STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable R. Kirk Griffin, Circuit Court Judge

Case No. 2021-CP-45-00327

John A. James, III, ...Petitioner,

v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Petitioner, John A. James III, appeals the order of the Honorable R. Kirk Griffin, dated December 18, 2023, and filed December 27, 2023. Petitioner received written notice of entry of this order on February 5, 2024.

2/7, 2024

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STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
John A. James, III, SCDC #,196633 Applicant, v. State of South Carolina, Respondent.	Case No. 2021-CP-45-00327 **ORDER OF DISMISSAL**

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by John A. James, III, ("Applicant") on August 5, 2021. On June 15, 2023, a hearing into the matter was convened before the Honorable R. Kirk Griffin at the Sumter County Courthouse. Applicant was present and represented by Michael Lifsey, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant, Grant B. Smaldone ("Counsel"), and Assistant Solicitor Warren S. Anderson ("Solicitor").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its January 2018 term, the Williamsburg County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime

(2018-GS-45-00022). Applicant was represented by Grant B. Smaldone, Esquire. Assistant Solicitor Warren S. Anderson of the Third Circuit Solicitor's Office prosecuted the case.

On May 29, 2018, Applicant proceeded to trial before the Honorable R. Ferrell Cothran, Jr. and a jury. The jury found Applicant guilty as indicted. On May 31, 2018, Judge Cothran Jr. sentenced Applicant to twenty (20) years for assault and battery of a high and aggravated nature and five (5) years for possession of a weapon during the commission of a violent crime, with those sentences to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender Joanna K. Delany of the South Carolina Commission on Indigent Defense, Office of Appellate Defense perfected the appeal by filing a brief with the Court of Appeals on the following issue:

> The [trial] court erred in appellant's ABHAN trial where it refused to charge the jury on the lesser offense of second-degree assault and battery, where expert testimony about the complainant's injuries was that he had "a scar" and that most people tolerate the type of surgery undergone by the complainant "without much difficulty," since these facts supported a finding of moderate bodily injury (second degree assault and battery) rather than great bodily injury (ABHAN), since the court must instruct the jury on a lesser-included offense where there is any evidence of the lesser offense rather than the greater offense.

Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence in an unpublished opinion. *State v. John Arthur James, III,* Unpub. Op. No. 2021-UP-023 (Ct. App. filed Jan. 27, 2021). The remittitur was issued on February 23, 2021.

STATEMENT OF FACTS

At trial, James Singletary ("Singletary") testified he went to the IGA the day of the shooting to get something to eat. When he drove into the parking lot, he spoke to a friend, and then parked his car. As Singletary opened his car door, Applicant walked up and punched him three times in the face. Singletary stated Applicant "hollered, he got a weapon, he got a weapon," but Singletary

was unarmed at the time. Applicant then ran around in a circle, came back to Singletary's car and kicked the car door. (Tr. pp. 45-48).

Applicant fell after kicking Singletary's car, then got up, ran over to his mother, who was by her car in the parking lot, and told her to "give [him] that damn thing out of the box." Singletary spoke to his friend for about thirty seconds, and started toward his car to leave, but Applicant started yelling at him, so Singletary got a machete out of the trunk of his car and started walking toward Applicant. Singletary stopped and said he was going to call the police. Applicant then got out of his mother's car with a gun. Applicant fired a shot toward Singletary, who turned around and started walking away for Applicant. (Tr. pp. 48-50).

As Singletary walked away, Applicant came up behind him. When Singletary got to a corner of the building, Applicant shot him twice in the abdomen from approximately six feet away. (Tr. pp. 50-51).

