STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	**C/A No. 2019-CP-39-0769**
Vincent Missouri, SCDC #197996,	)	
	)	
Applicant,	)	**ORDER OF DISMISSAL**
	)	
vs.	)	
	)	
State of South Carolina	)	
	)	
Respondent.	)	
	)	

This matter came before this Court by way of application for post-conviction relief filed June 6, 2019, by Mr. Vincent Missouri (Applicant). The State (Respondent) filed its return on December 9, 2019, requesting a hearing be held. An evidentiary hearing was convened on March 7, 2023, at the Greenville County Courthouse before the Honorable Daniel D. Hall. Present at this hearing was Applicant represented by his counsel Thurmond Booker, Esq. Respondent was represented by Assistant Attorney General, Taylor Smith of the Office of the Attorney General.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations that would afford him the granting of post-conviction relief. This Court denies this applicant with prejudice.

PROCEDURAL HISTORY

Records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Pickens County Clerk of Court. On June 18, 2012, the Applicant was charged with entering a bank with intent to steal, armed robbery, and failure to stop for blue light. On November 12, 2013, the Pickens County

Grand Jury Indicted the Applicant for armed robbery (Indictment No. 2014-GS-39-2242); entering a bank with intent to steal (Indictment No. 2012-GS-39-2203); and failure to stop for a blue light (12-GS-39-02204). The case was assigned to be prosecuted by Assistant Solicitor Doug Richardson of the Thirteenth Circuit Solicitor's Office. The Applicant was represented by attorney Aaron Angell.

Prior to trial, on December 19, 2013, all parties were brought before the Honorable Letitia H. Verdin for a hearing regarding Applicant's motion to relieve counsel. During this hearing the Applicant stated that he wished his counsel to be relieved. As a reason for the removal of Mr. Angell the Applicant stated it was, "based on the time and amount of cases Mr. Aaron has and the complexity of my defenses, I feel it'd be better that I have either someone that doesn't have as much of a case load as he has or either I be prepared to represent myself." R. p. 5. Judge Verdin decided to deny Applicants motion to relieve counsel and ordered that his counsel remain on this case. R. pp. 11-12.

On May 19, 2014, this case was called for trial before the Honorable James R. Barber, III. During a pre-trial hearing Applicant informed Judge Barber that he previously made a motion before Judge Verdin to relieve Mr. Angell and to represent himself. (R. p. 24). At that time Judge Barber believed that he could not override a ruling that was already made by another Circuit Court Judge so he decided to proceed with pre-trial motions. After ruling on these motions Judge Barber decided to take a break. Upon returning, Judge Barber asked the Applicant, if he is still interested in representing himself? Judge Barber made it clear that if he did not wish to proceed *pro se* he could proceed with counsel. R. p. 45. However, Judge Barber explained that if he was still interested in representing himself, "I will have certain questions I want to ask you. If I find you're competent to do so, you will be able to represent yourself and we'll go forward." R. p. 46.

Applicant then requested Judge Barber revisit the previously ruled-upon pre-trial motions. Judge Barber informed the applicant, "We're not going to revisit the issues. There's nothing that you can tell me differently that was brought out – you nor anyone else don't have anything that will change my mind on the *Denno* hearing." R. p. 48. Judge Barber also indicated he had made up his mind with respect to the pre-trial motions involving venue and indictments. R. p. 49. Since the Applicant did not make a motion to represent himself Judge Barber decided to go forward. R. pp. 49-50.

After two days of testimony a jury of his peers found the Applicant guilty of entering a bank with intent to steal, strong-arm robbery, and failure to stop for a blue light. After the announcement of the verdict the Applicant appeared before Judge Barber for sentencing. For entering a bank with intent to steal the Applicant was sentenced to a twenty-year term of incarceration; for strong armed robbery the Applicant was sentenced to a five-year period of incarceration; and failure to stop for a blue light Applicant received a sentence of three years incarceration. Judge Barber ordered that these sentences were to be served concurrently. R. p. 234.

Upon conviction Applicant filed a timely notice of appeal. Applicant was first represented by Ms. Tiffany Holt who filed an *Anders* brief and petition to be relieved as counsel. On June 13, 2016, the Court of Appeals denied the petition and directed parties to file briefs on the issues.

