

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court of General Sessions

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

The Honorable R. Kirk Griffin, Circuit Court Judge, Third Judicial Circuit

Case No.: 2019CP4301022

Rodney R. Green #335829Respondent

V.

State of South Carolina.....Appellant

NOTICE OF APPEAL

Rodney R. Green appeals his PCR ruling. The dismissal was imposed by the Honorable R. Kirk Griffin on March 20, 2024. This appeal is taken from the order of the Honorable R. Kirk Griffin, on March 20, 2024, which denied appellant's application for post-conviction relief and new trial. Respondent has received written notice of this order on March 22, 2024.

April 1, 2024



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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Rodney R. Green, #335829

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) Case No.: 2019-CP-43-01022

) ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Willie H. Brunson
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

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RECORDED

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Rodney R. Green (“Applicant”) on May 20, 2019, and amended on November 15, 2021. The Court convened an evidentiary hearing into the matter on June 15, 2023, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Willie H. Brunson, Esquire. Assistant Attorney General Zachary W. Jones represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Charlie J. Johnson (“Counsel”), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In July 2014, the Sumter County Grand Jury indicted Applicant for murder, attempted murder, possession of a weapon during the commission of a violent crime, and possession of stolen pistol (2014-GS-43-0524). Charlie J.

Johnson, Esquire (“Counsel”), represented Applicant. Solicitor Earnest A. Finney, III, prosecuted the case. On November 9-11, 2015, Applicant proceeded to a trial before The Honorable George C. James and a jury. The jury found Applicant guilty on all four counts as indicted. Judge James sentenced Applicant to life without the possibility of parole for murder, a concurrent sentence of thirty years for attempted murder, a concurrent sentence of five years for possession of a weapon during a violent crime, and time served for possession of a stolen pistol. Applicant filed a timely notice of appeal. In an unpublished opinion filed May 9, 2018, the South Carolina Court of Appeals affirmed Applicant’s convictions and dismissed his appeal. *State v. Green*, No. 2018-UP-187 (Ct. App. filed May 9, 2018).

Factual Background

This case arises from a shooting on March 16, 2014, outside a venue called “Club Miami” in Sumter. Ray’Quann Jenkins and Tyrese “Stymie” Archie were both shot during the incident, the latter fatally. Applicant was caught and arrested at the scene.

Prior to the shooting, Applicant and his girlfriend, Lavitra Harvin, attended an “all-white” party at Catchall Hall. (R.p.14). Applicant was wearing a white shirt, white pants, and white shoes. (R.p.26). At around 1:45 a.m., Harvin left the all-white party and went to Club Miami with some girlfriends. (R.p.15). At some point, a fight broke out inside the club, so Harvin and her girlfriends decided to leave. (R.pp.17–19). Outside the club, Harvin observed “a lot of commotion.” (R.p.19). She heard gunshots and took cover beside a black truck, and she saw Ray’Quann Jenkins run past her saying he had been shot. (R.p.20). She also saw Applicant running. (R.p.26). Harvin looked up and saw a gun being fired, but she testified that she could not see who fired the gun. (R.pp.21–26). On the stand, Harvin denied seeing Applicant with a gun that night. (R.p.34). However, she admitted that, in her initial statement to law enforcement,

she had identified Rodney Green as the shooter and said that she had seen him firing a gun and then running away. (R.p.36; p.44).

Ray'Quann Jenkins testified that he went to Club Miami with Tyrese Archie between 12:30 and 1:00 a.m. (R.p.67). As they were heading out of the club, they saw some of Archie's cousins fighting in the outside parking lot. (R.p.70). Jenkins and Archie went over to the fight, and Archie asked the participants to stop and told everybody to get in their cars and leave. (R.p.72). The fight broke up, but while Jenkins and Archie were still standing in the parking lot three other people came around the front of the club and approached Archie. (R.p.75). The three newcomers attacked Archie, and a fist fight broke out. (R.pp.75-76). Jenkins tried to break up the fight, but then four or five other people approached, including Applicant. (R.pp.76-78). Applicant said "You all watch out," and Jenkins saw him reach into his shirt and pull out a gun. (R.pp.79-80). Jenkins did not see anyone else with a weapon. (R.p.80). Jenkins picked Archie up and pushed him away from the scene, and then he heard a gunshot. (R.p.80). The shot hit Jenkins in the left femur near the pelvis, and he fell forward. (R.p.82). Applicant ran past him towards Archie, still carrying the black handgun, and Jenkins heard him fire it three or four times. (R.pp.83-86). After the firing stopped, Jenkins saw Applicant running away from the scene pursued by a security guard. (R.pp.87-89). Jenkins testified Applicant was wearing white pants, white shoes, and a white shirt. (R.p.90).