CURRENT APPLICATION

Applicant timely commenced this PCR application on August 5, 2021. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Counsel fail[ed] to make timely objection
2. Counsel fail[ed] to investigate
3. Counsel fail[ed] to request pretrial determination
4. Counsel fail[ed] to preserve issue
5. Appellant was not entitled to immunity

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel for
   a. Failing to adequately prepare for trial, having been appointed only a month prior to the trial date.
   b. Failing to object or offer any opposition whatsoever at a status conference held on April 26, 2018 in front of Judge Clifton Newman, to the plan of the Solicitor to try

the case on May 29, 2018, despite the fact that trial counsel was only formally appointed that day.

c. Failing to request a continuance from the trial judge when the case was called for trial on May 29, 2018 in front of Judge Ferrell Cothran, Jr.
d. Failing to request an immunity hearing pursuant to the Protection of Persons and Property Act (SC Code Section 16-11-410 *et seq.*).
e. Failing to object to the trial judge's confusing instructions regarding the charge of Possession of a Weapon During the Commission of a Violent Crime as it related to the charges of Assault and Battery of a High and Aggravated Nature and the lesser included offense of Assault and Battery 1st Degree.

On October 5, 2022, Applicant, through PCR counsel, filed a second amended allegation adding the following additional allegation:

f. Failing to object to the confusing instruction and commentary by the trial judge when the jury sought clarification on the difference between Assault and Battery of a High and Aggravated Nature and Assault and Battery 1st Degree.

At the hearing, Applicant proceeded only on claims that were raised in the amended applications.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Adequately Prepare for Trial

Applicant contends Counsel was ineffective for failing to adequately prepare for trial, having been appointed only a month prior to trial. This Court finds credible and persuasive the testimony of Counsel, who presented well-recollected testimony of his preparedness for trial.

1. PCR Testimony

Applicant testified he went to trial on May 29, 2018, with his Counsel, Grant Smaldone, only being appointed on April 26, 2018. Applicant testified a status conference was held in front of Judge Newman to discuss trial date. Applicant testified Counsel said he would not be prepared for trial within a week or two, but they eventually set a trial date about a month later. Applicant testified he attempted to call Counsel's office, but never received a call back. Applicant testified Counsel met with him the day before a jury was selected and they talked for about 20-35 minutes. Additionally, Applicant testified they met again the morning of trial. Applicant reiterated they only met those two times prior to trial.

Applicant testified Counsel never explained the elements of assault and battery of a high and aggravated nature or self-defense. Applicant testified he wanted to know the legal principles governing self-defense. Applicant testified he felt like he was provoked during the underlying incident, but Counsel did not want to argue provocation during trial. Applicant testified it would have been helpful to know this information in advance of his testimony at trial. Applicant testified he has a 7th grade reading level and he needed more than a 30 minute conversation with Counsel to understand the legal issues. Applicant testified that if Counsel adequately investigated the case he could have asked for additional self-defense instructions and the proceeding would have been different. Applicant testified Counsel was ineffective for not meeting with him.

Counsel testified one month was enough time to prepare for this case. Counsel testified this was a straightforward case in which the entire incident was on video and contained no expert testimony. Counsel testified he met with Applicant, but he does not recall how many times. Counsel testified it is his standard practice to explain the elements of the crime charged to his clients. Counsel testified he advises his clients about their right to testify. Counsel testified he was

prepared for trial. Solicitor Anderson explained the entire case was on video and was a "bone-simple" case.

2. Discussion

This Court finds Counsel was not ineffective in his preparation for trial. Counsel's credible testimony indicates he met with Applicant and informed him of the elements of assault and battery of a high and aggravated nature. Counsel credibly testsified it is his standard practice to explain the elements of the crime charged and the defendant's right to testify. Applicant testified Counsel should have discussed his case with him more; however, "even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation." *Harris*, 377 S.C. at 75, 659 S.E.2d at 145. This Court finds Counsel was prepared for trial and the straightforward nature of the case did not require much investigation, especially given the entire incident was captured on video. Although Applicant testified the outcome of the trial would have been different had Counsel adquetaly prepared for a self-defense case, this Court disagrees. The record from Applicant's trial shows Counsel effectively argued self-defense to the jury. Applicant testified at his trial explaining he was provoked and feared for his safety during the confrontation. (Trial Tr., certified on September 21, 2023, p. 189). Counsel's entire closing argument to the jury was that Applicant acted in self-defense. (Trial Tr., certified on September 21, 2023, pp. 306-325). The jury repeatedly watched the video of the incident and, despite the worthy efforts of Counsel, found Applicant guilty of assaut and battery of a high and aggravated nature. This Court finds Counsel properly informed Applicant of the elements of his charges and self-defense. Additionally, this Court finds Counsel was adequately prepared for trial. Therefore, this Court finds Counsel was not deficient in his preparation.

