

WITNESSES

Garrison, John

DCSO

Agency Case #: 07-006585

ARREST WARRANT NUMBER

K269836

Arrested: Aug 02, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 8-30-07

Foreperson of Grand Jury
Date: August 30, 2007

VERDICT

Guilty

Foreperson of Petit Jury
Date:

03/9/10

DOCKET NO. 2007GS18-1296

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

**THE STATE
vs.**

Anthony Sanders

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20
CDR Code: 0116
Class: FEL-X

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED

Sep 27 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2007GS18-1296

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

MURDER

The defendant, Anthony Sanders, did in Dorchester County on or about July 10, 2007, with malice aforethought, kill one Diane Grant by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Donald Sorenson, SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Dorchester)
 STATE VS.)
Anthony Sanders)
 AKA: _____)
 Race: B Sex: M Age: 27)
 DOB: 07-01-1982 SSN: _____)
 Address: _____)
N. Charleston, SC 29418)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS18-1298
 A/W#: K269838
 Date of Offense: 7/10/2007
 S.C. Code § 16-3-10
 CDR Code #: 0116

RECEIVED

Sep 27 2023

SC Court of Appeals

SENTENCE SHEET

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was:
TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) § 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant Initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Jennings, Blair SCB12046 SC Bar# _____ Anthony Sanders SCB65328 SC Bar# _____
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of life days/months/years or under the Youthful Offender Act, not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. of Corrections

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-136.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fines: _____ \$ _____

Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) _____ \$ _____

Random Drug/Alcohol

§ 14-1-211(A)(1)(Conv. Surcharge) \$100 \$ 100

Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

prmts. of \$ _____ Beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ paid to Public Defender Fund

§ 56-1-288 (DUI Breath Test) \$25 \$ _____

Other: _____

§ 35.13 (Public Def/Prob) \$600 \$ _____

no receipt

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

Appointed PD or appointed other counsel, § 35.13 TP requires \$500 be paid to Clerk during probation.

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PRESIDING JUDGE P. Madley

Judge Code: 2060

Sentence Date: 3/9/2010

Court Reporter: Deborah Garrison

Cheryl Hanam
Clerk of Court/ Deputy Clerk

SCCA/217 (08/2009)

WITNESSES

Garrison, John

DCSO

Agency Case #: 07-006585

ARREST WARRANT NUMBER

K269837

Arrested: Aug 02, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 8-30-07

Foreperson of Grand Jury
Date: August 30, 2007

VERDICT

Guilty

Foreperson of Petit Jury
Date:

3/9/10

DOCKET NO. 2007GS18-1297

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

**THE STATE
vs.**

Anthony Sanders

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20

CDR Code: 0116

Class: FEL-X

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED

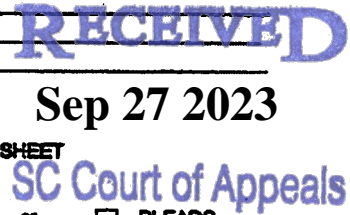
Sep 27 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF Dorchester)
 STATE VS.)
Anthony Sanders)
 AKA: _____)
 Race: B Sex: M Age: 27)
 DOB: 07-01-1982 SS#: _____)
 Address: _____)
N. Charleston, SC 29418)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS18-1297
 A/W#: K269837
 Date of Offense: 7/10/2007
 S.C. Code § 16-3-10
 CDR Code #: 0116



SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was:
 TO: Murder

CONVICTED OF or PLEADS

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45
 within 1st or Lowd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant Initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ SCB12048 _____ SCB65328
Jennings, Blair C. SC Bar# _____ Anthony Sanders Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of Life Impr days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waive Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____
 *Fines:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1)(Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-288 (DUI Breath Test)	\$25	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Cheryl Sharam
 Clerk of Court/ Deputy Clerk
Leboran Harrison
 Court Reporter:

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ paid to Public Defender Fund
 Other: no parole

Appointed PD or appointed other counsel, § 35.13 TP requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE: [Signature]
 Judge Code: 2060
 Sentence Date: 3/9/2010
 SCCA/217 (06/2009)

WITNESSES

Garrison, John

DCSO

Agency Case #: 07-006585

ARREST WARRANT NUMBER

K269838

Arrested: Aug 02, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 8-30-07

Foreperson of Grand Jury
Date: August 30, 2007

VERDICT

Guilty

Foreperson of Petit Jury
Date:

3/9/10

DOCKET NO. 2007GS18-1298

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

**THE STATE
vs.**

Anthony Sanders

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20
CDR Code: 0116
Class: FEL-X

