THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon. Debra R. McCaslin, Circuit Court Judge

Case No. 2019-CP-26-01035

David Welch, #372246, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

David Welch, Petitioner, appeals the attached Order of Dismissal issued by the Honorable Debra McCaslin on April 28, 2023. Petitioner, through counsel, received notice of the entry of the Order on May 5, 2023.

Date: May 15, 2023

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
David James Welch, #372246, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2019-CP-26-01035 **ORDER OF DISMISSAL**

This matter comes before the Court by way of Applicant's post-conviction relief application filed February 21, 2019. Respondent made their return on May 29, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held at the Horry County Courthouse on January 5, 2023. Christopher R. Geel, Esquire represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial Counsel Ralph J. Wilson Jr., Esquire and Senior Assistant Solicitor Joshua Holford also testified. After reviewing all records and evidence this Court finds Applicant cannot meet his requisite burden of proof establishing that he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted in Horry County for kidnapping (2015-GS-26-00969), armed robbery (2015-GS-26-00970), first degree criminal sexual conduct (2015-GS-26-00971) and possession of a weapon during the commission of a violent crime (20015-GS-26-00972). On April 17, 2017, Applicant proceeded to trial before the Honorable Steven H. John. The jury found Applicant guilty of kidnapping and criminal sexual

conduct, and acquitted Applicant on the remaining charges. The court sentenced Applicant to twenty-four years' imprisonment for each count, to run concurrently.

Applicant filed a timely notice of appeal. Katherine H. Hudgins, Esquire perfected the appeal, filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The issue offered was:

> Did the trial judge err in refusing to grant a mistrial when a detective testified that he knew the Appellant as the individual identified on Facebook as David Royal, implying the detective knew Appellant because of prior criminal activity?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Welch*, Op. No.2018-UP-451 (S.C. Ct. App. Dec. 12, 2018). Remittitur was issued on December 28, 2018.

Welch subsequently filed a PCR application in Horry County on February 21, 2019. That application was amended on January 5, 2023. The matter was convened for an evidentiary hearing on January 5, 2023. At that evidentiary hearing, Welch asserted the following grounds for relief:

In his original PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel for the following reasons:

1. "Trial counsel failed to conduct independent DNA testing on evidence."
2. "Trial counsel failed to subpoena a key witness to the defendant's trial."
3. "Trial counsel failed to adequately advise Defendant regarding his right to testify at trial."

In Applicant's amended application, filed January 5, 2023, he alleged:

1. "Trial Counsel was constitutionally ineffective pursuant to Strickland v. Washington, when he failed to object to improper corroboration of the victim's statements, improper vouching, and improper bolstering testimony. (Tr. 240-41, 247-48, 257, 259, 264-66)."
2. "Trial Counsel was constitutionally ineffective pursuant to Strickland v. Washington when he failed to object to and/or move to exclude audio of the Applicant's custodial interview based upon his pre-trial invocation of his right to counsel."
3. "Trial Counsel was constitutionally ineffective pursuant to Strickland v. Washington when he failed to object to improper remarks and arguments by the State during opening and closing arguments, including impermissible "golden rule" arguments. (Tr. 65, 330-32, 333, 334). Tappeiner v. State, 416 S.C. 239, 785 S.E.2d 471 (2016)."

At the PCR hearing, Applicant proceeded forward on all allegations raised in his amended application as well as the allegation of ineffective assistance of counsel for failure to object to the prosecutor's closing statement on the grounds that his argument extended past the scope of the evidence presented at trial and that the prosecutor impermissibly offered his own opinion regarding the evidence offered. All other allegations raised in his initial application and amendments are deemed waived and abandoned and accordingly, will not be addressed in this order.

At the evidentiary hearing, Welch testified on his own behalf, and the State presented the testimony of trial counsel as well as the trial-level prosecutor. Having heard the evidence presented in this matter, Welch's application is hereby DENIED for the reasons set forth below.