Additionally, Applicant has failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); *see Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Here, Counsel commendably argued self-defense to the jury and an instruction on self-defense was given during the charge to the jury. Thus, Applicant has failed to meet his burden establishing prejudice in this regard.

Accordingly, this Court finds this allegation is **DENIED**.

Failure to Object to Trial Date During Status Conference Hearing and Failure to Request a Continuance[1]

Applicant next contends Counsel was ineffective for failing to object or offer any opposition whatsoever at a status conference held on April 26, 2018, in front of Judge Clifton Newman, to the plan of the Solicitor to try the case on May 29, 2018, despite the fact that trial counsel was only formally appointed that day. Additionally, Applicant alleges Counsel was ineffetive for failing to request a continuance from the trial judge when the case was called for trial on May 29, 2018, in front of Judge R. Ferrell Cothran, Jr. This Court disagrees and finds Counsel's credible testimony refutes this allegation.

[1] Allegations 1(b) and 1(c) will be addressed in this section.

1. PCR Testimony

At the PCR hearing, Applicant testified Counsel should have requested a continuance to give them additional time to prepare. Counsel testified he beleived a month was aqequate time to prepare for this trial. Counsel reiterated the straightforward nature of the case that did not require additional time.

Solicitor Warren Anderson testified Applicant was repeatedly informed he had a right to an attorney during multiple appearances; however, Applicant was actively avoiding a lawyer. Solicitor testified Applicant finally requested an attorney on April 11 and Counsel was appointed on April 12. A status conference was held before Judge Newman in which Applicant insisted on a trial.

2. Discussion

This Court finds Counsel was not ineffective for failing to request a continuance. Counsel credibly testified he believed a month was plenty of time to prepare this case. Additionally, Applicant's own delay in obtaining an attorney contributed to the amount of time Counsel had to prepare. As discussed in the previous section, this Court finds Counsel was adequately prepared for this trial. Thus, Counsel was not deficient for failing to object to the trial date at the status hearing nor failing to request a continuance during the status conference hearing.

Furthermore, Applicant has presented no evidence or testimony showing how a continuance could have affected the outcome at trial. Therefore, Applicant has failed to prove he was prejudiced by Counsel's alleged deficiencies.

Accordingly, this allegation is **DENIED.**

Failure to Object to Judge's Confusing instructions[2]

Applicant further contends that Counsel was ineffective for failing to object to the trial judge's confusing instruction and commentary when the jury sought clarification between assault and battery of a high and aggravated nature and assault and battery 1st degree. Additionally, Applicant alleges Counsel was ineffective for failing to object to trial judge's confusing instructions regarding the charge of possession of a weapon during the commission of a violent crime as it related to the charges of assault and battery of a high and aggravated nature and the lesser included offense of assault and battery 1st degree. This Court disagrees and finds that the trial court's jury instructions, viewed as a whole, were correct.

1. PCR Testimony

Applicant testified the trial court gave his opinion to the jury by saying assault and battery of a high and aggravated nature was the greater and more accurate one.[3] Applicant testified the trial court admitted the difference between ABHAN and A&B 1st is confusing. Applicant testified that if the instruction was confusing to the trial judge, it was confusing to the jury. Applicant testified Counsel should have objected to the instruction. Furthermore, Applicant testified the trial court gave an ambiguous instruction regarding possession of a weapon during the commission of a violent crime when the court informed the jury they can only find Applicant guilty of the weapons charge if they also find him guilty of ABHAN.

2. Trial Transcript Challenge

Following the evidentiary hearing, the State initiated a formal transcript challenge challenging the transcription of the jury instruction in question. Specifically, the State challenged

[2] Allegations 1(e) and 1(f) will be addressed in this section.