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED

Sep 27 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2007GS18-1298

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

MURDER

The defendant, Anthony Sanders, did in Dorchester County on or about July 10, 2007, with malice aforethought, kill one Jatavius Lee Devore by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Donald Sorenson, SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Dorchester)
 STATE VS.)
Anthony Sanders)
 AKA:)
 Race: B Sex: M Age: 27)
 DOB: 07-01-1982 SS#:)
 Address:)
N. Charleston, SC 29418)
 DL#:) SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS18-1298
 AWW#: K269838
 Date of Offense: 7/10/2007
 S.C. Code § 16-3-10
 CDR Code #: 0116



Sep 27 2023

SENTENCE SHEET



In disposition of the said indictment comes now the Defendant who was:

CONVICTED OF or PLEADS

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC § 17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant Initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Jennings, Blair C. SCB12046 Anthony Sanders SCB65328
 SC Bar# SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of Life 18413 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

- CONCURRENT or CONSECUTIVE to sentence on: _____
- The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. of Corrections
- The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-208 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1)(Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 58-5-2885 (DUI Assessment) \$12 \$ _____

§ 58-1-288 (DUI Breath Test) \$25 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 58-5-2842(J) (Vehicle Assessment) \$40/ea \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ 390

TOTAL \$ 13390

Orville Graham
Clerk of Court/ Deputy Clerk

Court Reporter: Aborah Harrison

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol

Fine may be pd. in equal, consecutive weekly/monthly

prmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: * No parole

Appointed PD or appointed other counsel, § 35.13 TP requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE R. M. [Signature]
Judge Code: 2060

Sentence Date: 3/9/2010
SCCA/217 (08/2009)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

CERTIFIED COPY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800027

2023 SEP -7 PM 2:45

Anthony Sanders

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

[Signature]
CLERK OF COURT
DORCHESTER COUNTY

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

RECEIVED
Sep 27 2023
SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Kristi Curtis

2762

9/7/2023

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 9/7/2023, and a copy mailed first class or placed in the appropriate attorney's box on 9/7/2023, to attorneys of record or to parties (when appearing pro se) as follows:

Anthony Sanders #339645
Lee Correctional Inst.
990 Wisacky Hwy
Bishopville, SC 29010

Danielle Dixon
Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549

Leslie Therese Sarji
171 Church Street Suite 360
Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 ANTHONY SANDERS, #339645)
)
 Applicant,)
)
 -versus-)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

CASE NO.: 2011-CP-18-0027

ORDER
 (Granting Applicant a Direct Appeal)

RECEIVED
Sep 27 2023
SC Court of Appeals

CERTIFIED COPY
 2023 SEP -7 PM 3:55
 CLERK OF COURT
 DORCHESTER COUNTY

Hearing Date: May 17, 2021
 Presiding Judge: Kristi F. Curtis
 Attorney for the State: Benjamin H. Limbaugh
 Attorney for the Applicant: Leslie T. Sarji
 Court Reporter: Yvestre Torres

This matter came before me in Orangeburg County on May 17, 2021 for a hearing on Applicant’s Petition for Post-Conviction Relief, alleging ineffective assistance of counsel in being advised to enter into an agreement to waive his right to a jury trial, a direct appeal, and to any claims for ineffective assistance of counsel. Applicant alleges that this waiver constitutes a structural error requiring the court to grant him a direct appeal and a new trial. Based upon the testimony presented during the hearing of this matter and for the reasons stated herein, I find that Applicant received ineffective assistance of counsel in being advised to sign the agreement waiving his right to direct appeal and therefore grant Applicant a belated appeal. The court finds Applicant’s remaining grounds for post-conviction relief are without merit and denies Applicant’s request for a new trial.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted in

case numbers 2007-GS-18-1296, -1297, and -1298 for three counts of Murder. Applicant entered a not guilty plea and was scheduled for a jury trial. During a pre-trial status conference on January 21, 2010, Applicant's trial counsel, Boyd Young, Esquire, submitted a signed "Contractual Consent Order to Waive Rights to Jury Trial" (hereafter referred to as "Waiver") to the Honorable R. Markley Dennis, Jr. The Waiver provided that, in exchange for the State not seeking the death penalty, Applicant would proceed to a bench trial and he would waive his rights to a direct appeal, to post-conviction relief proceedings, or habeas corpus proceedings. After questioning Appellant as to his understanding of the Waiver, Judge Dennis approved the Waiver.

Appellant proceeded to a bench trial before Judge Dennis on March 8, 2010. At the conclusion of the bench trial, Applicant was found guilty of three (3) counts of murder, and on March 9, 2010 he received a life sentence for all three counts.

Applicant filed a *pro se* appeal to the Court of Appeals, which was dismissed for failure to serve and file a notice of appeal with proper proof of service. Applicant then filed an application for post-conviction relief on January 6, 2011, alleging ineffective assistance of counsel for providing him with "misleading statements" that rendered his entry into the Waiver Agreement involuntary. The State moved to dismiss pursuant to the Waiver.