Following briefing and oral argument, on October 18, 2017, the South Carolina Court of Appeals filed an unpublished opinion unanimously affirming the Applicant's conviction and sentence. *State v. Missouri,* Op. No. 2017-UP-383 (Ct. App. filed October 18, 2017). Applicant subsequently submitted a petition for rehearing, which was denied on December 14, 2017. Petitioner then submitted a petition for Writ of Certiorari, which was granted on April 19, 2018. On May 15, 2019, the South Carolina Supreme Court dismissed the writ as improvidently granted. *State v. Missouri,* 2019-MO-025 (S.C. Sup. Ct. 2019).

On June 6, 2019, Applicant filed an application for post-conviction relief. Within this application the Applicant alleged that he is currently being held in custody unlawfully based on the following reasons:

1. Ineffective Assistance of Counsel
    a. Failure to enforce the five-year plea offer;
    b. Failure to investigate the defense of involuntary intoxication;
    c. Failure to move for a timely *Faretta*[1] hearing;
    d. Failure to object to Judge Verdin's denial of Applicant's motion to relieve counsel;
    e. Failure to object to Judge Barber overruling Judge Verdin's prior ruling;
    f. Failure to move to dismiss the indictment on double-jeopardy grounds;

2. Ineffective Assistance of Appellate Counsel
    a. Failure to raise the issue of Judge Barber overruling Judge Verdin's prior ruling.

STATEMENTS OF FACTS RAISED DURING TRIAL

On June 18, 2012, Ms. Rachel White was working as the head teller at the Bank of America in Pickens, South Carolina. Around 4:45 p.m. Applicant walked into the bank and gave Ms. White a note. The note stated, "Place all money in the bag. Keep left hand on top of camera. Empty drawer with right hand. No [dye] pack. I know who you are." Ms. White followed the Applicant's demands and placed about one thousand eight hundred ($1,800.00) dollars into a bag. Once the Applicant was handed the bag he escaped through a side door. Ms. White alerted the manager that the bank had been robbed and they contacted law enforcement.

That morning Applicant visited the home of Bobby Wright and invited him to ride with him to pick up supplies. Mr. Wright lived in Greenville and grew up with Applicant. During the trial Mr. Wright testified that he did not know what supplies the Applicant needed to pick up, just that the Applicant told him that he needed to go to Pickens to "pick up some supplies for a job."

[1] *Faretta v. California,* 422 U.S. 806, 95 S.Ct. 2525 (1975).

Once they were in Pickens, Applicant stopped at the Bank of America, Applicant informed Mr. Wright that he needed a check cashed. While Applicant entered the bank Mr. Wright stayed in the car. Once they left they drove to a Family Dollar where the Applicant purchased some clothing. While driving away the Applicant looked into the rearview mirror and stated, "okay they on us." Mr. Wright asked Applicant what he meant by that and Applicant replied, "the police." Mr. Wright then asked Applicant why the police were on them and he told Mr. Wright he had just robbed the bank. Applicant, then took off at a high rate of speed and a car chase ensued. During this chase, Mr. Wright observed Applicant pull a bag of money from his pants.

Eventually Applicant stopped the vehicle, exited the driver's side, and ran through the woods. Law enforcement eventually was able to subdue and arrest Applicant. When he was arrested law enforcement officers recovered one thousand seven hundred and fifty (1,750.00) dollars from the brown bag off the Applicant and from the console of the truck Applicant was driving.

Following this arrest, the Applicant was questioned by Detective Samuel Byers of the Pickens Police Department. Upon his arrival Detective Byers advised Applicant of his *Miranda* rights. Applicant then made a full confession explaining to Detective Byers about his drug addiction, how he stole a vehicle to drive and rob the bank. Applicant admitted that Mr. Wright had no knowledge of this robbery. The Applicant was then arrested and charged with the offenses of entering a bank with intent to steal, armed robbery, and failure to stop for blue light.

During trial Applicant decided to take the stand to testify. During his testimony Applicant stated that he was released from federal prison on November 18, 2011, and immediately relapsed in an addiction to crack cocaine. Applicant testified that he was, "just basically running around

getting high, getting money from anywhere I could to get high." R. p. 190. During his testimony the Applicant stated:

> "And on that date – what was the date of the incident? June 18th? June 18th, the date that this robbery occurred, you know, it was not my defense to come into court and try convince twelve people that I didn't do it. In fact, I did do it. So that, you know, that eliminates y'all having to consider that. Mr. Richardson, he did an excellent job, I mean, the evidence is there. There's no refuting the evidence. I mean, that's what happened on June 18th."

R. p. 190.

During his testimony Applicant further stated, "I didn't come here to tell you I didn't take the money from the bank, because I did. It's called irresistible impulses. When you have a long-term addiction, experts consider that a disease. It's not something we can handle ourselves." R. p. 192.