[3] As explained in more detail in the subsequent section, the State initiated a transcript challenge where, upon review of the tapes, the court reporter indicated the transcript should have reflected "greater and more aggravated one." A new transcript was certified correcting this scrivener's error.

the "greater and more accurate" transcription. (Trial Tr., certified on October 20, 2018, l. 20 p. 345). Following a review of the recordings, the court reporter indicated the transcript should reflect "greater and more aggravated one." (*See* Affidavit, dated September 19, 2023). The court reporter transcribed a new transcript, including a new certification page, reflecting this change. (*See* Trial Tr., certified on September 21, 2023).

3. Discussion[4]

This Court finds Counsel was not ineffective for failing to object to the trial judge's jury instruction on the difference between assault and battery 1st degree and assault and battery of a high and aggravated nature. This allegation, and the testimony from the evidentiary hearing supporting it, is based on a transcription error that was corrected following the State's transcript challenge. When considering only the transcript certified on September 21, 2023, this Court finds this allegation is without merit.

During Applicant's trial, the court gave the following jury instruction on assault and battery of a high and aggravated nature:

> The Court: A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury. Great bodily injury means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the functions of a body member or organ.

(Trial Tr., certified on September 21, 2023, p. 332).

Additionally, the court gave the following instruction on the lesser included offense of assault and battery first degree:

> Now if you feel that the State has failed to prove the defendant guilty of assault and battery of a high and aggravated nature, you may consider a lesser included offense of assault and battery first degree. A person commits assault and battery first degree if the person

[4] This Court only considered the transcript certified on September 21, 2023, when making its findings of fact and conclusions of law.

unlawfully injures another person and the act either - - injures that person, I'm sorry. Is accomplished by means likely to produce death or bodily injury. Great bodily means the same thing I just gave you in assault and battery of a high and aggravated nature.

(Trial Tr., certified on September 21, 2023, p. 332).

The trial court gave an additional instruction to the jury when they requested a re-charge on assault and battery of a high and aggravated nature, and assault and battery, first degree:

> The Court: Assault and battery of a high and aggravated nature. A person commits the offense of assault and battery high and aggravated nature if the person unlawfully injures another person and great bodily injury to another person and great bodily injury to another person results or the act is accomplished by means likely to produce death or great and bodily injury. Great bodily injury means bodily which causes a substantial risk of death or which causes serious permanent disfigurement or protraction, or protracted loss or impairment of the function of body member or organ.
>
> Now, assault and battery in the first degree. A person commits the offense of assault and battery in the first degree if the person unlawfully injures another person and the act either – well, that doesn't apply 'cause it wasn't. A person may also commit the offense of assault and battery first degree if the person unlawfully offers or attempts to injure another person with the present ability to do so and the act is accomplished by means likely to produce death or great bodily injury.
>
> I know those definitions are very close. The greater and more aggravated one is assault and battery high and aggravated nature. And in assault and battery high and aggravated nature there must be an injury. In assault and battery in the first degree there doesn't necessarily have to be an injury as long as it's an offer or attempt to do injury. That's the only difference in the two. One is greater and more serious than the other. Assault and battery of a high and aggravated nature is more serious than assault and battery in first degree so the State has to prove beyond a reasonable doubt either one of those.

(Trial Tr., certified on September 21, 2023, pp. 344 – 346).

It is well established under South Carolina law "that a trial judge must refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy." *Sosebee v. Leeke*, 293 S.C. 531, 362 S.E.2d. Here, this Court finds trial judge's instruction regarding the difference between assault and battery 1st degree and assault and battery of a high and aggravated nature was

proper and not an impermissible comment on the facts. The trial judge's comment that assault and battery of a high and aggravated nature is the "greater and more aggravated one" is a correct statement of the law. Therefore, Applicant has failed to prove Counsel was deficient as to this allegation.