Synopsis of Trial Evidence

This case arises from an alleged kidnapping and sexual assault in the Myrtle Beach area of Horry County. On January 8, 2015, the alleged victim Jerrica Nelson contacted police and stated that she had been robbed by someone at the Burger King restaurant in Myrtle Beach. Nelson was interviewed by investigators and she ultimately accused the Applicant of luring her to an apartment complex and sexually assaulting her at gunpoint. The primary evidence at trial was the alleged victim's testimony – the physical and forensic evidence collected and presented at trial was inconclusive and did not inculpate the Applicant.

The victim, Jerrica Nelson, testified at trial. (Tr. 76). She stated that days before the incident, on approximately January 6, 2015, she received a Facebook message from Welch. (Tr. 117). Nelson had been posting messages on Facebook saying that she was interested in meeting new people. (Tr. 115). She did not know Welch when they first began exchanging messages. (Tr. 116-17). Nelson became acquainted with Applicant over the internet after Facebook suggested him as a friend but never met him in person. (R. 79-80). Nelson initiated the first conversation on

January 6, 2015. (R. 116-17).

Nelson stated that on January 8, 2015, when she got off of work and was on her way home, she received repeated messages from Applicant on Facebook. (R. 76-81). Nelson did not answer Applicant's messages because she was driving, but then her phone rang when Applicant called. (R. 78, ll. 4-6; R. 85-86).

Applicant continuously suggested they hang out and cuddle, to which Nelson replied, "I know what guys mean when they say that." (R. 118, ll. 9-20). Applicant requested sex with Nelson, but Nelson neither agreed nor refused. (R. 83-84; R. 126-27). Applicant wanted to meet Nelson in person, but Nelson delayed until she received a voicemail from Applicant amid a flurry of eight phone calls. (R. 86-87). In the voicemail, Applicant claimed he was waiting for Nelson, and that he had been waiting for her all day after they made plans. (R. 87, ll. 13-15). Nelson messaged Applicant back asserting she had never made plans with him, but ultimately relented and agreed to meet him at the Burger King "[i]n front of Coastal Grand Mall by Sticky Fingers." (R. 86-89). Nelson called Applicant while waiting at the Burger King to "see if he was actually gonna show up." (R. 86-87).

After Nelson waited for ten to fifteen minutes, Applicant appeared wearing khaki-colored jeans, a dark colored sweatshirt, and a "small like beanie type" hat. (R. 89-90). Applicant knocked on the window of Nelson's Hyundai Tucson and she let him into the SUV, where Applicant asked Nelson how her day was. (R. 90, ll. 22-24). Nelson resisted Applicant's efforts to pursue intimate relations. (R. 90-91). Applicant finally relented and asked her to take him home. (R. 91, ll. 8-12). Nelson drove him to the Town Square Apartments and pulled into the parking lot. (R. 92-96).

After Applicant pointed out an open window, Nelson turned off her headlights and Applicant asked her to have sex with him. (R. 96, ll. 8-12). Applicant "rubbed the gun on my hand"

before pocketing it again, then began to unbutton Nelson's pants over her objections, stating that he would shoot her. (R. 96, ll. 12-17). Applicant then ordered Nelson into the back seat where he raped her. (R. 96, ll. 17-24). Nelson told Applicant she was not on birth control in the hopes of dissuading him, but he responded by putting on a condom. (R. 96-97). After Applicant finished with Nelson, he grabbed her purse. (R. 97, ll. 2-4). Nelson refused to let go until he threatened to shoot her, at which point she released, and Applicant ran out of the SUV to a nearby gas station. (R. 97, ll. 4-8). Nelson shouted after him to return the purse, but Applicant paid her no attention. (R. 97, ll. 8-12). Deprived of her purse and iPhone, Nelson knocked on doors at the apartment complex to borrow a phone to no avail, then drove to a Belk to call her mother and the police. (R. 97-99; R. 102-03). Nelson did not see her purse, its contents, or Applicant again until trial. (R. 99-101). Nelson denied ever agreeing to have sex with Applicant, and asserted she was afraid for her life. (R. 114, ll. 1-9).

