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STATE OF SOUTH CAROLINA	FILED	SC Court of Appeals)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	2021 OCT -7 PM 3: 28)	THE ELEVENTH JUDICIAL CIRCUIT
The State	LISA M. COMER)	
	CLERK OF COURT)	Indictment No. 2014GS3200228
	LEXINGTON, SC)	
vs.)	FINAL ORDER DENYING
Worth Edward Cook III)	DEFENDANT'S APPLICATION FOR
Defendant.)	POST-CONVICTION DNA TESTING
)	AND GRANTING THE STATE'S
)	MOTION FOR SUMMARY DISMISSAL

COPY

This matter comes before the Court on a *pro se* motion of Worth Edward Cook III ("Applicant") for an order requiring post-conviction DNA testing pursuant to S.C. Code Ann. §§ 17-28-10, *et seq.* ("the Act"). On November 16, 2020, Applicant filed an Application for Post-Conviction Forensic DNA testing. The State filed its response on February 5, 2021. On March 1, 2021, Applicant filed a Reply to the State's Response, and subsequently an Amendment to the Reply on March 30, 2021. On July 1, 2021, this Court filed a Conditional Order Denying Defendant's Application for Post-Conviction DNA Testing and Granting the State's Motion for Summary Dismissal. Applicant was given twenty (20) days from service of said Order to provide specific factual and legal reasons as to why his application should not be dismissed. Applicant timely filed a response to the Conditional Order on July 15, 2021.

REQUIREMENTS OF THE POST-CONVICTION DNA TESTING ACT

The Access to Justice Post-Conviction DNA Testing Act ("the Act") authorizes a person who is currently incarcerated, who pled not guilty to certain offenses, who was subsequently convicted of the offense, and who asserts their innocence to apply for forensic testing of their DNA and any physical evidence or biological material related to their conviction. S.C. Code Ann. §§ 17-

28-10 *et seq.*

The Act requires that the applicant identify the evidence that should be tested and articulate the basis for their request for additional testing and the specific testing sought. Additionally, the Act requires the applicant to explain why their identity was or should have been a significant issue during the original trial of their case. The Act also requires the applicant to explain why the material that would be tested was not previously subjected to testing or why additional testing would provide a substantially more probative result. Furthermore, the Act requires that the applicant explain why, if the testing were to produce exculpatory results, the results would constitute new evidence that would change the results of the applicant's conviction.

The court shall order DNA testing of the applicant's DNA and the physical evidence or biological material only upon making a finding that the applicant has established each of the following factors by a preponderance of the evidence:

- (1) the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing;
- (2) the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material;
- (3) the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity;
- (4) the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity;
- (5) if the requested DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching;
- (6) the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, the requested DNA test would provide a substantially more probative result; and
- (7) the application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

S.C. Code Ann. § 17-28-90(B).

APPLICANT'S RESPONSE TO JULY 1, 2021 CONDITIONAL ORDER

Upon review of the Applicant's response to the Conditional Order Denying his application for post-conviction DNA testing, the Court hereby adopts its findings of fact and conclusions of law from its July 1, 2021 conditional order. Even viewing this evidence in the light most favorable to the Applicant, the Court finds that the Applicant has failed to provide factual and legal reasonings as to why his application should not be dismissed. Furthermore, the Applicant has failed to establish all the factors enumerated in the Act by a preponderance of the evidence. The burden of proof is on the Applicant to show why additional DNA testing is necessary.

In his response, Applicant asserts his application was denied wholly based on incriminating statements made at trial. The Court disagrees. The Court's initial decision to deny the Applicant's application was based on a totality of the circumstances review of all testimony and evidence introduced at trial. Even if the Applicant's testimony was false, as he now alleges, the Court also considered the testimony of the other witnesses, in addition to the evidence presented.

Additionally, as the Court previously found, the evidence that the Applicant is requesting to be tested is not material to the issue of Applicant's identity as the perpetrator of the offense. The Applicant fails to set forth the basis for the request for additional testing as required by the Act. The Applicant's request is not specific and does not provide any justification for why the testing is relevant. In the Applicant's response to the conditional denial, he asserts that the victim was not killed in his home. If the victim was not killed in his home, the testing of any item found in his home would not make any fact of consequence more or less probable. Moreover, as previously held, there were DNA swabs taken from Applicant's home. This Court maintains its position that the requested DNA test on these swabs would not provide a substantially more probative result.

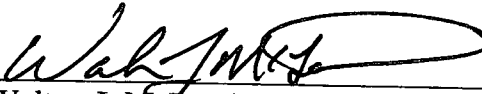
Even assuming that another individual's DNA is found on any of the items described above, that in and of itself would not shed any additional light as to who killed the victim. No DNA testing of the evidence listed in the application would change the evidence presented at trial, including both the Defendant's own testimony as well as eyewitness testimony provided.

Lastly, the Court will not address the allegations of ineffective assistance of counsel. The Applicant has already sought post-conviction relief on this ground and the denial is currently pending appellate review.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-28-50(c), the Court dismisses this application with prejudice and finds that the Applicant is not entitled to DNA testing and no purpose would be served by any further proceedings. Additionally, the Court grants the State's Motion for Summary Dismissal.

AND IT IS SO ORDERED.


Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

October 7, 2021