STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS IN THE TENTH JUDICIAL CIRCUIT
Jeremiah C. Johnson, #303825, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2017-CP-04-1162 **ORDER OF DISMISSAL**

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jeremiah C. Johnson (Applicant) on June 1, 2017. On March 2, 2023, an evidentiary hearing convened before the Honorable Perry H. Gravely. Applicant was present and represented by Sarah M. Henry, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a cumulative forty-year sentence. In November 2012, the Anderson County Grand Jury indicted Applicant for armed robbery (2012-GS-04-2404) and possession of a weapon during a violent crime (2012-GS-04-2405). In December 2012, Applicant was indicted for kidnapping (2012-GS-04-2547) and murder (2012-GS-04-2548). These charges arose from the disappearance and murder of Chandrakant Patel on July 2, 2012.

On June 22-24, 2015, Applicant proceeded to a jury trial before the Honorable R. Scott Sprouse. Gordon A. Senerius, Esquire, represented Applicant, and Assistant Solicitors Rame L.

Campbell and Brantley B. Haigler prosecuted the case. The jury convicted Applicant as indicted, and Judge Sprouse sentenced him to concurrent terms of thirty years for murder, twenty years for kidnapping, and five years for the weapon charge; and a consecutive term of ten years for armed robbery.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander filed a brief on Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). On December 7, 2016, the South Carolina Court of Appeals dismissed the appeal pursuant to Anders. State v. Johnson, Op. No. 2016-UP-508 (S.C. Ct. App. filed December 7, 2016). The remittitur was sent January 3, 2017.

II. Underlying Facts

At trial, Detective Jeff Finley testified he was investigating the disappearance of Chandrakant Patel (Victim), who went missing July 2, 2012. He stated Victim's abandoned vehicle was discovered the next day, but police did not find any evidence near the vehicle. (Tr. 112-14; 118). On July 11, 2012, police discovered Victim's body in a heavily-wooded area; Detective Finley explained the body was not near the area where Victim's vehicle was found.1 (Tr. 126-27). Police recovered a .9mm shell casing near the body. (Tr. 13-31).

Tawanya Edwards testified she was friends with Applicant and recalled seeing him on July 1, 2012. She stated she dropped Applicant off at a home, where she saw Kyndra Howell. Edwards stated she stayed for about seven minutes, left, returned, and stayed for about five minutes. Edwards stated Applicant gave her $30 for gas before she left the second time. (Tr. 148-50). Law enforcement recovered video from the home's exterior cameras; during her testimony, Edwards identified herself and Applicant in photographs taken from the video. (Tr. 121-22; 150-52).

Investigator J. Todd Owens testified Zach Gantt led him and Detective Barton to Victim's

body, which was in a heavily-wooded area. (Tr. 174-78). The following day, Investigator Owens interviewed Applicant. (Tr. 178). Investigator Owens testified Applicant initially denied involvement but later became upset and said, "Quevo shot him." (Tr. 185-86). Investigator Owens stated Applicant then provided details, and Investigator Owens typed a statement that Applicant signed. (Tr. 186-87). In the statement, Applicant indicated he went to a home on Jerry Drive and saw Zach Gantt and Kyndra Howell; he stated Howell "told [them] about a man inside who had some money and she said we should rob him." (Tr. 188-89). Applicant relayed he and Gantt agreed to rob the man and went inside with Howell. Once inside, they tied the man's hands behind him with a cord and took his wallet. (Tr. 189). Applicant and Gantt hit the man; thereafter, Applicant left and tried to use Victim's cards at an ATM. (Tr. 189-90). When Applicant returned, Quevo arrived "and things got out of hand." (Tr. 190). Applicant stated Quevo sprayed the man with bug stray and burned him with a hot knife. Applicant stated he wanted to let Victim go. (Tr. 190). They drove into the country, where Quevo shot Victim. (Tr. 190-91).