A hearing was held on Applicant's application for post-conviction relief. Applicant moved for a continuance to allow for more time to investigate potential witnesses. The State opposed the continuance based on the Waiver. Applicant then requested an evidentiary hearing on the issue of whether he received ineffective assistance of counsel that rendered his entry into the Waiver involuntary. The State opposed, and the PCR court dismissed the application.

Applicant appealed the dismissal of his PCR application, arguing that he should have been allowed to present evidence that his entry into the Waiver was based upon ineffective assistance of counsel. The South Carolina Supreme Court agreed and remanded Applicant's case for "an evidentiary hearing on the narrow issue of whether Sanders received ineffective assistance of counsel in being advised to enter into the Agreement." Sanders v. State, 412 S.C. 611, 773 S.E.2d 580 (2015).

Applicant's petition for post-conviction relief alleged that trial counsel "misadvised [him] with misleading statements that render [his] signing of the [Waiver] involuntary"

A hearing on the issue of whether Applicant received ineffective assistance of counsel when his attorney advised him to enter into the Waiver was held on July 9, 2018, before the Honorable Robin B. Stillwell. By Order filed October 17, 2018, Judge Stillwell found that trial counsel was ineffective for advising Applicant to enter into an agreement waiving his right to collateral review of his conviction. Judge Stilwell remanded Applicant's petition for a hearing on the merits of Applicant's claim for post-conviction relief.

Applicant is now before the Court on the merits of his claim for post-conviction relief. Applicant raises the following issues in his petition:

- 1. Trial Counsel provided ineffective assistance of counsel in advising Applicant to waive his right to a jury trial, a direct appeal, and to any claim of ineffective assistance of counsel, all of which amount to a structural error that requires the grant of a new trial.**
- 2. Trial Counsel failed to subject the prosecution's case to meaningful adversarial testing.**
- 3. Trial Counsel failed to object to the admissibility of the shell casings.**

4. Trial Counsel failed to inform Applicant, or to advise him, regarding Trial Counsel's personal conflict in advising him to sign the waiver of a jury trial, resulting in ineffective assistance of counsel sufficient to require reversal of Applicant's conviction and remand for a new trial.
5. Trial Counsel failed to adequately investigate the case prior to trial.
6. Trial Counsel failed to present any expert testimony regarding the DNA evidence.
7. Trial Counsel failed to object to hearsay evidence of Xavier Walker's identification of Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony provided at the hearing in this matter. Further, this Court has had the opportunity to observe the witnesses presented at the hearing, determine their credibility, and has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Standard for Establishing Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Post-Conviction Relief Applicant must prove that (1) counsel failed to render reasonably effective assistance under prevailing professional

norms, and (2) that the deficient performance prejudiced the Applicant's case. Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). In order to prove prejudice, Applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Courts presume that "counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Ordinarily, a PCR Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624, 625 (1989).

When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel 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 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude

that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696.

However, where there is an actual “conflict of interest in a criminal matter, the [Applicant] is not required to show prejudice in the traditional Strickland sense.” Gonzales v. State, 419 S.C. 2, 795 S.E.2d 835 (2017).

- I. Does the prior order of the court holding the Waiver Agreement invalid as to Applicant’s “waiver of the right to collateral review of his conviction” require this court to grant Applicant a belated appeal? [Applicant’s grounds 1 and 4)

The South Carolina Supreme Court remanded Applicant’s case to the circuit court for a hearing on the issue of whether Applicant received ineffective assistance of counsel in being advised to enter into an agreement to waive his right to collateral review of his conviction. Sanders v. State, 412 S.C. 611, 773 S.E.2d 580 (2015). At the hearing before Judge Stilwell, Applicant testified that his attorney advised him that the waiver was not enforceable and that trial counsel informed him that he could still appeal and could still have a PCR hearing. Judge Stilwell found that Applicant could not, as a matter of law, waive his right to collateral review of a trial that had not yet occurred, as he could not have known yet what errors might occur at trial. He further found that it was an inherent conflict of interest for Trial Counsel to advise him to sign an agreement that

included a waiver of an ineffective assistance of counsel claim. Judge Stilwell ruled that “trial counsel provided Applicant with ineffective assistance of counsel when he advised Applicant that the Waiver was unenforceable with regard to collateral review of Applicant’s conviction.” [Stilwell order of 10-17-2018]. Judge Stilwell remanded the case for a hearing on the merits of his Application for Post-Conviction Relief.

For the same reasons cited by Judge Stilwell in granting Applicant a hearing on the merits of his claims for Post-Conviction Relief, this court finds Applicant is entitled to a direct appeal. An applicant who meets the burden of showing that he did not knowingly and voluntarily waive his right to a direct appeal of his trial conviction is entitled to a belated appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002). An indigent defendant convicted by trial has the right to be informed of the right to appeal and the manner and method for taking the appeal. Cherry, 300 S.C. at 116, 386 S.E.2d at 626.