Nelson initially did not tell her mother or the police about the sexual assault "[b]ecause [she] didn't want to think it happened." (R. 102-03; R. 128-29). Instead, Nelson only reported that she was robbed at gunpoint at the Burger King, prompting officers to respond. (R. 107-09; R. 129-30; State's Trial Exhibit #21). Nelson also reported that she did not recognize her attacker, explaining at trial that she "wasn't thinking about it clearly." (R. 110-111). Nelson admitted that the story she told to 911 dispatch was a lie, and that she left things out because she "didn't want to think it had actually happened." (R. 130, ll. 1-15). Nelson agreed that law enforcement's questioning of her was "rough." (R. 112, ll. 15-21). Officer Sououd went so far as to warn Nelson that she could be charged with filing a false police report if she lied to police, which prompted Nelson to disclose the sexual assault. (R. 133-34; R. 142, ll. 3-12).

Officer Michael Dame, of the Myrtle Beach Police Department, assisted in Applicant's

arrest. (R. 204-06). Multiple law enforcement officers positioned at the front and rear of the house around midnight between January 8 and 9, 2015, with Dame situated "to the back of the house to the right." (R. 206-07; R. 211, ll. 1-5). An officer knocked on the front door; "the back door flew open, and the subject exited very quickly out of the back of the house." (R. 207, ll. 4-11). While other officers pursued through yards and over fences, Dame took a wider route down the street and "saw the same subject that left the house going underneath a vehicle, cowering underneath a vehicle." (R. 207-08). Applicant was apprehended. (R. 208, ll. 6-16).

Detective Jeremiah Beam, of the Myrtle Beach Police Department, responded to the Belk's at Coastal Grand Mall on January 8, 2015. (R. 232-35). Det. Beam acknowledged he was tough on Nelson to vet her complaint, and affirmed that Nelson never denied being sexually assaulted or being robbed at gunpoint. (R. 240-41). Det. Beam interviewed Applicant on January 9, 2015, after his arrest. (R. 242-45). Applicant was Mirandized and initialed the form utilized by the detective. (R. 243-45). Applicant asked for a lawyer after a couple of brief statements. (R. 252-54).

Vanessa Lynn Thompson, a resident of Myrtle Beach, decided one day in February 2015 to go check out a foreclosed, abandoned house that her sister had previously lived in. (R. 183-86; R. 190-91). While exploring the utility room, Thompson found a purse and "stuff scattered like it had been thrown out of the purse." (R. 186-87). Thompson's sister found more identification cards on the air conditioning unit. (R. 187, ll. 10-11). Thompson found a name tag for where the purse's owner worked and called the company try and alert the owner that she had found her pocketbook. (R. 187, ll. 12-22). Law enforcement returned the phone call, and Officer Brittany Southerland responded to the scene. (R. 188, ll. 5-13; R. 190-93; R. 237, ll. 9-13). At trial, Detective Beam noted that the house where the purse was found was along the direction of Applicant's flight from the scene after assaulting Nelson. (R. 239, ll. 9-25).

Counsel called expert witness Jessica Stowe, a forensic serologist with the South Carolina Law Enforcement Division. (R. 284-85). Stowe screened the sexual assault kit submitted to SLED and found neither pubic hair, spermatozoa, nor seminal components. (R. 286-296; Defendant's Trial Exhibit #16). Buccal swabs were taken from Norris, but no analysis was performed on them. (R. 294, ll. 22-25).

Summary of Testimony from PCR Hearing

Applicant Testimony

Applicant testified that he met once with Counsel before trial. He stated that the meeting was the day before trial. Applicant stated he discussed the evidence against him and the elements of the charges with Counsel.

Applicant told the Court that he wrote three letters to Counsel beginning March 21, 2017. Applicant testified that in the second letter he told Counsel that he had a possible witness for his case, and he did not "positively know [when] he was going to Court." Applicant testified that in his last letter, dated April 5, 2017, he stated he lost the discovery he was given initially and wanted Counsel to provide more copies of it.

Applicant testified that his rights were violated when he asked for a lawyer on the day he was arrested and then the next day he was subject to a police interview after being Mirandized. Applicant asserted that he was promised a phone call and a reasonable bond in exchange for Applicant giving a DNA sample and answering some questions. On cross-examination, Applicant admitted that he had reviewed all discovery with Counsel and the *Jackson v. Denno*[1] hearing was fully explained to him.