Detective Danny Barton testified he obtained Victim's phone records and noticed a number Victim had called numerous times before he went missing; the owner of that number had an address on Jerry Drive. (Tr. 207). Detective Barton stated Victim's son had also tracked Victim's phone using GPS in the area near the Jerry Drive home. (Tr. 207). During Detective Baton's testimony, the State played surveillance video from outside the Jerry Drive home. (Tr. 224). According to Detective Barton, the video showed Victim's black Honda pull up and Howell get in the vehicle. (Tr. 224-25). Later Victim's vehicle returned, and Victim and Howell went inside. (Tr. 225). A few minutes later, Applicant arrived in a Cadillac and got out; Gantt approached Applicant and spoke to him. According to Detective Barton, Applicant got dog food out of the Cadillac. (Tr. 226). About

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1 Brett Woodard, a pathologist, testified Victim died from a gunshot wound to the head. (Tr. 170).

ten minutes later, Howell walked outside holding a puppy and talking on a phone. Thereafter, Applicant walked outside and drove away in Victim's car. Thirteen minutes later he returned. (Tr. 227). Detective Barton later retrieved surveillance videos from two gas stations showing Applicant using an ATM machine around the same time someone attempted to access Victim's bank account. (Tr. 252-65).

III. CURRENT APPLICATION

Applicant timely filed this PCR application on June 1, 2017, alleging he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
   a. "Counsel failed to investigate law and facts."
   b. "Violation of right to fair trial." - "Counsel failed to make timely objections."
2. Due Process Violation
   a. "Procedures for Grand Jury violate Equal Protection."

On February 27, 2023, Applicant served on Respondent an amended application asserting counsel was ineffective as follows:

> a. Trial counsel failed to review important discovery with applicant including: 1) video from the scene that allegedly shows applicant, 2) video from nearby stores that allegedly show applicant. Trial counsel did not show Applicant these videos, and failed to discuss a strategy for dealing with this evidence with Applicant, or to seek applicant's explanation for this evidence. Applicant alleges that if trial counsel had disclosed and discussed these tapes with applicant, he would have been able to provide trial counsel with an effective explanation and that would have changed the trial strategy and the outcome of the trial. Defense counsel failed to call partial alibi witness, Andrew Johnson.
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> b. Applicant alleges that his confession was coerced by the police through lies, and that trial counsel's performance during the Jackson v. Denno hearing challenging the validity of applicant's confession was ineffective.
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> c. That Jeff Hook, Juror #71 admitted he had a positive

relationship with the victim and/or the victim's family through his former sales job, and that trial counsel failed to object to him remaining on the jury.

d. Trial counsel did not discuss or prepare sentencing mitigation on applicant's behalf. That applicant's family and employer were not informed of the sentencing and thus were not able to give statements of support that could have reduced applicant's sentence.

e. That trial attorney never requested a bond reduction for applicant. Applicant alleges that he would have been able to assist in his defense has he not been in jail.

f. Trial counsel failed to object to testimony from police officers Barton and Owens regarding non-testifying co-defendant's inculpatory hearsay statements, and failed to request a mistrial after objection was sustained.

At the PCR hearing, Applicant proceeded on the allegations in his amended application.

IV. Findings of Fact and Conclusions of Law

Before this Court are the Clerk of Court's records of the underlying conviction, the records from Applicant's direct appeal (including the entire trial transcript), Applicant's records from the South Carolina Department of Corrections, and the records of this PCR action. This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the standard set forth below, this Court finds Applicant has failed to carry his burden of proof under Strickland. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

A PCR applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, an 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 w. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. In evaluating allegations of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, an attorney's performance is measured 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). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

In addition to deficiency, a PCR applicant must prove that counsel's deficient performance 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, 386 S.E.2d at 625.

