. His office is located in the county detention center which gives the defendant's easy access to him as well as allows him

to visit regularly with defendants. Plea Counsel explained investigation in preparation for trial would have been the responsibility of Trial Counsel. However, Applicant was forwarded to Plea Counsel because he had expressed a desire to plead guilty. Still, Plea Counsel advised Applicant of his right to pursue a jury trial. Applicant never indicated he wanted a jury trial, but had he done so, Plea Counsel would have referred him back to his trial attorney – as is his usual practice.

In this case, Plea Counsel reviewed the State's file, negotiated for a plea, and talked to Applicant. The State has an open file policy which allows Plea Counsel to review everything they have against Applicant. He reviewed all of the evidence, including the results of the SLED paternity test with Applicant. Applicant had attended Virginia College and had no problems understanding Plea Counsel's discussions with him regarding the evidence and the paternity test. Plea Counsel explained his comments on page 22 of the transcript regarding no investigation with regard to Applicant being the biological father of the child. Plea Counsel explained he was referring to the child victim, not the infant to whom she gave birth. Applicant claimed he was the biological father of the victim, but Plea Counsel explained there was no testing done to prove that. Regardless, the incest charges were dropped. Lastly, Applicant requested Plea Counsel schedule him to plead before Judge J. Mark Hayes, II, and so Plea Counsel arranged for him to plead before Judge Hayes.

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 had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency.

I. Ineffective Assistance of Counsel

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) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 (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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Failure to investigate

Applicant failed to present any evidence in support of this allegation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have

discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Trial Counsel done more investigation. This Court also notes Applicant only expressed a desire to plead guilty to his counsel. Investigation in preparation for trial is often times more involved and complex than the investigation performed in a case where the defendant has no interest in pursuing a jury trial. Even so, Trial Counsel performed an adequate investigation given the particular facts and circumstances of this case. This Court finds credible Trial Counsel's testimony that she reviewed all of the evidence against Applicant, and went over the victim's statements, reviewed the CAC videos and reports. The fact that Trial Counsel did not provide Applicant a physical copy of his discovery is of no consequence. Of importance is the fact that Applicant was aware of all the evidence the State had against him prior to making his decision to plead guilty. Likewise, Applicant's complaint that Trial Counsel did not show him the actual paternity test, but simply told him the results of the test, lacks merit. This physical piece of paper is irrelevant. The results of the test are important; and Applicant has not offered any evidence that the test was wrong or performed incorrectly. Therefore, having failed to meet his burden of proof, this allegation is denied and dismissed.

Failure to visit and review all evidence with him

Applicant alleged Trial and Plea Counsel only met him one time. This Court finds Trial Counsel's testimony regarding the amount of meetings they had more credible. Counsel specifically recalled meeting Applicant at least three times. Additionally, Plea Counsel also met Applicant once. Regardless, this Court does not find the number of meetings relevant, but rather the substance and nature of the meetings to be important. Trial Counsel testified she reviewed all the discovery with Applicant. This Court finds this testimony credible. Additionally, Plea Counsel also testified he reviewed all the discovery with Applicant. This Court also finds this testimony credible. Applicant has failed to demonstrate how more meetings would have done anything to change the evidence and facts of the case. This Court further finds Applicant's contention, that neither counsel reviewed the discovery with him, lacks merit. Applicant has failed to meet his burden to prove either counsel was deficient in this regard, or how Applicant could possibly have been prejudiced. Therefore, this allegation is denied and dismissed.

Failure to challenge indictments

Applicant alleged counsel should have objected to his indictments. However, he has offered no reason as to why the indictments are objectionable or insufficient. Both counsel reviewed the indictments and neither found any defects. This Court has also reviewed the indictments and cannot find any defects. Rather, this Court finds the fundamental purpose of the indictments, to give Applicant notice of the accusations being made against him, was served. Applicant has failed to meet his burden of proof with regard to this allegation. It is therefore denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has

failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

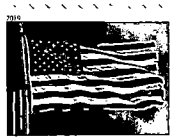
AND IT IS SO ORDERED this 13 day of June, 2018.

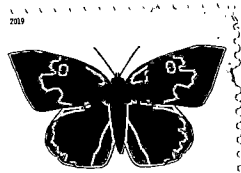
MICHAEL G. NETTLES
Presiding Judge
Seventh Judicial Circuit

Greenville, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 25 PM 1:15
M. HOPE BLACKLEY

RICHEY AND RICHEY, P.A.
Attorneys at Law
Post Office Box 10916
Greenville, SC 29603





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

292131330 B099