The South Carolina Supreme Court has upheld the enforceability of a guilty plea agreement wherein the Defendant waived his right to a direct appeal, PCR, and habeas corpus relief. In Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008), the court held that such an agreement was enforceable within the context of a guilty plea if the defendant entered into the waiver agreement knowingly and voluntarily. The Court noted in its review of Applicant’s case, however, that the practice of waiving any claim of ineffective assistance of counsel prior to a trial was “especially troubling” because a trial allows “significantly more potential for error than a guilty plea.” Sanders, 412 S.C. 611, 616, 773 S.E.2d 580, 582 (2015) (footnote 2).

This court finds that it was ineffective assistance of counsel for Trial Counsel to advise Applicant to waive his right to appeal any trial errors where the trial had not yet occurred. Unlike a guilty plea, where the defendant is admitting guilt and is only in front of the trial judge for

acceptance of the plea and sentencing, a trial has an unlimited number of opportunities for legal error by the attorneys or the judge. It is difficult to conceive of a scenario where any pre-trial waiver of the right to appeal any errors of law committed during a future trial would be enforceable. This court finds that such a waiver prior to trial is unenforceable as a matter of law.¹

In this case, Applicant attempted to file a *pro se* appeal, which was dismissed for failure to perfect the appeal. This court finds, however, that Applicant's attempt to appeal was likely thwarted by the Waiver Agreement. Because he signed the Waiver, Trial Counsel did not file the Notice of Appeal on his behalf. This court finds Applicant certainly wanted to appeal these convictions sentencing him to a term of life imprisonment, and he did not knowingly and voluntarily waive that right. This court therefore finds Applicant is entitled to a belated Appeal.

- II. Does the prior order of the court holding the Waiver Agreement invalid as to Applicant's "waiver of the right to collateral review of his conviction" require this court to also invalidate his waiver of the right to a jury trial and grant Applicant a new trial? [Applicant's grounds 1 and 4)

Applicant argues that because the waiver of Applicant's right to collateral review of the conviction was declared invalid, this court should also invalidate the waiver of his right to a jury trial as the result of ineffective assistance of counsel. This court disagrees. The court finds that Applicant knowingly and voluntarily waived his right to a trial by jury, and that he was not prejudiced by that decision.

¹ This court recognizes that Trial Counsel himself believed that the Waiver was unenforceable as to both the waiver of PCR and of direct appeal, and that he instructed his client that those waivers were likely unenforceable. In that respect, Trial Counsel was absolutely correct. Trial Counsel testified his primary concern in this case was removing the death penalty, and signing the Waiver accomplished that primary goal.

The facts of this case were particularly horrific. Applicant was charged with the murders of three people: 44-year old Diane Grant, along with her 20-year old son Jatavius Devore and 15-year old daughter Deanna Devore. Both Diane Grant and Jatavius Devore were killed in their apartment by a single, close-range gunshot wound to the head. [Trial Tr. at 28, 205, 207] The body of 15-year old Deanna was found the next morning behind a nearby apartment building. [Trial Tr. at 43-44] The pathologist testified Deanna was shot 4 to 5 times - in the back, in the face, and several more times in the neck. [Trial Tr. at 211-15] Deanna was found partially nude. Her pajama pants were found near her body and semen was recovered from her mouth and pajama pants. [Trial Tr. at 46, 217, 141, 142] Witnesses testified they heard a gunshot and a scream, followed by multiple additional gunshots. [Trial Tr. at 13, 17] The State's theory was that Applicant was sexually assaulting Deanna when her brother and mother either walked in on the assault or woke up to find Applicant in the apartment assaulting Deanna. The State theorized that Applicant first shot and killed Diane and Jatavius, but that Deanna was able to flee from the scene before Applicant chased her down and killed her behind the apartment building. [Trial Tr. at 249, 250]

The State sought the death penalty for these murders. Trial Counsel testified that his primary concern was to remove the death penalty as a possible punishment. [PCR Tr. at 42] The parties entered into plea negotiations wherein the State agreed to remove the death penalty and agree to a life sentence in exchange for Applicant's guilty plea to the murders. [PCR Tr. at 39, 40] Applicant was transported to the courthouse to review the State's evidence with his attorney and to possibly enter a plea, but he ultimately declined to enter into the plea agreement. [PCR Tr. at 40] The State then offered to remove the death penalty in exchange for Applicant's waiver of the right to a jury trial and waiver of his right to appeal, PCR, and habeas corpus relief. [PCR Tr. at

40-41] Applicant agreed and signed the Waiver Agreement, and came before Judge Dennis on January 21, 2010 for approval of the agreement. [Status Conf. Tr. at 2-3].