Failed to review discovery and call alibi witness

Applicant avers trial counsel failed to review important discovery with Applicant including a video from the scene and nearby gas stations allegedly showing Applicant. He contends counsel did not show him these videos, discuss a strategy for dealing with the evidence, or seek Applicant's explanation for this evidence. Applicant alleges that if trial counsel had disclosed and discussed these videos, he would have been able to provide an effective explanation that would have changed the strategy and outcome of trial. Applicant also asserts counsel failed to call Andrew Johnson as a partial alibi witness. Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel "hardly" communicated with him, and it took "time for [counsel] to come meet with him whenever he requested a meeting." He agreed, however, that he met with counsel multiple times. Applicant stated counsel did not review the facts of the case with him; they "talked about the case but [counsel] was telling him that he might as well plead guilty for something that he didn't do." Applicant contended counsel "said something about videos" but never showed them to Applicant, and Applicant first saw the videos at his trial. Applicant agreed he was in the videos at the gas stations but claimed he was attempting to use his own debit card and purchasing dog food. He acknowledged he told counsel he was at the gas station purchasing dog food. Regarding the videos from the home, Applicant stated he was trying to get dog food and had never seen Victim's car until that day; he thought the car belonged to one of Howell's friends.

Applicant also claimed he never saw Gantt's statement prior to trial, and he "didn't have the chance to tell [counsel] about the inconsistencies in Gantt's statement because they cut his phone off at jail." Finally, Applicant averred his brother, Andrew Johnson, could have spoken to counsel about Applicant's "whereabouts." Applicant acknowledged being at Howell's home and claimed he was there to feed the dogs. He also acknowledged his brother Johnson was *not* at Howell's home but claimed he saw Johnson and his cousin later that night.

Counsel testified he met with Applicant frequently to discuss the case. He stated the State's evidence included two statements signed by Applicant, two videos showing him attempting to use Victim's debit card at different locations, and a video showing Applicant being dropped off at Howell's house and leaving in Victim's car. Counsel stated he discussed this evidence with Applicant frequently. He averred they had a communication problem, however, because Applicant did not understand the felony murder rule. Counsel did not recall Applicant asking him to speak to his brother or any other alibi witnesses.

Counsel did not believe Applicant saw the videos before trial, but he stated they discussed them frequently. He stated Applicant never told him he tried to use his own card or he was trying to buy dog food. Counsel stated Applicant *did* tell him that he went to Howell's to feed his dogs, but he stated the PCR hearing was the first time he heard Applicant claim he was using his own ATM card. Counsel explained Applicant was sitting next to him at trial when he saw the videos, and Applicant did not say anything to him at that time. Counsel recalled Gannt was a potential witness for the State; he stated Gantt made a deal with the solicitor's office in exchange for his testimony.

This Court finds **credible** counsel's foregoing testimony that he met with Applicant frequently; they discussed the State's evidence, including the videos; Applicant never claimed he was using his own debit cards; Applicant did not say anything to him at trial when he saw the videos; and Applicant did not ask counsel to speak with his brother or any potential alibi witnesses. This Court further finds counsel's communication with Applicant was reasonable under prevailing professional norms. Finally, counsel articulated a valid reason for not interviewing potential alibi witnesses—namely, counsel did not recall Applicant asking him to. Thus, Applicant did not prove deficiency.

Likewise, Applicant has not shown a reasonable likelihood exists that the outcome would be different had counsel communicated with him more. Pertinently, Applicant has not set forth any credible evidence counsel could have obtained with additional communications. Regarding his claim of an alibi, Applicant's testimony about what Johnson might have said would not have provided an alibi, and it is not reasonably likely such testimony would have changed the outcome. Finally, and critically, Applicant did not call Johnson as a witness at the PCR hearing and thus did not prove prejudice from counsel's failure to call him as a witness at trial. See Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) ("[T]o support a claim that trial counsel was ineffective for

failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.").2 Thus, this claim is denied and dismissed with prejudice.

Jackson v. Denno hearing

Applicant alleges that his confession was coerced by the police through lies, and trial counsel's performance during the Jackson v. Denno hearing was ineffective. Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant claimed his confession was coerced because it was typed by the detective. He averred "the same wording in Gantt's statement is the same as in his but with different wording." Applicant claimed police wrote his statement and he signed it because he "thought it was something that he was telling them about how he didn't have anything to do with it." Once he realized what he had signed, he asked if there was any way that he could change it. Applicant claimed he did not read the statement before signing it because he trusted law enforcement to write what he said. He recalled counsel challenged the statement through a Jackson v. Denno hearing but claimed counsel did not object to things. Specifically, he testified "they were explaining some things in the case and some things he didn't understand why they convicted him because he knows that he was not guilty." Applicant averred counsel should have objected to the statement that he didn't really write.