Applicant later pleaded with the jury:

> "You don't have to find me guilty based on his evidence. The jury did such a thing that's called jury nullification for any reason in the world that you might want to say not guilty, y'all have that right. And you cannot be intimidated by the judge, nor Mr. Richardson. Y'all have that right. Y'all have to know your powers in order to be able to exercise them. That is the power of the jury. You're not under state government. You're not under the courts. You're not under the judicial branch. The jury is created separately from the establishment of our jury trial. That's why we elect to have a jury to find us guilty as opposed to any other entity. This is your power. For whatever reason I may have given you, you can say I'm guilty.[2]"

R. p. 202

Judge Barber then corrected the Applicant stating, "Mr. Missouri, I will instruct the jury on the law of the state of South Carolina as it applies to this case. R. p. 202.

On March 11, 2014, a jury of his peers found the Applicant guilty on each indictment. Judge Barber sentenced Applicant to concurrent sentences of twenty years imprisonment for

[2] Applicant could have possibly meant "not guilty"

entering a bank with intent to steal, five years for strong armed robbery, and three years for failure to stop for a blue light.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments of the United States Constitution guarantees the right to effective assistance of counsel. *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052 (1984), *Taylor v. State,* 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013).

In a post-conviction relief action, the Applicant always bears the burden of proving the allegations by a preponderance of the evidence – a mere allegation of ineffective assistance is not sufficient to warrant granting relief. *Butler v. State,* 286 S.C. 441, 334 S.E.2d 813, 814 (1985). Pursuant to *Strickland,* the reviewing court must apply a two-prong test to make a determination as to whether trial counsel's conduct "was so ineffective as to require reversal" of the Applicant's conviction or sentence. 466 U.S. at 687. First, Applicant must show that counsel's performance was deficient; second, that this deficient performance prejudiced the Applicant. *Id.*

The first prong reveals that the Applicant must reveal that counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State,* 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). The proper measure of performance is

whether the attorney provided representation within the range of competence required in criminal cases. *Butler,* 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, "does not guarantee perfect representation – only a 'reasonably competent attorney.'" *Harrington v. Richter,* 562 U.S. 86, 110, 131 S.Ct. 770, 791, *quoting, Strickland,* 466 U.S. at 687. Representation is constitutionally ineffective only if counsel's conduct, "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland,* 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington,* 562 U.S. at 110, 131 S.Ct.2d at 791.

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or 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, 104 S.Ct. at 2065. In *Strickland* the U.S. Supreme Court stated:

> A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action, "might be considered sound trial strategy."

Id.

The second prong of *Strickland* is rooted in the very purpose of the Sixth Amendment's guarantee of counsel – to ensure the defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* 466 U.S. at 691-692, 104 S.Ct. at 2066. In order to prove

prejudice, an Applicant must demonstrate counsel's deficient performance prejudiced the Applicant such that, "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 117-118, 386 S.E.2d at 625. A reasonable probability is a probability, "sufficient to undermine confidence in the outcome." *Strickland,* 466 U.S. at 694, 104 S.Ct. at 2068. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding – counsel's errors must be "so serious as to deprive the defendant of a fair trial." *Id.,* 466 U.S. at 687, 104 S.Ct. at 2064. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at a PCR hearing in order to establish prejudice. *Bannister v. State,* 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The Applicant has failed to produce any evidence revealing that the outcome of this case would have been different but for the ineffectiveness of his counsel. According to the application and his testimony the Applicant was under the impression that he had a five-year plea offer and his counsel was ineffective due to him not enforcing this plea offer. According to the testimony of Mr. Angell as well as Assistant Solicitor Richardson there was never a five-year plea offer, the offer was always fifteen years, an amount that the Solicitor's office was not going to reduce. Mr. Angell testified that he brought this offer to the Applicant which he refused, so there exists no ineffectiveness on behalf of the Applicant's counsel. Mr. Angell got an offer that was less than the maximum amount Applicant was facing and the Applicant decided not to accept this offer. The fact the Applicant received the sentence he received is through no fault of his counsel.

The Applicant also argues that his counsel was ineffective due to his failure to investigate the possibility that Applicant could be exonerated though involuntary intoxication. Involuntary

intoxication does not apply in the present case. The Applicant admitted to being addicted to crack cocaine, however, during the post-conviction relief hearing Applicant never presented any facts that he was tricked, or forced into taking these drugs. Involuntary intoxication is defined as:

> Innocently consuming an intoxicant, through being tricked into it by another, or being forced to take it or perhaps through unanticipated side effects of a prescription drug taken on orders of a physician.