During the status conference, Judge Dennis questioned Applicant's trial attorneys and Applicant himself about the Waiver Agreement. Judge Dennis advised Applicant of his constitutional right to remain silent, and then questioned him extensively about his decision to enter into the Waiver. He asked Applicant whether he was under the influence of any alcohol or medication, whether he had taken any medication or drugs in the past 24 hours, and whether he was now or in the past treated for any emotional or mental health conditions. [Status Conf. Tr. 8-9] He asked whether Applicant had sufficient time to discuss the Waiver with his lawyers, and Applicant indicated that he had. [Status Conf. Tr. at 9] Judge Dennis asked Applicant whether he was comfortable with his decision and wanted to accept the Waiver, and Applicant answered "Yes."

Judge Dennis specifically advised Applicant that he was giving up the right "to have a jury empaneled, a fair and impartial jury, to listen to the evidence and decide what they believe to be the true facts. I wouldn't have anything to do with that process if we had a jury trial. Do you understand that? . . . the actual decision on the issues of fact would be made by a jury. Do you understand that? . . . You're not going to have that right now and you understand that, sir?" Applicant responded "Yes" to these questions. [Status Conf. Tr. at 11]

Judge Dennis further questioned Applicant about the reasons behind his decision to enter into the agreement, stating:

Court: The reason that you make this decision is because you want to avoid the death penalty as a possible punishment; is that correct?

Applicant: Yes, sir.

Court: Because that's a real right – that's a real benefit for you, from your vantage point?

Applicant: Yes, sir. [Status Conf Tr. at 14-15].

Judge Dennis went on to explain the process if Applicant elected a jury trial. He explained that the jury would not have to agree to the death penalty, but that the jury trial would be a “two-phase” trial process where the jury first determined the issue of guilt, and then in the second phase would consider the potential sentence. Judge Dennis explained the potential sentences a jury could consider, and then asked, “But you have removed something and that is the death penalty option. That's what you seek to do. Is that right?” Applicant agreed that it was. [Status Conf. Tr. at 17]

At the hearing on the merits of Applicant's claim for Post-Conviction Relief, both of Applicant's Trial Counsel, Boyd Young and Mark Leindecker, testified that out of their main objective was to remove the death penalty as a sentencing option. [PCR Tr. At 65-66] Young felt that entering into the Waiver was the best option to take the death penalty off the table. Young further testified as to why he felt that a bench trial was in Applicant's best interest in this case. He testified that the difficulty in selecting a jury in a death penalty case is that the court has to exclude those potential jurors who are opposed to the death penalty. The remaining jury panel then consists of those people who are willing supporters of the death penalty. Young testified that in his experience, those jurors who are opposed to the death penalty are also the ones who tend to be more critical of police searches and more critical of police credibility. By losing that sector of the population, “it makes juries in capital cases much more likely to convict, even in innocent cases.” [PCR Tr. at 42].

Young further testified that he thought a bench trial was a better option for Applicant than a jury trial because of the relative weakness of the DNA evidence in Applicant's case. In

Applicant's case, the DNA report indicated there was a 1 in 260 chance that the DNA belonged to someone other than Applicant. Young testified that the DNA evidence in most criminal cases is much more statistically significant. He felt Judge Dennis, as a very experienced trial judge, would recognize how weak the DNA evidence was in this case, where a jury might not appreciate that weakness. [PCR Tr. At 44-45, 70-71]

Young also felt Judge Dennis would be a particularly good choice to hear the bench trial in Applicant's case, which was based largely on circumstantial evidence. Young felt Judge Dennis would be willing to hold the State to their high evidentiary standard. Given his prior experience with Judge Dennis, the horrific facts of the case, the weakness of the DNA evidence, and the circumstantial nature of the evidence, he felt Applicant's chances of acquittal were much better with a bench trial in front of Judge Dennis than with a jury trial. [PCR Tr. at 42, 44, 45, 48, 62, 63, 64]

The court finds Trial Counsel articulated valid, strategic reasons for advising Applicant to waive his right to a jury trial. While Applicant was not ultimately acquitted, the agreement accomplished the goal of removing the death penalty from consideration. Moreover, the standard for establishing ineffective assistance of counsel is independent from the trial outcome. What matters is whether counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. This court finds that Trial Counsel did exercise reasonable professional judgment.

In addition, Applicant has suffered no prejudice from the waiver of the right to a bench trial, despite the fact that the waiver of his right to collateral review has been declared invalid. Applicant entered into an agreement to waive his right to a bench trial, a direct appeal, PCR, and habeas corpus proceedings all in exchange for the State's withdrawal of the death penalty. Because

this court has now granted Applicant a direct appeal and PCR, Applicant actually now has a better bargain than he initially negotiated. Instead of waiving both his right to a jury trial and his right to collateral review of the conviction, he now in effect has only waived his right to a jury trial in exchange for the same concession from the State - the exact outcome Trial Counsel predicted when he advised Applicant to sign the Waiver.