[1] *Jackson v. Denno*, 378 U.S. 368 (1964).

Applicant stated that he did not believe Solicitors can make statements that suggest guilt over innocence in front of a jury during the State's closing argument. He insisted that it was a violation of his constitutional rights when facts were presented at his trial that pointed to his guilt because it indicated the prosecutor was using his authority unfairly to prejudice the jury. Additionally, Applicant claims the prosecutor's argument that Applicant is guilty is an impermissible expression of an opinion. Applicant believed the prosecutor bolstered the victim's testimony. Applicant ended his testimony by stating that he "didn't have a problem with the prosecutor saying he was not a twenty-two-year-old girl" during his closing statements.

Counsel Testimony

Counsel testified he was aware of Applicant's allegations of ineffective assistance of counsel. Regarding the police interview, Counsel stated that there was most likely no *Miranda* violation because of the large difference in time between when Applicant claims he invoked his right to an attorney and when he was Mirandized and subsequently interviewed. Counsel testified that he watched the video of the interview which was only around six minutes long. Counsel stated he did not think this argument was worth pursuing because it rested on Applicant's telling of what happened and he said nothing incriminating in the interview. Further, Counsel explained that even if he had tried to raise that issue, he did not believe it would have any chance of being successful due to the evidence required to prove the violation occurred therefore would not have changed the overall outcome. Additionally, nothing from that interview was used at trial. Counsel also testified that he saw in the video of the interview that the detective told him he had the option not to talk.

Counsel testified that he reviewed the passages which Applicant claims constitute bolstering and stated that he did not believe they did. Counsel testified that his strategy was prepared two weeks before trial, but he was worried about the credibility of the victim and the

detective assigned this case. Counsel testified that he did a mock trial at the jail with Applicant as part of his strategy and preparation for this trial.

Counsel testified that many of the objections Applicant now asserts should have been made were purposefully not made because he wanted use to impeach in cross-examination. Counsel also noted that he didn't object to some questions by prosecution because he was going to ask the witness the same types of questions. Counsel recalled he did not object to the question to witness Detective Jeramiah Beam "are omissions lies in your book?" because he was going to ask the same thing. Counsel testified that he didn't make objections of "bolstering or vouching" because he didn't find them to have a valid legal basis. Counsel recognized that there were statements made that were false but not "bolstering". Counsel stated that he did not think there was anything impermissible in the State's opening and closing arguments.

Prosecutor Testimony

Prosecutor testified that he was the lead prosecutor in the case. Prosecutor stated he believed that the credit at issue was whether the police department found credible evidence. Prosecutor testified that he did not believe he exceeded the scope of the evidence. Prosecutor asserted that it was acceptable to make a reasonable inference as to the gun's presence throughout this incident. as he did not proffer that the gun was held up to the victim's person the whole time. Prosecutor concluded his direct examination by stating that he never asked the jury to put themselves in the victim's shoes. On cross-examination, Prosecutor clarified that he did not believe a prosecutor may insert their own opinion, but he can argue what the evidence shows. Lastly, Solicitor clarified that it is prohibited to mischaracterize evidence and he did not do that.

Findings of Fact and Conclusions of Law

In a PCR action, Applicant bears the burden of proving the allegations in his 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, 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, 686 (1984); *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*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *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 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.* (citing *Strickland*, 466 U.S. at 690). 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.

Improper Bolstering

"Improper bolstering is 'testimony that indicates the witness believes the victim but does not serve some other valid purpose.'" *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499-500 (Ct. App. 2019) (quoting *Briggs v. State*, 421 S.C. 316, 325, 806 S.E.2d 713, 718 (2017)). "Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that

the witness believes the victim, or when there is no other way to interpret the testimony other than to mean the witness believes the victim is telling the truth." *Id.* "However, an expert's testimony is not improper bolstering 'when the expert witness gives no indication about the victim's veracity[.]" *Id.* (quoting *State v. Perry*, 420 S.C. 643, 663, 803 S.E.2d 899, 910 (Ct. App. 2017)).