State v. Shands, 424 S.C. 106, 125, 817 S.E.2d 524, 534 (2018).

An addiction does not equate to involuntary intoxication, so if this argument was raised by Applicant's counsel it would have certainly failed looking at the facts of this case, and the Applicant's admission during testimony.

The Applicant testified that he was addicted to crack cocaine. It has been long held in the State of South Carolina that the general rule is that voluntary intoxication or use of drugs does not constitute a defense to a crime. The Applicant got on the stand to testify to possibly get the jury to find him not guilty due to jury nullification, which is not recognized in the State of South Carolina. Therefore, even if Applicant's counsel had done the investigation and presented the defense of involuntary or voluntary intoxication it would not have changed the final result of the trial.

Self-Representation

The application alleges that Applicant's counsel was ineffective due to a failure to timely move for the Applicant to represent himself, and failing to object to Judge Verdin's denial of the Applicant's motion to relieve counsel. There exists no ineffective assistance of counsel due to the Applicant not being prejudiced by being represented, and he had an opportunity to request to go forward *pro se* when asked by Judge Barber, Applicant failed to make such request. So, Applicant waived any opportunity to proceed *pro se*.

In *Faretta v. California,* 422 U.S. 806, 95 S.Ct. 2525 (1975) the United States Supreme Court decided that "The Sixth Amendment as made applicable to the States by the Fourteenth Amendment guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so." *Id.* 422 U.S. at 806, 95 S.Ct. at 2527.

Under *Faretta,* the trial judge has the responsibility to make sure that the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel. *State v. Reed,* 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). However, only a clearly and unequivocally expressed request for self-representation will require the court to engage in a *Faretta* inquiry. *United States v. Lorick,* 753 F.2d 1295, 1298 (4th Cir. 1985); *State v. Fuller,* 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). The Applicant never clearly explicitly, and unequivocally sought to represent himself. The motion that was before Judge Verdin was a motion to relieve counsel. During this motion Applicant wished to have another attorney replace Mr. Angell, Applicant expressed to Judge Verdin during this hearing that he, "feel it'd be better that I have either someone that doesn't have as much of a case load as he has or either I be prepared to represent myself." R. p. 5. When a defendant wishes to represent himself that assertion of his right to self-representation must be: (1) clear and unequivocal; (2) knowing, intelligent and voluntary; and (3) timely. *United States v. Frazier-El,* 204 F3d 553, 560 (4th Cir. 2000). The motion as presented to Judge Verdin was not clear nor unequivocal. The Applicant expressed the wishes for different counsel or if that could not be done he could represent himself. Therefore, Judge Verdin did not have the duty to go through the questioning found in *Faretta.* Judge Verdin's order to have the Applicant to remain with counsel was not done in error; therefore, counsel not objecting does not equate to being ineffective.

During pre-trial the Applicant raised to Judge Barber the fact that he made a motion for the removal of counsel but that motion was denied by Judge Verdin. At that time Judge Barber felt that he did not have the authority to overrule another Circuit Court Judge; however, after the break Judge Barber changed his ruling and opened back up the ability for the Applicant to request to go *pro se.*

Judge Barber specifically asked Applicant, "If you are interested in representing yourself, I will have certain questions I want to ask you. If I find you're competent to do so, you will be able to represent yourself and we'll go forward." R. p. 46. Judge Barber was stating the specific responsibilities a trial judge must inquire pursuant to *Faretta.* Applicant wished for the court to allow him to re-hear the prior pre-trial motions that he thought, "Mr. Angell did a poor job of doing this morning." P. 48. In response Judge Barber stated, "We're not going to revisit the issues. There's nothing that you can tell me differently that was brought out … you nor anyone else have nothing that will change my mind on the *Jackson v. Denno* hearing." R. p. 48. Judge Barber also indicated that he made up his mind regarding the other pre-trial motions also. R. p. 49. At that time the Applicant did not make the motion to proceed *pro se.* So, Judge Barber decided to go forward with Mr. Angell representing the Applicant. The Court of Appeals was correct in deciding that Applicant had an opportunity to go forward *pro se* which he decided to waive.