Applicant specifically argues that he was prejudiced at trial because the bench trial was conducted by the same judge who stood ready to accept his guilty plea. At the PCR hearing, Applicant testified it was never his intention to plead guilty. [PCR Tr. at 28] However, at the Status Conference before Judge Dennis, the Solicitor stated:

Your Honor . . . you'll recall that on January 8th we had all congregated at the Dorchester County Courthouse, that we had all the physical evidence, and Mr. Sanders and his attorney looked through that evidence. Part of the premise of being there was based on prior conversations that **Mr. Sanders had intended to plead guilty that Friday to three counts of murder**. We'd met with the victim's family and discussed that proposition, that he would be sentenced to life without parole pursuant to that plea and they were all in agreement. That Friday we were not able to execute the plea, but had some discussion at that time of the possibility of a bench trial. Essentially where we are procedurally is that the State has agreed that in the event we do have a bench trial the defendant waives his right to a jury trial. We're prepared to consent to a bench trial before Your Honor and agree with Mr. Young that in the event of a bench trial, should he be found guilty by Your Honor, that he would be sentenced pursuant to 16-3-20, under the normal murder statute, where he would face thirty years to life. [Status Conf. Tr. at 3-4] (emphasis added)

Judge Dennis then questioned Applicant extensively regarding whether he was freely and voluntarily entering into the Waiver. Judge Dennis stated:

as I recall when we were last assembled, there were family members present. We were glad to give you as much time as you needed to talk with those family members and you had that opportunity. . . when I was requested to come talk about a possible plea and I certain respect your decision fully, a hundred percent, saying 'I am not going to plead' I understand that and I respect you for that. It's a tough decision, I'm sure. And I don't know anything about what went on. I just know that there was substantial time that we sat and ultimately a decision was made. That was your conscious decision, something that you chose to do. Is that correct?

Applicant then confirmed that it was his decision not to accept the plea. [Status Conf. Tr. at 9, 17-18].

It is clear from the record that there were unsuccessful plea negotiations prior to trial between the State and Applicant. Judge Dennis was aware of the fact that plea negotiations took place in this case, as they do in the vast majority of criminal cases prior to trial. Judge Dennis also knew that Applicant ultimately refused to accept the plea, even though he was facing the death penalty. This court disagrees that the trial judge would have assumed when Applicant entertained plea negotiations it was somehow an implied admission of his guilt. One could just as easily presume that the fact Applicant refused to plead guilty, even when doing so would remove the threat of the death penalty, was because he was in fact innocent of the crime. Of course, there were downsides to agreeing to a bench trial instead of a jury trial. However, those were well known to Applicant and to his attorneys at the time he voluntarily entered into the Waiver in exchange for the State's agreement to withdraw the death penalty.

This court finds Trial Counsel exercised reasonable professional judgment in advising Applicant to waive his right to a jury trial in exchange for the State withdrawing the death penalty, and denies relief on this ground.

III. Was Trial Counsel ineffective for failing to present any expert testimony regarding the DNA evidence? (Applicant's ground 6)

Applicant argues Trial Counsel was ineffective for failing to call a DNA expert to refute the State's expert witness testimony. The Supreme Court of South Carolina "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish

prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of an expert at the evidentiary hearing, and therefore, he has not established he was prejudiced by Counsel's allegedly deficient representation. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding Applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

In any event, this Court finds Counsel offered a reasonable, strategic explanation for his decision not to call a DNA expert. Counsel testified he consulted a DNA expert who reviewed the DNA testing and analysis done by the State. Counsel further testified he chose not to call the defense expert as a witness because the defense expert did not disagree with the analysis done by the State's expert. The record reflects Counsel thoroughly cross-examined the State's expert and clearly established the defense's best argument regarding the DNA – the fact that it was not a statistically significant match. Importantly, Counsel was able to emphasize the weakness of the DNA evidence in this case (1 in 260) in comparison to the exponentially higher probability usually seen in a DNA match. In addition, Counsel was able to elicit testimony from the SLED DNA expert that there was semen detected on the victim's pajamas pants that did not match Applicant's DNA profile, and that Applicant was excluded as a contributor for that semen sample. Counsel thus elicited testimony from the SLED expert that there was the presence of semen from an unknown male contributor present on the victim's clothing.

“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense.” Harrington v. Richter, 562 U.S. 86, 11 (2011). Further, “[c]ounsel’s failure to procure expert witnesses does not render their representation deficient when counsel vigorously cross-examines the State’s witnesses and attacked the accuracy of the evidence.” Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008). Indeed, in this case, Counsel retained an expert to test the accuracy and methodology of the state’s expert and to prepare a vigorous cross-examination of the State’s expert witness.