Myron Conyers and Patrick Washington, two security guards who worked at the club, testified that on the night of the shooting a fight broke out inside the club, and multiple people had to be escorted outside, where a second fight occurred. (R.pp.252-53; p.287). Auntachie Blanding, Davontae Blanding, and Demetrice Brooks also testified that a fight had occurred inside the club and that security had forced a number of people outside the club, where the fighting resumed.

(R.p.148; pp.190–92; pp.220–21). They also testified that they saw Archie outside the club telling everybody to go home. (R.p.149; pp.191–92; p.221).

Brooks testified that, as she was getting in the car to leave, she looked back and saw Applicant, dressed all in white, shooting a handgun three or four times, but she could not see who he was shooting at. (R.p.153–54). Davontae testified that, just before the shooting, he saw a young lady run toward Applicant screaming “don’t do it.” (R.p.225). He then saw Applicant raise his arm and start shooting a handgun. (R.p.234). Davontae saw Archie running away, and Davontae followed him to see if he was all right. (R.p.236). Archie told Davontae, “He got me,” and ran to the back of the club, where he collapsed. (R.p.236).

Conyers testified he was outside the club trying to control the crowd when he saw an individual appear from the fence line, fire three shots into the crowd, and turn and run away. (R.p.253). Conyers and his fellow security guard, Washington, pursued the individual, and Conyers also saw a police officer arrive and join in the pursuit. (R.p.253). Conyers shined his flashlight on the fleeing individual, and Washington and the officer ran ahead and were able to catch him. (R.p.253). Conyers testified the fleeing individual was a black male dressed all in white. (R.p.258).

Washington testified he was in the parking lot dealing with an angry club patron when he heard shots and looked back to see a man dressed in all white shooting. (R.p.287). The shooter then started running off into a field, and Washington followed him, telling Conyers to keep his flashlight on the individual so Washington could see him. (R.pp.287–88). Washington saw a patrol car coming down the road, so he pointed at the person in the white outfit, and the car went to cut him off. (R.p.288). Applicant stopped near a big dirt pile, and Washington saw him throw something. (R.p.288). Washington tackled Applicant, and a police officer came over and arrested

Applicant. (R.p.288–89).

Deputy Steven Pizzino testified that he and another officer, Corporal Lee, arrived at Club Miami in response to a call regarding a fight and shooting. Lee arrived first and radioed that the shooting suspect was running across a field wearing a white shirt and white pants. (R.p.118). Pizzino was scanning the field with his spotlight and saw an individual wearing a white shirt and white pants being chased by some other individuals. (R.pp.118–19). Pizzino got out of his vehicle and chased the suspect, catching him as he was trying to climb over a sand berm. (R.p.119). Pizzino identified the person he chased and arrested as Applicant. (R.p.123).

Lieutenant Misty Lee testified that she received a call that night in regard to a fight in progress at Club Miami, and she followed Pizzino and the security guards in pursuit of the suspect towards a group of sand berms. (R.pp.316–20). As Pizzino was chasing the suspect towards the front of the first berm, Lee went around the back of the berm, and she heard Pizzino making contact with the suspect and yelling commands at him. (R.p.320). In the valley between two berms, she saw a gun lying on the ground, and she photographed it and collected it as evidence. (R.p.320–21). The gun was later determined to be a .45 caliber Smith and Wesson handgun, with a maximum capacity of ten rounds, and there were six unfired cartridges left in the magazine. (R.p.378). Three fired .45 caliber cartridge casings were recovered from scene and determined to have been fired by that gun. (R.pp.382–83).

