

PCR

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**Attorney at Law**

30 Short Street  
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July 24, 2013

**RECEIVED**

Hon. Daniel E. Shearouse, Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

JUL 29 2013

**S.C. SUPREME COURT**

RE: Adarius Quante Dennis vs. State of South Carolina, 2012-CP-37-0076; Notice of Appeal

Dear Mr. Shearouse,

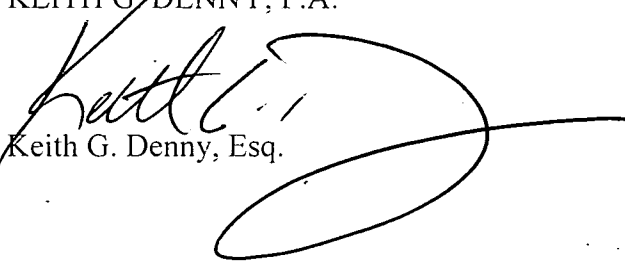
Please find the enclosed original and four (4) copies of the Notice of Appeal in the above referenced PCR matter. Also, please find the enclosed Certificate of Service along with four (4) copies. I have enclosed a pre-addressed with prepaid postage envelope for the return of two (2) clocked copies of each document.

I was appointed to represent Mr. Dennis in this matter and have notified the Office of Indigent Defense – Appellate Defense of Mr. Dennis’ appeal. Please contact me if I need to provide any additional information for this matter.

Thank you for your assistance in this matter.

Very truly yours,

KEITH G. DENNY, P.A.



Keith G. Denny, Esq.

KGD/

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Hon. J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2012-CP-37-0076

Adarius Quante Dennis

Appellant,

v.

State of South Carolina,


Respondent.

**NOTICE OF APPEAL**

The Appellant, Mr. Adarius Quante Dennis, was convicted on June 24, 2009 for armed robbery (2008-GS-37-1590) and was sentenced by the Hon. Alexander S. Macaulay to twenty three (23) years imprisonment. Mr. Dennis appealed the conviction and the South Carolina Court of Appeals affirmed Mr. Dennis' conviction and the Remittur was issued on July 20, 2011. On February 1, 2012, Mr. Dennis filed an Application For Post-Conviction Relief. A hearing was held on February 23, 2013 before the Hon. J. Cordell Maddox, Jr. On July 11, 2013, an Order of Dismissal by Judge Maddox was filed with the Oconee County Clerk of Court. This appeal follows.

July 24, 2013

Walhalla, S.C.

  
Keith G. Denny, Esq., SC Bar # 79727

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Phone: 864-638-2930

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Attorney for Appellant

Other Counsel of Record:

Mr. Walt Whitmire, Esq.

S.C. Attorney General's Office

P.O. Box 11549

Columbia South Carolina 29211-1549

**RECEIVED**

JUL 29 2013

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Hon. J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2012-CP-37-0076

Adarius Quante Dennis

Appellant,

v.

State of South Carolina,

Respondent.

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, July 24 2013, I mailed a copy of **NOTICE OF APPEAL** to the following address(es):

Mr. Walt Whitmire, Esq.  
S.C. Attorney General's Office  
P.O. Box 11549  
Columbia South Carolina 29211-1549

Walhalla, South Carolina

KEITH G. DENNY, P.A.

Keith G. Denny


Attorney for Appellant

30 Short Street / P.O. Box 101

Walhalla, S.C. 29691

Phone: 864-638-2930 / Fax: 864-638-2922

Sworn to me on July 24, 2013

  
Notary Public for South Carolina

My commission expires: 5/29/2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Adarius Q. Dennis, )  
 S.C.D.C. No. 336620, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2012-CP-37-076

ORDER OF DISMISSAL  
**RECEIVED**

JUL 30 2013

S.C. SUPREME COURT

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2013 JUL 11 AM 11 00

This matter comes before the Court pursuant to an Application for post-conviction relief (PCR) filed January 27, 2012. Respondent made its Return on May 22, 2012. An evidentiary hearing into the matter was convened on February 25, 2013, at the Oconee County Courthouse. Applicant was present at the hearing and was represented by Keith G. Denny, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Suzanne Earle, Esquire, (trial counsel) and Reynaldo Robinson (the victim) testified. This Court also had before it the records of the Oconee County Clerk of Court, court exhibits, the transcript of the proceedings against the Applicant, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Oconee County Clerk of Court's orders of commitment. The Applicant was indicted at the

October 2008 term of the Oconee County Grand Jury for armed robbery (2008-GS-37-1590). Suzanne Earle, Esquire, represented the Applicant.