Additionally, Applicant alleges Counsel should have objected to the trial court's instruction regarding possession of a weapon during the commission of a violent crime. Specifically, Applicant alleges the instruction was confusing to the jury when the court charged the following:

> The Court: ...In order for the defendant to be guilty of possession of a weapon during the commission of a violent crime you must first find the defendant guilty of committing a violent crime or attempting to commit a violent crime, and I charge you that assault and battery of a high and aggravated nature is a violent crime. Now assault and battery first degree is not a violent crime.

(Trial Tr., certified on September 21, 2023, p. 333).

This Court finds this instruction was proper and a correct statement of the law. According to S.C. Code Ann. § 16-1-60, assault and battery of a high and aggravated nature is a violent crime, while assault and battery first degree is not. Additionally, the possession of a weapon during the commission of a violent crime statute explicitly states "the penalties prescribed in this section may not be imposed unless the person convicted was at the same time indicted and convicted of a violent crime." S.C. Code Ann. § 16-23-490. This Court finds both jury instructions in question were properly charged. Therefore, this Court finds Applicant has failed to prove Counsel was deficient.

Additionally, it was uncontradicted that Applicant shot the victim in the abdomen twice during the incident. The victim's surgeon testified that without surgery the victim would have succumbed to his injuries. (Trial Tr., certified on September 21, 2023, p. 79). The evidence presented at trial clearly supported a guilty verdict for assault and battery of a high and aggravated

nature and possession of a weapon during the commission of a violent crime. Therefore, this Court finds Applicant has failed to meet his burden establishing prejudice as to this allegation.

Accordingly, this allegation is **DENIED**.

Failure to Request an Immunity Hearing

Applicant contends that Counsel was ineffective for failing to request an immunity hearing pursuant to the Protection of Persons and Property Act (S.C. Code Ann § 16-11-410). This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified Counsel should have requested a pre-trial immunity hearing. Applicant testified the judge may have determined he was immune from prosecution pursuant to the act. Counsel Smaldone testified he believed a pre-trial immunity hearing would be frivolous based on the video of the incident. Counsel explained his trial strategy was to play on the juror's emotions which does not work at a pre-trial bench hearing. Counsel testified the victim stated Applicant walked up to him and punched him.

2. Discussion

Applicant asserts Counsel was ineffective for failing to seek immunity pursuant to the Protections of Persons and Property Act. This Court disagrees. Subsection 16-11-440(C) of the South Carolina Code provides in pertinent part:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has not duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person. . .

Additionally, our Courts have held that "while the Protection of Persons and Property Act may be considered "offensive" in the sense that immunity thereunder operates as a bar to prosecution, such

immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013).

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). "[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).

This Court finds Counsel believed a pre-trial immunity hearing would be frivolous based on the evidence presented at trial, specifically the video and the victim's testimony. This Court agrees. During Applicant's trial, the victim testified that when he pulled into the parking lot of the IGA, Applicant approached him and punched him three times in the face. (Trial Tr., certified on September 21, 2023, p. 47). This Court finds the video of the incident corroborates this testimony.

Because Counsel articulated a valid reason for not requesting a pre-trial immunity hearing, Applicant has failed to prove Counsel was deficient. Furthermore, this Court finds the evidence presented at trial demonstrates Applicant was not without fault in bringing on the difficulty, so any attempt to receive immunity would have been unsuccessful. Additionally, Applicant testified during trial explaining his version of events. (Trial Tr., certified on September 21, 2023, pp. 155–259). Despite this, a jury found he was not acting in self-defense and found him guilty. Therefore, Applicant has failed to meet his burden establishing prejudice as to this allegation.

Accordingly, this allegation is **DENIED.**

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief be denied and dismissed with prejudice; and

2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 8th day of December, 2023.

THE HONORABLE R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

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In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable R. Kirk Griffin, Circuit Court Judge

Case No. 2021-CP-45-00327

John A. James, III, ...Petitioner,

v.

State of South Carolina, ...Respondent.

PROOF OF SERVICE

I, Michael H. Lifsey, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, on February 7, 2024, addressed to:

T. Cruise Mitchell
Assistant Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

2/7, 2024

Michael H. Lifsey
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ATTORNEY FOR PETITIONER