Dr. Janice Ross testified as an expert in forensic pathology. (R.pp.488–89). On March 17, 2014, Dr. Ross examined the body of Tyrese Archie and determined the cause of death was a through-and-through gunshot wound that perforated the left lung. (R.pp.489–93). Dr. Ross testified it was “difficult to say” what caliber of bullet caused the wound because “skin is elastic, so it’ll move a little bit.” (R.p.492). However, she opined that the size of the wound was consistent

with a "medium caliber," such as .38 or .357. (R.pp.492-93). She testified the wound did not appear to be from a "large caliber" bullet like a .45 because the entrance wound measured .3 by .38 inches in diameter, but she could not rule out a .45 caliber bullet because the elasticity of the skin could have caused the dimensions of the wound to be smaller than the projectile. (R.pp.495-96).

Auntachie Blanding and Demetrice Brooks both testified that, as they were leaving the parking lot in Auntachie's car, they saw a man with dreads, carrying two pistols, whom they identified as "Carter Man." (R.pp.155-57; pp.200-02). Brooks testified "Carter Man" fired one shot at their car as they were driving away. (R.pp.166-67). However, Brooks insisted that only Applicant could have fired the shot that killed Archie because of the relative positions of Archie, Applicant, and "Carter Man." (R.pp.180-81). Auntachie stated she did not hear any gunshots coming from "Carter Man's" direction. (R.pp.203-04).

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

- (1) "Ineffective Assistance of Coun[sel], no[t] producing a defen[s]e on my behalf."
- (2) "Due Process Violation / Constitution Violation not properly instructing the jury on transferred intent charge."
- (3) "Constitution Violation / Due Process I wasn't allowed to question my accuser."
- (4) "Due Process rights violation. Jury stop deliberating to ask judge for four of the witnesses statements that testified on the State's behalf. That wasn't put into evidence."
- (5) "All witness[es] that testified on the State's behalf testified that they did not s[ee] me sho[o]t or kill anyone."
- (6) "Investigator giving witnesses my name when clearly they didn't kn[o]w who I was. And threat[en]ing to take witness['s] kids if she didn't sa[y] it was me that killed the victim and lock her up."
- (7) "the arresting officer took me to the crime scene where the body was got out the car and left me there where everybody that was out there would see me in the back of his car."

Applicant, through counsel, amended his application on November 15, 2021, raising the following claims:

1. Trial counsel failed to conduct effective pre-trial investigations.
2. Trial counsel failed to collect and examine the projectiles that were fired from multiple guns at the scene of the crime.
3. Trial counsel failed to collect medical and autopsy records.
4. Trial counsel failed to interview witnesses who had favorable information that applicant did not commit the crime.
5. Trial counsel failed to investigate the ballistics from the night in question.
6. Trial counsel failed to identify the other individuals who were shooting guns.
7. Trial counsel failed to determine the caliber of the weapons the other shooters were firing.
8. Trial counsel failed to effectively cross-examine the State's witnesses.

At the evidentiary hearing, Applicant proceeded on the allegations of ineffective assistance of counsel raised in his amended application.

III. 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, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a

preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). 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. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced 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. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

1. Failure to conduct effective pre-trial investigations

In his amended application, Applicant alleges generally that Counsel failed to conduct effective pre-trial investigations. However, apart from the particular failures enumerated in Allegations 2–7, Applicant has not specified or presented evidence as to any other failures of Counsel's pre-trial investigations. The Court has addressed Applicant's specific allegations below, and, therefore, omits any further discussion of Allegation 1 as redundant.

2. Failure to collect projectiles from the crime scene

Applicant alleges Counsel was ineffective for failing to collect fired projectiles from the crime scene. Specifically, Applicant argues that a projectile struck the dashboard of a car at the scene, but neither law enforcement nor Counsel arranged for the projectile to be recovered and tested. However, Applicant did not produce any evidence at the evidentiary hearing to substantiate

his claim that the testing of that projectile could have been helpful to the defense. Accordingly, the Court finds Applicant has failed to prove prejudice as to this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813 (holding the applicant bears the burden of proof in a PCR action); Rule 71.1(e), SCRPC (PCR allegations must be proved by a preponderance of the evidence). Without supporting evidence, Applicant's claim that further investigation of the projectile might have been helpful to his case is merely speculative. Moreover, Counsel credibly testified that he attempted to recover the projectile in question but was informed that it was irrecoverable. Therefore, the Court finds this allegation must be denied and dismissed with prejudice.