The State took the case to trial, and on June 24, 2009 the Applicant was found guilty as indicted in his absence. On August 31, 2009, the Honorable James Williams unsealed the sentence. The Honorable Alexander S. Macaulay sentenced the Applicant to twenty three (23) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire, of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Adarius Q. Dennis, Op. No. 2011-UP-352 (S.C. Ct. App. filed June 29, 2011). The Remittitur was issued on July 20, 2011.

At the PCR hearing, Applicant proceeded on the following allegations:

1. Ineffective assistance of counsel:
  - a. failure to prepare and consult with Applicant.
  - b. failure to challenge a defective indictment.
  - c. failure to advise Applicant of the solicitor's guilty plea offer.
  - d. failure to make a motion for continuance.
  - e. failure to adequately cross-examine a State's witness.
  - f. failure to request a jury instruction on "withdraw."
2. Ineffective assistance of appellate counsel.
  - g. failure to raise meritorious issues on appeal.

## II. Summary of Testimony

At the PCR hearing, Applicant testified. Applicant alleged counsel was ineffective for failing to prepare his case and consult with him prior to trial. Applicant stated he met with trial counsel twice prior to trial. Applicant stated the first meeting occurred at the Oconee County

Detention Center prior to Applicant posting bond. Applicant stated trial counsel provided him no information on the case. Applicant stated the second meeting occurred months later. Applicant stated he met trial counsel at the court house in order to obtain discovery. Applicant stated trial counsel did not review discovery with him. Applicant stated he did not meet with trial counsel again until his case was called for trial. Applicant stated that trial counsel never tried to contact him after he posted bond.

Applicant alleged trial counsel was ineffective for failing to advise him of the solicitor's guilty plea offer. Applicant stated trial counsel conveyed the guilty plea offer to him at their second meeting. Applicant stated trial counsel told him the offer was for a ten year negotiated sentence for all of his pending charges. Applicant stated counsel did not advise him of parole eligibility. Applicant stated trial counsel neglected to discuss the offer with him in the weeks leading up to trial. Applicant stated that he was under the impression the guilty plea offer had been revoked. Applicant alleged trial counsel was ineffective for failing to advise him he would be tried in absentia if he decided to violate the conditions of his bond and not return for his trial. Applicant stated that subsequent to jury selection, he was panicked and scared. Applicant acknowledged the trial judge warned him he would be tried in absentia if he neglected to return for the disposition of his case. Yet, Applicant stated he was ignorant of the law. Applicant stated he phoned trial counsel on the second day of trial and explained to her that he was scared. Applicant stated trial counsel failed to tell him his attendance at trial was compulsory. Applicant stated he subsequently learned he could have returned and entered a guilty plea. Applicant stated he was unaware how the trial judge would have proceeded had he returned to court subsequent to absconding. In conjunction to this allegation, Applicant additionally alleged trial counsel was

ineffective for failing to move for a continuance when he was not present on the second day of his trial.

Applicant alleged trial counsel was ineffective for failing to review discovery with him. Applicant stated he told trial counsel that he had nothing to do with the commission of the offense. Applicant stated he did not recall telling trial counsel he had an alibi. Applicant stated he was unaware that his co-defendants had identified him. Applicant stated he had a copy of discovery and knew of the victim, Ronaldo Robinson's, statement. Applicant stated he was also unaware of the pictures taken of the victim and his vehicle. Applicant stated trial counsel did not discuss his right to testify with him. Applicant also stated trial counsel did not consult with him during jury selection. Applicant stated trial counsel neglected to answer his questions regarding the process.

Applicant alleged trial counsel was ineffective for failing to investigate and cross-examine one of his co-defendants, Diverio Manley, prior to trial. Applicant stated trial counsel asked him if he desired having Manley testify on his behalf at trial. Applicant stated he was surprised when Manley testified for the State. Applicant stated he told trial counsel he did not desire her to investigate any potential witnesses at trial. Applicant stated trial counsel failed to cross-examine Manley regarding an oral statement he gave her about Applicant's knowledge of the use of weapons during the commission of the offense.

Applicant alleged trial counsel was ineffective for failing to request a jury instruction on "withdraw." Applicant also alleged trial counsel was ineffective for failing to object to the court's lack of jurisdiction. Applicant stated the Grand Jury did not convene on the day his indictment was allegedly true billed. Applicant further stated the clerk of court canceled the

General Sessions when he was allegedly fraudulently indicted.

