STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CALHOUN COUNTY
Kristi L. Harrington, Circuit Court Judge
Edgar W. Dickson, Circuit Court Judge

2013-CP-09-0012

Anthony Lockhart, # 184799,

Appellant,

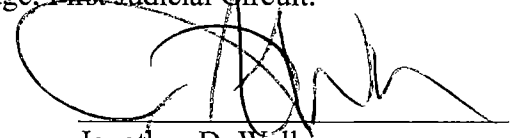
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Anthony Lockhart, # 184799, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed May 9, 2018, issued by the Honorable Kristi L. Harrington, Presiding Judge, First Judicial Circuit and the subsequent Order Denying Applicant's Rule 59(e) Motion file April 15, 2020, issued by the Honorable Edgar W. Dickson, Chief Administrative Judge, First Judicial Circuit.



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May 5, 2020

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STATE OF SOUTH CAROLINA COUNTY OF CALHOUN	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Anthony Lockhart, #184799, Applicant, v. State of South Carolina, Respondent.	2013-CP-09-0012 **ORDER DENYING APPLICANT'S RULE 59(e) MOTION**

FILED 2018 OCT 15 P 4:12

The Order of Dismissal in the above captioned matter was filed on May 9, 2018, and provided to Applicant on July 30, 2018. Applicant filed a timely motion pursuant to Rule 59(e), SCRCP, on August 4, 2018.

In consideration of the pleadings in this matter, the motion, and after review of the transcript from the evidentiary hearing held on December 14, 2017 before the Honorable Kristi Harrington, this Court denies the motion and rules in its capacity as Chief Administrative Judge[1]. The following factual findings and conclusions are set out in support of the Court's ruling:

1. Applicant first argues the Court incorrectly denied his motion, pursuant to Rule 15(b), SCRCP, to amend his PCR Application to conform to the evidence and testimony presented during the evidentiary hearing regarding trial counsel's failure to object to the malice portion of the jury charge (Rule 59 Motion, p. 1). At the close of testimony, Applicant made a motion under Rule 15(b), SCRCP, to amend the pleadings to conform to the testimony and evidence presented during the hearing. (PCR Tr. 81-82). Applicant argued that although this allegation was not

[1] Applicant's Rule 59 (e) motion was not considered by Judge Harrington as she left the bench in June 2018, prior to its filling. Judge Dickson is ruling on the Applicant's PCR in his capacity as Chief Administrative Judge.

enumerated in the application, nor in the amendment, the States' failure to object to testimony on this issue during the hearing allowed the allegation to be presented to the Court for consideration (PCR Tr. 82). The Court denied Applicant's motion, stating it would not allow Applicant to amend his application to include the allegation, as Applicant had stated the allegations he planned to go forward on at the onset of the evidentiary hearing (PCR Tr. 5-9; 82-83). This Court finds Applicant's arguments supporting his request to be without merit. The State had no notice Applicant decided to pursue this claim until the end of the hearing, after all the evidence had been presented. On direct examination, after PCR Counsel stated he had no further questions, Applicant stated, "and I want to get that piece of paper I gave you about the malice. I want to address that and put it on the record also" (PCR Tr. 26-27). PCR Counsel proceeded to briefly question Applicant regarding the jury charge and the use malice:

Q: Did you notice anything wrong with it?

A: I didn't know nothing about the law then.

Q: You didn't at the time, but now you've come to see that there are some issues?

A: Yes sir.

(PCR Tr. 27)

On re-direct, after PCR counsel stated he had no further questions for Applicant, Applicant again brought up "that piece of paper... about drugs that addresses the malice." (PCR Tr. 38). PCR Counsel briefly questioned Applicant regarding the charge. Applicant proceeded to begin reading the Trial Court's jury instruction on malice (PCR Tr. 39-41). Additionally, though PCR Counsel briefly questioned trial counsel regarding his opinion of the malice instruction given by the trial court, the State had little reason to suspect this testimony would form part of the basis of a PCR

claim yet to be made. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017). Therefore, this Court finds no cause to alter or amend its decision denying Applicant's Rule 15(b) motion.