Counsel testified he had concerns about the voluntariness of Applicant's statement and raised

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2 Applicant's mother testified at the PCR hearing but did not provide an alibi—or any type of defense—for Applicant. This Court finds it is not reasonably likely her testimony would have changed the outcome of trial, and thus Applicant did not show prejudice from counsel's failure to call her as a witness.

them at the Denno hearing. He stated he argued the statement should have been video-recorded.

This Court finds counsel *did* challenge Applicant's statement through a pre-trial Jackson v. Denno hearing, and counsel's representation in this regard was reasonable under prevailing professional norms. (Tr. 40-76). Notably, counsel advanced arguments in favor of suppression—including that the statements were typed by law enforcement and not written by Applicant—but the trial court determined the statement was admissible. (Tr. 74-76). Because counsel *did* challenge the voluntariness of this statement, and his challenge was reasonable under prevailing professional norms, Applicant did not show deficiency. Likewise, Applicant has not shown what counsel should have argued instead that would be reasonably likely to change the outcome. Thus, Applicant did not prove prejudice, and this claim is denied.

Juror Issue

Applicant contends counsel was ineffective for failing to object to Juror #71 remaining on the jury after the juror admitted he had a positive relationship with the victim and/or the victim's family through his former sales job. Applicant has not shown counsel was ineffective in this regard.

At the beginning of the second day of trial, the Court indicated it had received notice that Juror 71 realized after the case started "that he may have been familiar with or knew some of the alleged victim's family." (Tr. 143). Thereafter, the following exchange occurred:

> The Court: . . . [Juror 71], what is the nature of what you remembered about the situation?
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> [Juror 71]: Okay. Well, for about 20 years, I was a tobacco sales rep in Anderson County and Oconee County, and all my call points were convenience stores. So for 20 years, I knew most all these accounts pretty—pretty well. I called on them once a month, monthly basis.
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> And I do remember the convenience store on Clemson Boulevard, the Exxon station, old Shirley's Exxon. I'm assuming that's where this person worked. And I don't know if—I left that job in 2011, so the

incident took place in 2012. I don't know how long—if that same owner had still been at this business in 2012 is the same one that I knew in the prior years, so I don't know.

The Court: You did not know the person individually?

[Juror 71]: I would probably know him if I saw him. There's a lot of Indians that own these convenience stores, and they're all last name were Patel. So I don't know particularly which Patel this was, but I do remember that store and I remember the family. Most of these stores had owners that were not always there, but their families were always there, so I got to know a lot of them, you know, over the years.

The Court: Now—

[Juror 71]: I didn't recognize the name. I wasn't paying attention to the name when the first—when everything was being announced at the beginning of the trial.

The Court: Do you feel that you being familiar with this particular store and having contact with this particular family would make it impossible for you to be fair and impartial in this trial?

[Juror 71] Like I told the clerk last night, I feel like I could be impartial, but I just want it to be known up front because I don't want it to come out after the trial and somebody say, 'Oh, this is a mistrial because this person actually knew these people.'

The Court: So you feel like you can be fair and impartial?

[Juror 71]: Yes sir.

. . . .

[Trial counsel]: Your Honor, could you ask him if he has any contact with those people today, with the Patels?

The Court: Do you have any contact with this family today?

[Juror 71]: No, sir.

(Tr. 143-45). Thereafter, when asked if he had any objections to the juror, counsel replied, "Leave him on." (Tr. 146).

At the PCR hearing, Applicant testified Juror 71 admitted he had a positive interaction and long relationship with Victim's family, and counsel should have objected to him remaining on the jury. Applicant stated he did not understand why counsel allowed the juror to remain; he averred the juror could have discussed his relationship with Victim in the jury room. Applicant stated he told counsel he should object to the juror but counsel did not say anything.