Last, Applicant alleged appellate counsel was ineffective for failing to present meritorious issues on appeal. First, Applicant stated appellate counsel failed to argue the trial judge erred in admitting inflammatory pictures of the victim. Second, Applicant stated the trial judge erred in not allowing jury to hear that Applicant was not armed during the commission of the offense. Third, Applicant stated appellate counsel failed to argue the trial judge erred in allowing a discovery violation. In support of his Application, Applicant presented Exhibit 1, a copy of his GED that he has since obtained pursuant to the trial judge's orders.

The victim testified at the PCR hearing. The victim stated he did not believe Applicant received a fair sentence proportionate to his role in the armed robbery. The victim stated the Applicant lured him into the ambush. The victim stated he heard one of the co-defendants call out to Applicant during the commission of the offense. The victim stated that although he did not know who stole shoes from his vehicle, he did not doubt the Applicant was involved in the commission of the offense.

Trial counsel testified at the PCR hearing. Trial counsel was appointed to represent Applicant in July of 2008. Trial counsel first met with Applicant in local detention on the day she was appointed. Trial counsel met with Applicant five or six times prior to trial. Trial counsel filed for discovery and reviewed it with Applicant. Trial counsel provided a complete copy of discovery to Applicant that included photographs of the victim's injuries. Trial counsel stated Applicant told her he was not present in the county during the commission of the offense. Trial counsel stated Applicant told her he was in Greenville, South Carolina, visiting his girlfriend. Applicant did not provide trial counsel the girlfriend's name or address nor did he provide trial

counsel with receipts or other evidence to corroborate his story. Because Applicant provided no basis for her to investigate the girlfriend, trial counsel did not pursue an extensive investigation on the matter. Trial counsel explained to Applicant that various witnesses identified him at the scene of the offense. Trial counsel stated Applicant was not forthcoming with her regarding his presence at the scene during the commission of the offense. Furthermore, trial counsel stated Applicant was uncooperative and missed several appointments with her.

Trial counsel conveyed the solicitor's plea offer to Applicant. Trial counsel stated the solicitor offered to allow Applicant to plead guilty to the lesser included offense of strong armed robbery along with unrelated charges. Because trial counsel did not represent Applicant on all of his pending charges, she carefully crafted her advice on the matter. Trial counsel stated she reviewed the State's evidence with Applicant and explained to him "hand of one" accomplice liability. Trial counsel stated that as a matter of practice, she never tells her clients how much time they will serve on a sentence.

Trial counsel interviewed Applicant's co-defendant, Diverio Manley, prior to trial. Trial counsel stated that Diverio Manley told her the offense was planned but that Applicant was unaware that his co-defendants were armed. Trial counsel stated Manley was originally slated to testify on Applicant's behalf. However, prior to trial, trial counsel stated Manley recanted and admitted to lying to her. Because Applicant absconded, trial counsel decided not to cross-examine the witness on the matter. Trial counsel stated Applicant hindered her ability to present a defense because he would not tell her if he was present at the scene. Nor did Applicant select a defense theory of the case for trial counsel to pursue. Trial counsel stated she tried to impress the importance of attorney/client communication with Applicant. As a result, trial counsel pursued

the defense that Applicant did not participate in the commission of the armed robbery without conceding that he was present at the scene. Second, trial counsel stated she was weary of Diverio Manley providing further testimony regarding Applicant's involvement in the armed robbery. Trial counsel stated that because Applicant absconded during his trial, she was unable to consult with Applicant for trial strategy regarding the cross-examination of State's witnesses. Trial counsel stated she cross-examined the State's witnesses to the best of her ability under the circumstances. Trial counsel stated she had no knowledge that Applicant would abscond during his trial.

### III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "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." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective

assistance of ~~plea~~<sup>trial</sup> counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. Second, counsel's deficient performance must have 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.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

##### A.

This Court finds Applicant has failed to meet his burden to prove trial counsel was ineffective for failing to prepare his case and consult with him during representation. This Court finds trial counsel's testimony credible and Applicant's testimony not credible. A criminal defense attorney has a duty to perform a reasonable investigation. Ard v. Catoe, 372 S.C. at 331, 642 S.E.2d at 597. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case." Id. at 331-32, 642 S.E.2d

at 597 (internal quotes and citation omitted). Trial counsel met with Applicant on numerous occasions, reviewed discovery, and conducted a reasonable investigation into Applicant's case. This Court finds trial counsel was thoroughly diligent and prepared. Additionally counsel met with the lead investigator assigned to the case. Furthermore, Applicant failed to produce any beneficial evidence to support this allegation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.").