2. This Court also finds no cause to alter or amend its ruling as Applicant has failed to show the original order of dismissal did not address his claim regarding counsel's failure to properly investigate and introduce evidence of third party guilt. At the evidentiary hearing, Applicant attempted to introduce into evidence a document he received in his Rule 5 materials provided by trial counsel. The document, from the Orangeburg County jail, "appears to state there's an informant that has information that Travis Morgan committed the homicide." (PCR Tr. 54). Counsel admitted at the PCR hearing he was not able to find any notes in his defense file whether or not he had investigated this document and its credibility. However, he testified "the more I reflect as I sit here on this Travis Morgan document, I would not have ignored it... to the best of my ability I would have pursued this information to determine if there was any merit to it... my best answer would be that I determined it was meritless." (PCR Tr. 69-70). However lacking trial counsel's investigation was into Travis Morgan as a suspect for third-party guilt, there is no probative evidence to support a finding of prejudice as required by *Strickland*[2]. Applicant provided no witnesses or other documentation necessary to lay the foundation as to this document's veracity or credibility, and therefore failed to substantiate this allegation with any probative evidence. *See Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998); *See also Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (emphasis added) (applicant's allegations, alone, 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*

[2] *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984).

resulted in a different outcome at trial). Mere speculation and conjecture on the part of respondent is insufficient. *Id.* As such, this Court declines to alter or amend its ruling.

CONCLUSION

THEREFORE, upon consideration of the arguments presented, this Court DENIES Applicant's motion to alter or amend the Court's judgment.

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 SO ORDERED.

EDGAR W. DICKSON
Chief Administrative Judge
1st Judicial Circuit

1 April, 2020
Orangeburg, South Carolina

ALAN WILSON
ATTORNEY GENERAL

April 8, 2020

The Honorable Kenneth Hasty
Calhoun County Clerk of Court
Post Office Box 709
St Matthews, SC 29135-0709

Re: **Anthony Lockhart, #184799 v. State of South Carolina**
2013-CP-09-0012

Dear Mr. Hasty:

Enclosed please find the original **Order Denying Applicant's Rule 59(e) Motion** signed by the Honorable Edgar W. Dickson, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Sara E. Gunton FOR SEG
Assistant Attorney General

SEG/kw

Cc: Jonathan Waller, Esquire

STATE OF SOUTH CAROLINA COUNTY OF CALHOUN	)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT
Anthony Lockhart, #184799, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-09-00012 **ORDER OF DISMISSAL**

The above-captioned matter comes before this Court by way of a post-conviction relief (PCR) application filed by Anthony Lockhart on January 10, 2013. This Court convened an evidentiary hearing into this matter on December 14, 2017, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant was indicted during the February 2010 term of the Calhoun County Grand Jury for murder (2008-GS-09-0178). On February 22, 2010, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. On February 25, 2010, the jury convicted Applicant as indicted. Judge Goodstein sentenced Applicant to life imprisonment.

A Notice of Appeal was filed with the South Carolina Court of Appeals and an appeal was perfected on Applicant's behalf. The Court of Appeals affirmed Applicant's sentence and conviction. State v. Lockhart, Op. No. 2012-UP-599 (S.C. Ct. App. filed on October 31, 2012). The Remittitur was issued on November 16, 2012.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. "Ineffective Assistance of Counsel"
   a. "Counsel failed to fully represent me"
2. "Prosecutorial Misconduct"
   a. "Prosecutor engaged in unlawful conduct"
3. "Denial of Due Process."

On December 14, 2017, Applicant amended his application through Counsel to make the following allegations, the State did not object to the amendment:

1. "Counsel was ineffective for failing to object to introduction of evidence of medical testing where the chain of custody had not been properly established."
2. "Counsel was ineffective for failing to properly argue Applicant's directed verdict motion to include an argument for lack of venue."
3. "Counsel was ineffective for failing to properly investigate and introduce evidence of third party guilt, when such evidence was provided in discovery and counsel was made aware of its existence."

III. SUMMARY OF FACTS

On May 14, 2004, a Friday, some Orangeburg-Wilkinson High School students decided to cut class and go fishing at a Orangeburg County pond. While fishing, the boys noticed what appeared to be a mannequin floating in the water. It was not a mannequin. It was the nude decomposing body of the victim Timothy Ravenel. When the teenagers realized the body was real, one of boys ran to a near-by home and called police. The other teenagers waited on the Orangeburg County Sheriff's deputies to arrive. (Tr. pp. 160-165, 289-302).