"In an ineffective assistance case, 'trial counsel's failure to object to [improper bolstering] testimony does not remove a [] [PCR] applicant's burden to prove prejudice." *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 246, 814 S.E.2d at 492). "The determination of whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim." *State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015). "The outcome of a trial turns on the credibility of the victim when the State presents no physical evidence or 'relie[s] solely upon the victim's testimony to establish the details of the crime . . . *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 248, 814 S.E.2d at 494).

Applicant has not met his burden of proof concerning this allegation. This Court concurs with Counsel and Prosecutor in their assertions that none of the portions highlighted constituted improper bolstering. Additionally, several of the highlighted portions included questions Counsel intended to ask himself, which this Court finds are not appropriate for Counsel to object to. Further, this Court finds that none of the highlighted portions were so crucial as to undermine the results of the proceedings. Accordingly, because Applicant has not met either prong of the *Strickland* analysis, relief is denied on this ground.

Custodial Interview

Applicant claims Counsel was ineffective for failure to object to the custodial interview or move to suppress the interview on the grounds that Applicant invoked his right to counsel the day

before the police interview. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* "[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

Counsel credibly testified that he did not think this was a winnable argument, in part because it was based upon Applicant's word alone. He stated that he thought the argument chosen

during the *Jackson v. Denno* hearing was the most compelling argument regarding the statement and stood by that at the PCR hearing. This Court agrees. This Court finds Counsel made a reasonable decision and Applicant's chosen argument would not have been successful. Further Counsel stated that the Applicant said nothing incriminating in the interview, nor was it used in the trial in this case. Accordingly, because there is no deficiency, there can be no prejudice. Thus, relief is denied on this ground.

Prosecutor Opening/Closing – Golden Rule

Applicant claims Counsel was ineffective for failure to object to the State's opening and closing statements on the grounds that the arguments implicated the golden rule argument. To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019).

"It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony."). A prosecutor should "prosecute with earnestness and vigor" and "may strike hard blows, [but] is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 88 (1935). "If a Solicitor's closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs." *New*, 338 S.C. at 319, 526 S.E.2d at 240. "On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury's passions or prejudice."

Id. "[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none." *Berger* at 88.

"Improper comments do not automatically require reversal if they are not prejudicial to the defendant." *Id.*, 428 S.C. at 550, 837 S.E.2d at 40 (quoting *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor's argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

Golden Rule arguments made in closing are generally not permissible because they generally ask the juror to depart from neutrality and to decide based upon personal bias, not the evidence itself. *See e.g. Brown v. State*, 383 S.C. 506, 516-17, 680 S.E.2d 909, 915 (2009) (finding that Counsel was deficient for failure to object to the prosecutor asking the jury to "speak up" for the three-year-old victim).

Applicant has not met his burden of proof concerning this allegation. This Court has carefully reviewed the transcript and concurs with Counsel and Prosecutor in their assertions that the opening and closing arguments were not improper or objectionable. Further, this Court finds that none of the highlighted portions were so crucial as to undermine the results of the proceedings. Accordingly, because Applicant has not met either prong of the *Strickland* analysis, relief is denied on this ground.

Prosecutor Closing – Outside Scope of Evidence

Applicant claims both ineffective assistance of counsel for failure to object to the prosecutor's closing, as well as prosecutorial misconduct, because the prosecutor allegedly his closing argument outside of the scope of the evidence. This Court finds this allegation is without

merit and that the conclusion consisted of evidence in the record and reasonable inferences derived therefrom. The statement was not objectionable, Counsel was not deficient for failing to launch frivolous objections during the closing, and no prejudice derives therefrom. Accordingly, relief is denied on this ground.

Prosecutor Closing – Personal Opinion

Applicant claims both ineffective assistance of counsel for failure to object to the prosecutor's closing, as well as prosecutorial misconduct, because the prosecutor allegedly his closing argument around his opinion. This Court finds this allegation is without merit and that what Applicant described is a prosecutor's closing, built around the State's theory of the case. The statement was not objectionable, Counsel was not deficient for failing to launch frivolous objections during the closing, and no prejudice derives therefrom. Accordingly, relief is denied on this ground.