This Court also finds Applicant failed to prove trial counsel was ineffective for not consulting Applicant during jury selection. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997). "The selection of a jury is inevitably a call upon experience and intuition. The trial lawyer must draw upon his own insights and empathetic abilities." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (citing Romero v. Lynaugh, 884 F.2d 871, 878 (5th Cir.1989) (emphasis added)). "In PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." Id. This Court finds Applicant's testimony not credible. Applicant failed to specifically allege how trial counsel's strategic decision to exercise peremptory strikes was detrimental to the verdict. Therefore, these allegations are denied and dismissed.

#### B.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failing to challenge an alleged defective indictment. "[A]n indictment is a notice document.

The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. A defendant must challenge the sufficiency of an indictment before the jury is sworn." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499; S.C.Code Ann. § 17-19-90 (2003). This Court finds Applicant failed to produce credible evidence that showed he was improperly indicted. See Weathers v. State, 319 S.C. 59, 62, 459 S.E.2d 838, 839 (1995) ("Absent evidence to the contrary, the regularity and legality of proceedings in general sessions court is presumed."). This Court finds the indictment in question was facially valid. Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failing to advise Applicant of the terms of the guilty plea offer. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). This Court finds trial counsel's testimony credible and Applicant's testimony not credible. This Court finds trial counsel adequately advised Applicant on the terms and applicable punishment of the solicitor's guilty plea offer. Trial counsel provided sound advice regarding Applicant's exposure for incarceration. Trial counsel also provided sound advice regarding the strength of the State's evidence. This Court finds trial counsel was not

deficient in declining to advise Applicant on how the guilty plea offer would have affected Applicant's collateral pending charges. This Court finds Applicant failed to produce credible evidence on this issue. This Court also finds ~~intending~~ Applicant protested his innocence by telling trial counsel he had an alibi. Applicant failed to present credible testimony that indicated he desired a guilty plea. Therefore, this allegation is denied and dismissed.

D.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to make a motion for continuance when Applicant did not appear on the second day of trial. "A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence." State v. Patterson, 367 S.C. 219, 229, 625 S.E.2d 239, 244 (Ct.App.2006). "A trial judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend." State v. Ravenell, 387 S.C. 449, 455-56, 692 S.E.2d 554, 557-58 (Ct. App. 2010). This Court finds trial counsel's testimony credible and Applicant's testimony not credible. The trial judge continued Applicant's surety bond and warned him that if he failed to return to court the following day, he would be tried in his absence. (Trial Tr. p.29). This Court finds the motion lacked merit. This Court further finds Applicant failed to present credible evidence that <sup>trial</sup> ~~plea~~ counsel told him he was not required to return to court for his trial. Therefore, this allegation is denied and dismissed.

E.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for her performance in cross-examining a State's witness. When reviewing a counsel's

performance, there is a strong presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) (citing Strickland, *supra*). This Court finds trial counsel’s testimony credible. Trial counsel interviewed Manley prior to trial. This Court finds trial counsel’s decision not to cross-examine Manley on his inconsistent statements for impeachment purposes was a product of sound trial strategy. Applicant failed to provide trial counsel a consistent version of the facts of the offense. Applicant initially claimed he was not present in Anderson at the time of the offense. Although Applicant conveyed to trial counsel that his story might be false, Applicant waived on whether he was present at the scene of the offense. Applicant’s decision to ignore the trial judge’s order to be present at his trial further exacerbated trial counsel’s dilemma in presenting a defense. As a result, trial counsel made the strategic decision to limit her cross-examination of Manley. Trial counsel stated that because Applicant was not present to testify and deny Manley’s statements, she feared further harmful testimony from the witness that could not be refuted. Thus, this Court finds trial counsel’s strategy on the matter valid. See Ingle v. State, 348 S.C. 467, 471, 560 S.E.2d 401, 403 (2002) (counsel must articulate an objectively reasonable strategy to avoid a finding of ineffectiveness). Therefore, this allegation is denied and dismissed.

F.