When police removed Ravenel's body from the pond, they found it was anchored to cement blocks by a piece of rope. The victim's body was also bound with rope. The body's decomposition was consistent with having been submerged for several days. Police also searched the bank and surrounding area and found no blood or shell casings or any evidence to indicate the victim had been murdered at the pond. Investigators concluded the pond was only a dump site. (Tr. pp. 289-302).

A few days later, police also searched the victim's residence. They found no evidence the victim was murdered inside his home. (Tr. pp. 289-302).

The autopsy determined the victim had been shot twice with a small caliber weapon, and the victim was also stabbed twice with a sharp object. The pathologist determined the cause of death was not drowning, or the gunshot wounds, but a stab wound to the victim's chest, which was fatal. The gunshot wounds to the victim were potentially fatal. The pathologist testified the victim could have survived at most, five to six minutes after being shot and stabbed. The evidence also showed the victim had a blood alcohol level of .067 and had used cocaine or crack cocaine immediately before his death. (Tr. pp. 383-399).

Ravenel's murder remained unsolved for four years. In August 2008, Victor Keitt notified the Orangeburg County Sheriff's Office from jail that he knew who killed the victim Timothy Ravenel. Keitt told police Applicant, Anthony Lockhart, killed the victim, and he, Keitt, assisted in disposing of the body. Keitt related to police Applicant murdered Ravenel in Calhoun County, but they disposed of the body in Orangeburg County. Keitt took police to the location where the murder took place, and to locations where Applicant and he disposed of evidence in the case. Applicant and Keitt were charged with Ravenel's murder.[1] (Tr. pp. 166-206, 303-308).

[1]At the time Keitt related to police Applicant murdered the victim and that he assisted in disposing of the body, Keitt was in jail on a general sessions shoplifting charge. (Tr. p. 170).

Keitt testified at Applicant's trial. Keitt related to the jury that in 2004 he worked for Applicant doing construction work, and the victim also worked for Applicant from time to time. Keitt testified that on the day of the murder, the three men (Applicant, Keitt, and the victim) rode around in several vehicles belonging to Applicant getting high. Keitt testified they all smoked crack cocaine, and Applicant and the victim eventually stopped and obtained some white liquor from a bootlegger. The three men eventually went to a secluded location and parked. (Tr. pp. 166-182). Keitt was sitting in the truck smoking crack when Applicant told the victim to get out of the truck and check under the hood. The victim complied. Applicant then stepped out of the truck and asked Keitt to lean up. Applicant retrieved a .22 caliber rifle from behind the seat of his truck. Keitt remained in the truck smoking crack when he heard a gunshot. Keitt thought Applicant was shooting at some animal or just shooting the gun. Keitt then heard arguing and got out of the truck. Applicant was pointing the .22 rifle at the victim. Applicant accused the victim of "ratting them out." The victim begged for his life. Applicant then shot the victim two times with the .22 caliber rifle. (Tr. pp. 182-183).

Applicant and the victim began to struggle, and Keitt pushed the victim away from Applicant. Keitt and the victim both ran, but the victim collapsed on the ground. Applicant then stated out loud: "the gun is jammed." Keitt stopped running when the victim collapsed, and Keitt began yelling at Applicant: "What are you doing? What have you done?" (Tr. pp. 183-184).

Applicant then told Keitt to stab the victim. Keitt refused. Applicant then took Keitt's work knife and stabbed the victim two or three times. Keitt heard the victim grunt. Keitt testified the victim eventually died there at the scene after being stabbed. (Tr. pp. 184-185, 231).

Applicant then told Keitt to help him dispose of the victim's body. Applicant threatened Keitt if he did not help him. Keitt testified he agreed to help dispose of the body after Applicant threatened to kill him. Applicant then removed the clothes from the victim's body. Keitt testified they tried to dig a grave for the victim's body, but the ground was too hard, and the shovel they were trying to use was a flat shovel and would not work. (Tr. pp. 184-185).

Keitt testified he and Applicant left the victim's body at this location, and Applicant drove the two men to Keitt's mother's home to get tools to dispose of the victim's body. Keitt testified he borrowed two shovels from his brother and a can of fuel. They then left his mother's house and returned to the crime-scene. Once there, Applicant tried to burn the body, and Applicant covered the body up with some dirt using one of the spade shovels they had obtained from Keitt's mother's house. (Tr. pp. 185-187).