Conclusion

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 21 **day of** February **, 2023.**

DEBRA R. MCCASLIN
Chief Administrative Judge
Fourth Judicial Circuit

Horry, South Carolina

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HORRY COUNTY
2023 APR 28 P 3:43
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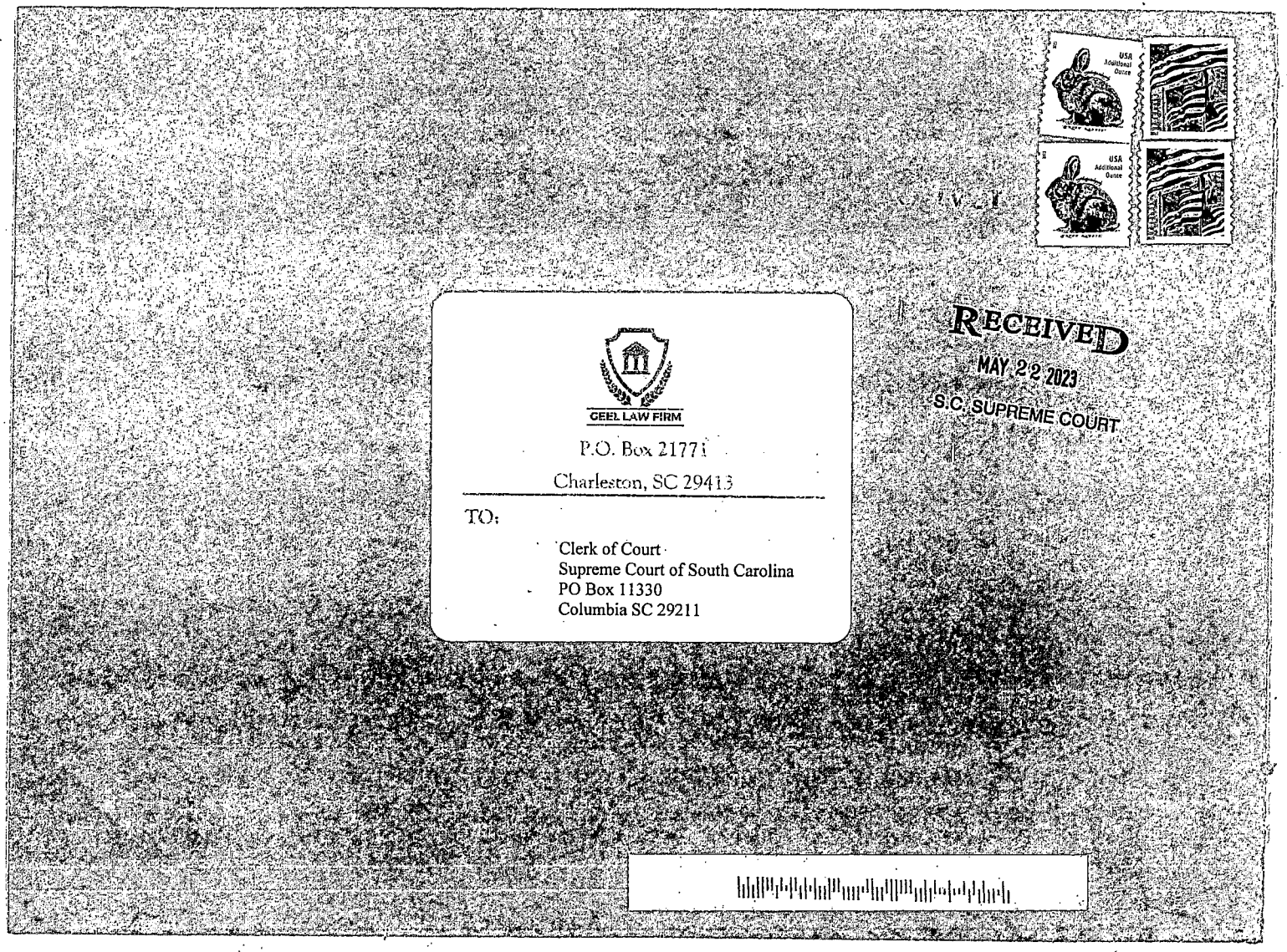
CLERK OF COURT
HORRY COUNTY, SC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