This Court finds Applicant’s allegation that trial counsel was ineffective for failing to request a jury charge on “withdraw” is without merit. “[I]f a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both.” State v. Kelsey, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76 (1998). This Court finds the trial

judge properly issued jury instructions on "hand of one" and "mere presence." (Trial Tr. pp.181-3). Therefore this allegation is denied and dismissed.

**G.**

This Court finds Applicant failed to meet his burden to prove appellate counsel was ineffective for not raising meritorious issues on appeal. "Although appellate counsel is required to provide effective assistance of counsel, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). First, this Court finds Applicant failed to prove appellate counsel was deficient for not raising a discovery violation issue on appeal. "Discovery rule requiring prosecution to disclose evidence material to preparation of defense upon request of defendant applies to evidence within the actual possession of the prosecution and to evidence within the possession of other government agencies." State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998) aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999). The solicitor provided trial counsel copies of photographs intended to be admitted as evidence. (Trial Tr. 45). Trial counsel argued the solicitor failed to provide information regarding the origins of the photographs. The trial judge ruled trial counsel's objection did not trigger a potential Rule 5, SCRimP, concern. This Court agrees. The solicitor properly complied with Rule 5, SCRimP, on the matter. Therefore, appellate counsel was not deficient for exercising her discretion to not raise this issue on appeal.

Second, Applicant failed to prove appellate counsel was ineffective for failing to raise an alleged Rule 403, SCRE, violation on appeal. "The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). "A trial court has particularly wide

discretion in ruling on Rule 403 objections." See State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We ... are obligated to give great deference to the trial court's judgment [regarding Rule 403]."). Trial counsel made a motion to suppress photographs that showed the victims' injuries after the commission of the offense. (Trial Tr. pp.37-47). The solicitor argued the photographs were relevant to corroborate the victim's testimony regarding the injuries he sustained. The trial judge ruled the pictures were relevant to the armed robbery charge. (Trial Tr. pp.41-2). The trial judge made rulings on all ten pictures. The trial judge granted trial counsel's motion to suppress on three of the pictures finding "the prejudicial value would have outweighed the probative value." (Trial Tr. p.47). Applicant failed to prove that the trial judge's admissibility findings constituted an abuse of the trial judge's discretion. Therefore, this Court finds appellate counsel was not deficient for exercising discretion to not raise this issue on appeal.

Last, this Court finds Applicant's assertion that appellate counsel was ineffective for not arguing the trial judge precluded the jury from hearing ~~that~~ Applicant was unarmed during the offense is wholly without merit. When Applicant absconded and abandoned his defense, he waived his right to testify. Therefore these allegations are denied and dismissed.

## II.

This Court finds Applicant also failed the second prong of Strickland -- that he was prejudiced by trial counsel's performance. The victim testified on Applicant's behalf at the PCR hearing. Echoing his trial testimony, the victim stated Applicant was involved and guilty of the armed robbery. Additionally numerous other witnesses, including a co-defendant, testified to

Applicant's role in the commission of the offense.

### All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

### CONCLUSION

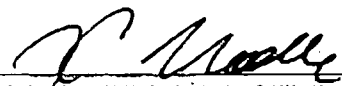
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

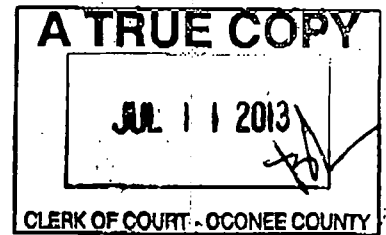
**IT IS THEREFORE ORDERED:**

- 1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
- 2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 3rd day of July, 2013.

  
 J. CORDELL MADDOX, Jr.,  
 Presiding Judge  
 Tenth Judicial Circuit

Walhalla, South Carolina



FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2013 JUL 11 AM 11 00

30 Short Street  
Walhalla, S.C. 29691  
864-638-2930  
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**Keith G. Denny, P.A.**

**RECEIVED**

JUL 30 2013

S.C. SUPREME COURT

# Fax

**To:** Ms. Janet Johnson, SC Supreme Court    **From:** Keith Denny, Attorney

---

**Fax:** 803-734-1499    **Pages:** (including cover) 17

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**Phone:** 803-734-1055    **Date:** 30-JUL-2013

---

**Re:** Adarius Dennis; 2012-CP-37-0076;  
ORDER OF DISMISSAL    **cc:**

- Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

• **Comments:**

Attached, please find the Order of the Dismissal for the above referenced case. Feel free to contact my office with any further questions.

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KEITH G. DENNY, P.A.  
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Hon. Daniel E. Shearouse, Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
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