Keitt testified Applicant then drove to Applicant's residence. While there, Applicant got his wife to get them both a change of clothes, and he and Applicant changed into different clothes. They took the clothes they were wearing during the murder, placed them in a bag, and disposed of them somewhere in Calhoun County. (Tr. pp. 187-190).[2]

Keitt testified Applicant kept him [Keitt] with him the remainder of the day and into the night until about 3:00 a.m. Applicant then dropped Keitt off at his house. The next morning around 5:30 to 6:00 a.m., Applicant returned in his wife's white car. The two men drove back to

[2]Keitt was not asked by either side where the murder weapon was disposed of; however Detective Riley Godwin testified Keitt informed police the murder weapon was disposed of with the victim's clothes and the clothes Applicant and Keitt were wearing during the murder. (Tr. pp. 526). While police attempted to locate this and other discarded evidence, they were unable to do so. (Tr. pp. 525-528). The search for this evidence was not conducted until four (4) years after the murder, and one possible evidence dump site was only approximately two (2) miles from Applicant's home. (Tr. p. 527). Another dump site was a relatively large and deep creek that was subject to flooding, and a dump site near Columbia could not be definitely located and there had been construction in the area since the murder in 2004. (Tr. pp. 528, 542-543, 549-550).

the murder scene and looked at the body. They then drove to Applicant's residence and got a tarp out of Applicant's barn. (Tr. p. 190).

Keitt testified Applicant then drove to a Lowe's hardware store where Applicant purchased some painter's clothing (painter's suits). Applicant then drove by a Mr. Stokes' residence and borrowed Mr. Stokes' pick-up truck. Applicant and Keitt put the stuff they needed in the truck, i.e. the tarp, a cement block from Applicant's wife's residence, another block from Applicant's mother's residence and some rope. The two men then returned to the crime-scene. (Tr. pp. 190-192).

Applicant then wrapped the victim's body in the plastic tarp; they put the body in the bed of the truck, and Applicant placed some cement blocks on the tarp covering the victim's body. They then drove to Orangeburg County to a pond. (Tr. pp. 190-193).

Keitt testified Applicant and he removed the body from the truck, and Applicant wrapped the rope around the victim's body, and tied the other end of the rope to some cement blocks. They then put the victim's body into the pond. (Tr. pp. 193).

Keitt testified they left the pond and threw the shovel, the gas can, and the tarp in a creek and bagged the painter's clothes they were wearing when they moved the body to the pond and other clothing and threw them in some woods near Columbia. They also washed the truck out at a truck wash. Applicant also tried to sell the rifle to a Ms. Fersner. (Tr. pp. 193-195).

At Applicant's trial, Keitt's brother also testified. He confirmed, in 2004, Applicant and his brother came to Keitt's mother's home and borrowed a spade type shovel and a five gallon can of gas. Keitt's brother testified Applicant and Keitt never returned the spade shovel, and when he got the gas can back, it was missing the top. He was not satisfied with this. As a result,

they took it back. Keitt's brother testified they then brought him another gas can, a smaller one. He never got his original gas can back from Applicant or his brother. (Tr. pp. 310-338).

Another witness, Mr. Edward Fersner, testified that in 2004, he remembered Applicant coming to his house and attempting to sell him a long gun. The witness testified it was dark when Applicant approached Fersner's home about buying the rifle. As a result, the witness could not tell if anyone else was with Applicant. (Tr. pp. 350-373).

Mr. Stokes' (James Stokes) testimony was also stipulated to. Mr. Stokes would have testified, in part, that during the week of May 10, 2004, he allowed Applicant to borrow his white pick-up truck. (Tr. p. 683).