Counsel testified he watches jurors during trial to assess their interest. Although he did not specifically recall Juror 71, he noted he is always concerned about getting a juror that is worse than the one being replaced. Counsel reviewed the trial transcript and noted the juror may have had a professional relationship with Victim's family; he stated he would have challenged the juror remaining if it had been a personal relationship.

This Court finds Applicant has not overcome the presumption that counsel's decision here fell within prevailing professional norms. Notably, counsel inquired at trial as to whether the juror had an ongoing relationship with the Patels, and the juror replied he did not. At the PCR hearing, counsel stated he would have objected if it had been a personal relationship. He also noted he watches juries to gauge their interest, and he is often concerned that a juror may be replaced with someone worse. This Court finds the foregoing testimony by counsel **credible**. This Court further finds the foregoing is a valid strategic reason for not moving to replace the juror. Counsel, in watching the jury, seemingly made a strategic decision that this juror was a better option than the alternates. Ultimately, Applicant has not overcome the presumption that counsel's decision fell within prevailing professional norms. Finally, the juror's connection with Victim's family—if it actually existed—was tenuous at best, and the juror relayed that he could be fair and impartial. Thus, Applicant has not shown a reasonable probability exists that the juror would have been removed had counsel objected. C.f. State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (finding trial court erred in

removing juror that failed to disclose during voir dire her "scant acquaintance" with State's witness, a former neighbor whose name the juror did not know, because the failure to disclose was innocent and would not have supported a challenge for cause or been a material factor in exercising peremptory challenges); State v. Burgess, 391 S.C. 15, 18, 703 S.E.2d 512, 514 (Ct. App. 2010) ("[T]he fact that a juror has some relationship with the victim does not automatically require the trial judge to remove the juror."). Thus, Applicant has not shown counsel was ineffective, and this claim is denied.

Sentencing mitigation

Applicant asserts trial counsel did not discuss or prepare sentencing mitigation on applicant's behalf. He contends his family and employer were not informed of the sentencing and thus were not able to give statements of support that could have reduced Applicant's sentence. Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel did not discuss sentencing and mitigation. Applicant claimed counsel told him he could get a life sentence and he would get a thirty-year sentence if he testified. Applicant clarified that after he was sentenced, he was told his sentence would be reduced by ten years if he testified against Ezra Williams. Applicant also testified he asked counsel to contact his brothers to attend his trial.

Applicant's mother, Shelby Johnson, testified she would have attended sentencing if she had been asked to attend. She stated counsel never discussed speaking at sentencing with her. When asked what she would have told the sentencing court, Johnson indicated she would have told the court that Applicant had a good job building houses, doing roofing and construction. Johnson explained she did not know how things for Applicant "went left"; she didn't communicate with Applicant much because it seemed he didn't want to discuss things with her. Johnson was unsure if

Applicant didn't want to get her 'too deep in it' or get her upset. When asked if she would have asked the court for leniency at sentencing, Johnson replied, "Just the truth coming from Johnson." She stated she always told her children that what is wrong is wrong and that she stands on the truth.

Counsel recalled Applicant's family being present for portions of trial, but he did not believe they attended every day. However, he averred they knew what was going on. Counsel testified his general practice is not to discuss specifics of a case with family members. He stated he would have allowed family members to make a statement at sentencing if they had wanted to.

This Court finds Applicant has not shown counsel was ineffective in this regard. This Court further finds counsel's foregoing testimony **credible**, and counsel's representation in this regard was reasonable under prevailing professional norms. Thus, Applicant has not shown deficiency. Likewise, Applicant did not prove prejudice. At the PCR hearing, Applicant called his mother as his only witness. This Court finds his mother's testimony was credible. This Court further finds it is not reasonably likely his mother's testimony would have changed the outcome of the sentencing hearing. Thus, Applicant did not prove prejudice, and this claim is denied.