Applicant had an opportunity to represent himself which he decided not to do. Judge Barber made it clear that no matter if another counsel presented pre-trial arguments his decision would remain. The Applicant was represented by competent counsel who was prepared when the case was called for trial. There exists no ineffective assistance of counsel. The fact trial counsel represented the Applicant did not have any effect on the final outcome. Actually, it might have created a better outcome than if the Applicant represented himself *pro se.*

Double Jeopardy

Applicant argues that his counsel was ineffective due to him not moving to quash the indictments since they were in violation of double jeopardy. Applicant argues that the indictment for entering a bank with intent to steal was identical to strong armed robbery, therefore they were duplicitous. So, failing to request them to be quashed amounted to an ineffective assistance of counsel.

The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense. *Brown v. Ohio,* 432 U.S. 161, 97 S.Ct. 2221 (1977); *State v. Amerson,* 311 S.C. 316, 428 S.E.2d 871 (1993).

Pursuant to *Blockburger v. U.S.,* 284 U.S. 299, 52 S.Ct. 180 (1932), the United States Supreme Court decided:

> Each of the offenses created requires proof of a different element. The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.

Blockburger, 284 U.S. at 304, 52 S.Ct. at 182.

The Applicant was charged with the offenses of entering a bank with the intent to steal and strong-armed robbery. Section 16-11-380 of the South Carolina Code of Laws specifically state, "It is unlawful for a person to enter a building or a part of a building occupied as a bank, depository, or building and loan association with intent to steal money, securities for money or property, either by force, intimidation, or threats. S.C. Code Ann. §16-11-380(A)(2012). Strong Armed or

Common Law Robbery is defined as " the felonious or unlawful taking of money goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. *State v. Bland,* 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1995). It is clear that Section 16-11-380 has the extra element as having to occur inside a bank, so this is not considered double jeopardy. There exists no ineffective assistance by Applicant's counsel not moving to quash this indictment.

Ineffective Assistance of Appellant counsel

Applicant asserts that his Appellant Counsel was ineffective due to the fact they did not raise the issue of Judge Barber overruling Judge Verdin's prior ruling. In analyzing a claim of ineffective assistance of appellate counsel, the *Strickland* test is applied as if it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State,* 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009).

Tiffany Holt was originally the Applicant's appellant counsel. Ms. Holt filed an *Anders* brief and motion to be relieved as counsel. The Court of Appeals denied her motion and ordered a brief be filed on the Applicant's behalf. Mr. David Alexander then became the Applicant's appellant attorney of record. The only issues raised by Mr. Alexander on behalf of the Applicant was that "The trial court categorically refused to consider Appellant's request to represent himself," and "Denial of the right of self-representation is a structural error and this court should ignore the states harmless error argument." During his PCR testimony Mr. Alexander testified that he did not raise the issue that Judge Barber overruled Judge Verdin because he felt that Judge Barber gave them what they wanted, an opportunity to be heard in order to go *pro se*. Mr. Alexander testified that he believed in a *Faretta* situation one Circuit Court Judge can override the decision of another. He thought the better argument was that the Applicant should have been granted time

to prepare his case after being allowed to appear *pro se.* Mr. Alexander believed this argument would have remedied the decision given by Judge Verdin.

Appellate counsel is trusted in raising the issues that they find would be more successful. Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every nonfrivolous issue that is presented by the record." *Tisdale v. State,* 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), *quoting, Thrift v. State,* 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Since the identical criteria established in *Strickland* applies to appellate as well as trial counsel, this Court does not see how arguing that Judge Barber erred in overruling Judge Verdin would have changed the outcome of this case, when the Court of Appeals decided that the Applicant had the opportunity to proceed *pro se* and waived that chance. There exists no ineffective assistance of appellate counsel.

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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See,* Rule 203 SCACR. Pursuant to *Austin v. State,* 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. 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 Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and,

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

IT IS SO ORDERED this 21st **day of** November **, 2023.**

The Honorable DANIEL D. HALL
Circuit Court Judge

Pickens, South Carolina

ALAN WILSON
ATTORNEY GENERAL

November 27, 2023

The Honorable Harold P. Welborn
Clerk of Court, Pickens County
P. O. Box 215
Pickens, South Carolina 29671-0215

Re: Vincent Missouri, SCDC #197996 vs. State of South Carolina
C/A No. 2019-CP-39-0769

Dear Mr. Welborn:

Please find enclosed the Signed Order of Dismissal regarding the above captioned case. Please kindly file the Order and return stamped copy via email. I would really appreciate it. If you have any questions, please contact me at (803)734-6305. Thank you.

Sincerely,

Tommy Evans, Jr.
Assistant Attorney General

TE:bbr

cc: Vincent Missouri, SCDC #197996