This Court therefore finds Counsel was not deficient in declining to call the expert as a witness, nor was Applicant prejudiced by Counsel’s decision. This Court denies relief as to this ground.

IV. Did Trial Counsel fail to adequately investigate the case prior to trial? (Applicant’s Ground 7)

Applicant contends Counsel was ineffective for failing to adequately investigate. “Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citations omitted). “Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” Tucker v. Ozmint, 350 F.3d 433, 442 (4th Cir. 2003) (quoting Green v. French, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Strickland, 466 U.S. at 691; Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” Porter v. State, 368 S.C. at 385-86, 629 S.E.2d at 357, abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836 (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Trial Counsel Young testified he and the other defense attorneys “didn’t leave any stone unturned” in the investigation. He testified they interviewed all of the witnesses in the case, except for those witnesses who refused to meet with them. He further testified he went to every location himself to view the various crime scenes. They also did an independent analysis of the DNA evidence, [PCR Tr. At 43, 45] and consulted with an expert in shoe impression analysis. [PCR Tr. At 46] In addition, Counsel testified the defense attorneys went to the SLED lab and met with them with respect to the shoe impression evidence. [PCR Tr. At 72]

This court finds Applicant has failed to show how Trial Counsel failed to investigate and therefore denies relief on this ground.

V. Was Trial Counsel ineffective for failing to object to the admissibility of the shell casings? (Applicant's ground 3)

As a preliminary matter, Applicant has failed to allege on what grounds Trial Counsel could have objected to the admissibility of the shell casings. Detective Earl Asbill, the lieutenant in charge of the Dorchester County Sheriff's Office Crime Scene Unit, testified that he responded to the scene of the murders and collected spent shell casings from the scene. [Trial Tr. At 37-40, 47-48] Applicant has not alleged any grounds for the exclusion of that evidence.

Applicant also testified he felt Trial Counsel was ineffective for failing to call a ballistic expert to dispute the State's expert opinion that the shells from the murder scene matched the spent shell casings from two prior shooting scenes and were all likely fired from the same handgun. This court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of an expert at the evidentiary hearing, and therefore, he has not established he was prejudiced by Counsel's allegedly deficient representation. The Supreme Court of South Carolina "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Trial Counsel testified he had prior experience challenging ballistics evidence in another capital case and had consulted with a metallurgist. [PCR Tr. At 47] He felt he was able to adequately cross examine the State's expert himself, regarding the subjective nature of toolmark identification. [PCR tr. At 47]. The trial transcript reflects that Trial Counsel thoroughly cross-

examined the State's expert regarding the reliability of that evidence, including studies that have cast doubt as to the reliability of toolmark evidence. [Trial Tr. at 161-68]

The court finds Applicant has failed to meet its burden of proof on this issue and denies relief on this ground.

VI. Was Trial Counsel ineffective for failing to object to hearsay evidence of Xavier Walker's identification of Applicant? (Applicant's Ground 7)

One of Trial Counsel's defense strategies was to show that another individual, Xavier Walker, was a person of interest whom law enforcement failed to investigate as a suspect in this case. At trial, SLED expert Tracy Thrower testified that the shell casings from the murders matched shell casings found at the scene of two different shootings – the "Hunters Ridge" shooting and the "Anchor Bar" shooting. [Trial Tr. at 144-56] Xavier Walker had been identified by witnesses as one of the shooters from the Hunters Ridge incident, and he had been arrested in connection with the shooting. [Trial Tr. at 98] A bouncer from the Anchor Bar, Reginald Chambers, witnessed the shooting at that location and had given a statement to law enforcement that he had spoken with one of the shooters earlier that evening and he believed he could identify the shooter. [Trial Tr. at 89, 90, 169-80]

When law enforcement questioned Xavier Walker in connection with the murders, Walker implicated Applicant in both the Hunters Ridge and Anchor Bar shootings. [Trial Tr. at 97-98] Law enforcement then showed Chambers a photo lineup containing Applicant's photo. Chambers identified Applicant as the individual who was kicked out of the Anchor Bar and later got in a truck and fired at the bar from the vehicle. [Trial Tr. at 90, 169-180] Trial Counsel elicited testimony from the lead investigator that Walker had already been arrested for the

Hunters Ridge shooting, yet his photo was never shown to Chambers as part of a photo lineup in connection with the Anchor Bar shooting. [Trial Tr. at 99]