Bond reduction

Applicant contends trial counsel never requested a bond reduction. He avers he would have been able to assist in his defense had he not been in jail. Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he asked counsel to request a bond, but counsel told him that he didn't want to make himself look bad for requesting one if Applicant's family couldn't afford to make it. Applicant averred counsel's failure to request a bond prejudiced him because "they went off his history at the prison after he had been incarcerated, which "made him feel uncomfortable in prison with his situation." He also contended he could have been working on his

case if he had been on bond. Specifically, he could have gotten his relatives to "speak out," including Andrew Johnson, who could have spoken on Applicant's whereabouts. He also could have obtained receipts to prove he was purchasing dog food at the gas station.

Counsel recalled he may have discussed a bond reduction with Applicant. However, he stated the likelihood of a bond being set on a murder charge that anyone could actually make was not great. Ultimately, counsel averred his energy would be better spent elsewhere.

This Court finds counsel's foregoing testimony **credible**. This Court further finds counsel articulated a valid reason for not requesting a bond reduction in that bond was unlikely to be set for a murder charge—especially given the heinous facts of this case. Thus, Applicant did not show deficiency. Likewise, Applicant did not show a reasonable likelihood that the outcome of trial would have been different had he been out on bond. Although he averred he could have obtained receipts or gotten relatives to speak out, Applicant did not present any receipts or witness testimony (other than his mother) at the PCR hearing and thus failed to prove prejudice.3

Hearsay

Applicant asserts trial counsel failed to object to testimony from Officers Barton and Owens regarding non-testifying co-defendant's inculpatory hearsay statements and failed to request a mistrial after his objections were sustained. Applicant has not shown counsel was ineffective here.

At the PCR hearing, Applicant testified counsel should have brought up the confrontation clause and that his witness wasn't present. He averred counsel should have moved for a mistrial after several hearsay objections were sustained. Specifically, Applicant pointed to hearsay objections counsel made to (1) Officer Finley's testimony that "Mr. Glenn had actually saw [Victim's] vehicle

3 As previously noted, it is not reasonably likely the outcome of Applicant's trial would have been different had Applicant's mother testified. Notably, she did not have any testimony that would have provided a defense to Applicant.

on the 2nd"; (2) Officer Owens' testimony that Gantt said "Quevo shot him"; and (3) Officer Barton's testimony that "Ms. Howell denied any—." (Tr. 113, 178, 211).

Counsel recalled Gannt was a potential witness for the State; he stated Gantt made a deal with the solicitor's office in exchange for his testimony. Rame Campbell, the prosecutor, testified Gantt was on the State's witness list. He explained Gantt provided a typed statement and a handwritten statement, and law enforcement corroborated the things in Gantt's statement. Campbell stated Gantt cooperated with law enforcement and took them to Victim's body. Ultimately, Campbell did not call Gantt as a witness because he decided he did not need his testimony.

This Court finds counsel *did* object to these hearsay statements, and each time the objection was sustained. Likewise, this Court finds it is not reasonably likely a mistrial would have been granted had counsel moved for one. See State v. Nelson, 431 S.C. 287, 305, 847 S.E.2d 480, 490 (Ct. App. 2020) ("A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for only very plain and obvious reasons. The burden is on the movant to demonstrate error and resulting prejudice in order to justify a mistrial."). Officer Finley's testimony that "Mr. Glenn had actually saw [Victim's] vehicle on the 2nd" was not material to Applicant's guilt or innocence and would not have warranted a mistrial. Likewise, Officer Owens' testimony that Gantt said "Quevo shot him" did not implicate Applicant and would not have warranted a mistrial. Finally, Officer Barton merely testified "Ms. Howell denied" before counsel objected. This mere statement was not material to Applicant's guilt or innocence and did not warrant a mistrial. Because it is not reasonably likely a mistrial would have been granted, Applicant did not prove counsel was deficient in failing to request one or that he was prejudiced by counsel's failure to request one. Applicant did not show counsel was ineffective, and this claim is denied.

V. Conclusion

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 6th day of June, 2023.

PERRY H. GRAVELY
Presiding Judge
Tenth Judicial Circuit

Pickens, South Carolina