The State also called three different persons who had been incarcerated with Applicant after his arrest for Ravenel's murder. All three related admissions Applicant made to them regarding the murder of the victim.[3]

The State called Ali Brunson. Brunson was confined in the Orangeburg County Jail with Applicant. Brunson testified Applicant made admissions to him regarding his commission of the murder of the victim. Brunson testified Applicant told him "[t]hey was getting high, smoking crack." on the day of the murder. Applicant also told Brunson that Keitt was involved in the decedent's murder with him. Applicant told Brunson that Keitt was there with him when the murder occurred, and Keitt helped Applicant dump the body. Applicant also told Brunson that they [Applicant and Keitt] took the clothes off the victim and dumped his body in a pond naked. Applicant also told Brunson they burned the victim's clothes so police would not be able to trace their DNA. Applicant also told Brunson that the murder happened in Calhoun County. Brunson

[3]One of these witnesses was Ricky Jamison, a portion of whose cross-examination is the subject of this appeal. (Tr. pp. 400-489). The admission to Jamison actually occurred outside of jail before Jamison and Applicant were incarcerated together.

testified Applicant did not tell him exactly where the pond was located but Brunson understood it was in Orangeburg County. Brunson testified Applicant told him that the guy who helped him dispose of the body was named Vic Keitt. (Tr. pp. 435-469).

The State also called Jubraie Pringle. Pringle was also confined with Applicant in the Orangeburg County Jail pre-trial. Pringle testified Applicant told him that on the day of the murder he and two buddies were getting high. Applicant told Pringle that he and one of the guys he was getting high with got in an argument and then into a physical fight. Applicant told him that after something else happened he went to the truck and got something, an iron or something, and stabbed the guy two times. Applicant also told Pringle that he asked the guy in the truck to lean up and he got a gun from behind the seat. Applicant admitted to Pringle that he shot the decedent two times. Applicant told Pringle the other guy with him at the time of the murder, not the victim, was named "Vic." Applicant also told Pringle that he would not have gotten caught if the guy named "Vic" had not told on him. (Tr. p. 470-489).

Ricky Jamison's testimony was very limited. Jamison testified Applicant told him on his [Applicant's] mother's front porch, about a year after the murder, that he, Applicant, had to get rid of the victim once and for all. Applicant told Jamison the victim had been stealing from him. Jamison also testified that he knew Victor Keitt, and during the time period after Ravenel's murder Keitt would stay high during the daytime and only come out at night, and Keitt quit hanging around Applicant. Jamison testified that on one occasion Keitt related to him that he was afraid for his life. Jamison testified that later while incarcerated with Applicant, Applicant denied that he had murdered the victim and tried to convince Jamison he was innocent. Jamison testified this was different from what Applicant told him at his mother's home approximately one year after the murder. (Tr. pp. 403-404, 406-408).

IV. SUMMARY OF PCR TESTIMONY

Applicant testified Counsel did not go over his rights but, did speak with him about his right to a jury trial, right to testify, and right to remain silent. Applicant stated he and Counsel discussed his statement and the potential sentences at trial, including his LWOP notice. He said Counsel didn't discuss any defenses with him, but did go and speak with several people. He stated he met with Counsel seven or eight times. Applicant testified he didn't understand the conversations as well then as he does now. Applicant testified he and Counsel went over the codefendant's statements, but did not discuss any third-party guilt defenses. Applicant stated Counsel did what he could with the time frame he had, but the trial court wouldn't grant him a continuance.

Counsel testified he discussed whether Applicant wanted a continuance and Applicant insisted he wanted a trial. Counsel testified he met with Applicant seven to eight times in the four to five weeks before the trial. Counsel said his motion to dismiss based on venue was not a trial strategy decision nor would it have changed Applicant's case. He stated he made the motion to dismiss based on venue because he thought it was legally appropriate. Counsel testified he was satisfied with the State's representation of the incident walk-through that took place prior to trial. Counsel testified he went out and personally interviewed the witnesses because he wanted to get a feeling for their testimony in person. Counsel testified he believed the strongest third-party perpetrator defense was accusing the wife of the victim, who had recently taken out a large life insurance policy on the victim. The testimony concerning the third-party defense was proffered and denied by the trial judge. Counsel testified he would not have objected to the toxicology even if he believed it was objectionable because the evidence was beneficial to his client. Counsel testified drugs and alcohol in the victim's system are almost always beneficial to the

defendant. Counsel testified he did not believe the trial judge's malice charge was incorrect because Applicant's defense was that he was not present. Counsel testified he went over Applicant's rights with him carefully and advised him of the risks and benefits of testifying. Counsel testified Applicant was always adamant he would testify and Counsel helped Applicant practice to testify. Counsel testified he did not specifically recall the hearsay document alleging third-party guilt of an inmate. However, Counsel testified he would have investigated it and believed the third-party guilt defense against the wife was stronger. Counsel testified he would have reviewed and rejected the third-party guilt document in his trial preparations.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Applicant has failed to satisfy his burden to prove Counsel was deficient or that he was prejudiced by Counsel's 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 "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 Counsel provided representation within the range of competence required in criminal cases. Id.