Trial Counsel also questioned investigators as to whether they knew Xavier Walker's whereabouts on the night of the murders, and pointed out that investigators had never gotten a DNA sample from Xavier Walker to compare with the DNA recovered from victim Deanna Devore. [Trial Tr. at 102-103] In addition, Trial Counsel brought out on cross examination that Walker was subsequently charged in another murder that took place after Applicant was arrested and denied bond. Law enforcement received a tip regarding the possible location of the gun used in the subsequent murder, but had failed to follow up on the tip. [Trial Tr. at 103-104]

In closing argument, Trial Counsel refers to Xavier Walker as a person who implicated Applicant to deflect from his own involvement in the case, stating:

And the whole time that I've worked on this case I don't understand that, until I start to add up that how do we get here? We don't get here just because of ballistics. We don't get here just because ultimately of DNA. **We get here and we get pointed in this direction because of one individual and one individual only, Xavier Walker.** Xavier Walker is arrested not long after the incident in March at Hunters Ridge, the second place that we see these shell casings that SLED says match. Xavier Walker is the only person identified by the victims of that crime as the shooter at Hunters Ridge. Xavier Walker, after he is arrested . . . gets somehow a bond to get out. Then when this murder comes down, Xavier Walker, the person who had the gun at Hunters Ridge, probably the same person who had the gun at The Anchor Bar, becomes cooperative and points a finger at Anthony Saunders. Xavier Walker, a person whose cell phone was off during the time of the murder, who wasn't in communication, who wasn't talking to girlfriends and other people . . . And the question was asked again and again and over and over by Mr. Young and others on the defense team: 'Did you take a sample from Xavier Walker? Did you get a DNA sample?' The answer, "no." 'Did you get footwear from Xavier Walker?' The answer, "no." 'Do you know what size Xavier Walker wears?' The answer, "no." . . . They get Xavier Walker to tell them that it's Anthony Saunders, and they quit looking at Xavier Walker. The same Xavier Walker that they let out on bond and now we understand was involved in another murder. . . The SLED expert on DNA . . . also had DNA from the pajama bottoms that she couldn't match. Yet we don't go out and check DNA against a viable suspect, Mr. Walker, who was at the other two crimes that we say Mr. Sanders was involved in? We don't check it? Your Honor, what that is in the context of a murder trial is reasonable doubt. [Trial Tr. 259-66]

This court finds that Applicant has failed to show any deficiency on the part of Trial Counsel in eliciting testimony regarding Xavier Walker's self-serving identification of Applicant. This court finds that Trial Counsel elicited this testimony as part of a valid strategy to show potential third-party guilt and denies relief on this ground.

VII. Was Trial Counsel ineffective for failing to subject the prosecution's case to meaningful adversarial testing? (Applicant's Ground 2).

In United States v. Cronin, 466 U.S. 648, (1984), the United States Supreme Court characterized the protection that the Sixth Amendment affords the defendant:

The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of **meaningful adversarial testing**. When a true adversarial criminal trial has been conducted—even if defense counsel may have made demonstrable errors—the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated. As Judge Wyzanski has written: “While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators.”

466 U.S. at 656-657, (citations omitted). The Court stated in Cronin that prejudice to the defendant can be presumed if “counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing.” When there has been no meaningful adversarial testing, then “the adversary process itself [is] presumptively unreliable.” Id. In Bell v. Cone, the U.S. Supreme Court explained further that “the attorney's failure [to test the prosecutor's case] must be complete” for this standard to be met. 535 U.S. 685, 697 (2002).

A thorough review of the trial transcript in this case convinces the court that Applicant has failed to show the kind of deficiency contemplated by Cronin and Bell. Counsel thoroughly cross-examined the State's witnesses and demonstrated familiarity with both the subject matter and the weaknesses in the State's case. Trial counsel elicited testimony showing that there was another potential suspect in the case who was never seriously investigated by law enforcement.

Counsel elicited testimony that there was the presence of semen and DNA on victim's clothing from an unknown male. Importantly, Counsel also elicited testimony that Applicant had an identical twin brother with whom he shared a bedroom, and that all of the items seized from Applicant's home were taken from their shared room. At the PCR hearing, Counsel articulated valid strategic reasons for his decisions. This court finds Applicant has failed to show any deficiency in the representation, sufficient to support this claim and denies relief on this ground.

CONCLUSION

Based on the foregoing reasons, this court finds and concludes that Applicant has established that he received ineffective assistance of counsel when his Trial Counsel advised Applicant to waive his right to direct appeal of his conviction. This court finds Applicant is therefore entitled to a belated appeal of his trial conviction. Applicant's remaining grounds for relief are denied. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This court notes Applicant must also file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review of this order. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appeal of his trial conviction.

AND IT IS SO ORDERED!

Kristi Curtis
JUDGE KRISTI F. CURTIS
PRESIDING JUDGE, 1ST CIRCUIT

Sumter, South Carolina

Sept. 1, 2023