This Court finds Counsel's testimony was credible. This Court finds Applicant's testimony lacked credibility. 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, therefore, dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland, 466 U.S. at 669. 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." Id. at 117-18, 386 S.E.2d at 625. "[E]very effort must 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. Failing to object to introduction of evidence of medical testing where the chain of custody.

Counsel testified he did not object to the evidence or the chain of custody because the evidence was beneficial to his client. Applicant alleges Counsel should have objected to the chain of custody for the victim's bloodwork that showed the victim had drugs in his blood at the time of his death. Counsel testified even if the chain of custody was deficient he would not have

objected as a matter of trial strategy. Counsel testified tests that find drugs in the victim's blood are almost always beneficial to the accused. The analysis showed the victim was impaired and involved in illegal activities, which casts doubt on the victim's credibility and the defendant's guilt. "Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). This Court agrees with Counsel's trial strategy and finds it was reasonable to allow the victim's blood analysis into evidence without objection.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient. This Court also finds Applicant failed to prove he was prejudiced under Strickland by the victim's blood analysis coming into evidence. Accordingly, this Court denies and dismisses this allegation.

2. Failing to properly argue Applicant's directed verdict motion to include an argument for lack of venue.

Counsel objected to the venue during pre-trial motions at trial. In his motion challenging venue, Counsel admitted there was going to be testimony part of the incident occurred in Calhoun County, but wanted to bring the conflicting statements to the court's attention. (Tr. 109.) Viktor Keitt, Applicant's codefendant, testified much of the incident occurred in Calhoun County, which satisfied the venue jurisdiction. (Tr. 181-187.) "The standard for establishing venue is not a stringent one, for "venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient. Where some acts material to the offense ... occur in one county, and some in another, venue is proper in either county." State v. Crocker, 366 S.C. 394, 404, 621 S.E.2d 890, 895 (Ct. App. 2005) (internal cites omitted). Further, Counsel renewed all his prior motions at the end of the case. (Tr. 684). Based on the testimony of Keitt in the record, this Court finds venue was proper. Counsel

also testified there was no strategic reason to challenge venue and it did not change Applicant's case.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient. This Court also finds Applicant failed to prove his case was prejudiced under Strickland by his case being tried in Calhoun County. Accordingly, this Court denies and dismisses this allegation.

3. Failing to properly investigate and introduce evidence of third party guilt.

Applicant presented no evidence or testimony on how further investigation would have helped his case. Applicant alleges a piece of paper in the defense file which had a handwritten note stating an inmate told a detention officer who told his supervisor that someone else killed the victim in Applicant's case. Counsel could not recall specifically whether he investigated the potential for a defense of third-party guilt. Counsel believed he investigated it and decided the victim's wife taking out a large life insurance policy was more convincing. Ultimately, the trial judge ruled Counsel's attempt to assert third-party guilt of the victim's wife was mere suspicion and suppressed that testimony. (Tr. 566). Applicant presented no evidence other than the triple hearsay statement. "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). Applicant failed to present any evidence other than mere speculation as to what further investigation would have revealed. Counsel believed he would have investigated that lead and it did not lead to anything substantial. Although Counsel could not recall specifically recall his investigation; Applicant's assertion Counsel should have investigated further is supported by mere speculation.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient. This Court also finds Applicant failed to prove his case was prejudiced under Strickland by Counsel's

failure to investigate a hearsay statement. 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 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 71.1(g), 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:

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 23rd day of April, 2018.

KRISTI L. HARRINGTON
Presiding Judge
1st Judicial Circuit

Charleston, South Carolina

State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

Kristi Lea Harrington
Judge

300-B California Avenue
Moncks Corner, SC 29461
Phone: (843) 719-4480

May 2, 2018

Calhoun County Clerk of Court
Common Pleas Filing Clerk
P.O. Box 709
St. Matthews, SC 29135-0709

Dear Clerk:

Please find enclosed for filing the original Order of Dismissal for Anthony Lockhart, #184799 v. State, Case Caption 2013-CP-09-0012.

Thank you,

Elizabeth Wiles

Elizabeth Wiles
Law Clerk