3. Failure to collect medical and autopsy records

Applicant alleges Counsel was ineffective for failing to obtain medical and autopsy records that would show the size of the victim's gunshot wounds being approximately .38 inches in diameter, which was smaller than the diameter of the .45 caliber bullets fired from Applicant's gun. The Court finds this allegation is meritless, as Counsel elicited the same information from Dr. Janice Ross, who performed the autopsy, on cross-examination during Applicant's trial. Counsel also elicited and argued to the jury that Dr. Ross believed the victim's wounds were not caused by a .45 caliber projectile. (R.p.640). Additional development of the autopsy report would have been merely cumulative to Dr. Ross's testimony and probably far less impactful than her expert opinion that the wounds did not appear consistent with a .45 caliber bullet. For these reasons, the Court finds Applicant has not proved a substantial likelihood the result of the trial would have been different had Counsel more thoroughly investigated the autopsy report.

4. Failure to interview favorable witnesses

Applicant argues Counsel failed to interview witnesses who could have provided favorable testimony for the defense. At the evidentiary hearing, Applicant named John Dunham and Shatae

Rivers as two witnesses whose testimony, he claims, might have been helpful. However, Applicant did not present John Dunham or his testimony at the evidentiary hearing; therefore, as regards John Dunham, Applicant has not met his burden of proving the witness's testimony would have been favorable. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Butler*, 286 S.C. 441, 334 S.E.2d 813 (holding the applicant bears the burden of proof in a PCR action); Rule 71.1(e), SCRPC (PCR allegations must be proved by a preponderance of the evidence).

Applicant did introduce a statement by Rivers, which he argues corroborates the testimony of Demetrice Brooks that “Carter Man” shot at her car as she was driving away. But even if this Court were to accept that “Carter Man” fired at Brooks’ car, that is not exculpatory for Applicant. The shooting victims, Jenkins and Archie, were not in that car. In addition, Counsel testified that his investigator examined the crime scene and determined that the car was in a different direction from Archie, so that if “Carter Man” was indeed firing at the car he would *not* have been firing in the direction of Archie. Finally, the last line of Rivers’ statement reads, “And I (Shatae Rivers) saw Rodney shooting, also,” which corroborates the testimony that Applicant was also firing a weapon at the scene.

The Court finds Applicant has not provided any evidence that Dunham’s and Rivers’ testimony would have been favorable to the defense. Therefore, Applicant has not met his burden of proving prejudice from Counsel’s alleged failure to interview those witnesses or call them at trial,¹ and this allegation is denied and dismissed with prejudice.

¹ Furthermore, at the evidentiary hearing, Counsel testified that he interviewed or attempted to interview every person Applicant named as a potentially helpful witness.

5. Failure to investigate ballistics

Applicant also alleges Counsel failed to investigate the ballistic evidence in this case. At the evidentiary hearing, Applicant presented Gary Chapin as an expert in firearms and ballistics. Chapin testified that a .45 caliber gun fires a projectile approximately .45 inches in diameter, and he noted that the autopsy report in this case measured the entry wound as .3 by .38 inches in size. He also testified that a .38 caliber revolver would not have ejected cartridge cases, unlike a .45 caliber semi-automatic pistol. Applicant argues that Counsel was ineffective for failing to present equivalent testimony at trial because it could have established that Archie was not killed by Applicant's .45 caliber gun, but by a .38 caliber revolver which did not leave any cartridge cases behind. Applicant also claims "Carter Man" could have been carrying a .38 caliber revolver.

The Court finds this allegation is without merit. As already discussed, Counsel appropriately elicited from the State's forensic pathologist that the gunshot wounds on Archie's body were more consistent with a .38 caliber projectile than a .45 caliber projectile. Like Dr. Ross, Applicant's ballistics expert Gary Chapin acknowledged that a bullet passing through an elastic medium like skin could leave a hole that was smaller than the diameter of the bullet. Chapin's testimony on this point was entirely cumulative to the testimony of Dr. Ross, which Counsel reasonably elicited and exploited on cross-examination and in his closing argument.

The Court further finds Applicant's contention that Chapin's testimony might have implicated "Carter Man" as the killer, instead of Applicant, is also meritless. First of all, there is no evidence in the record that "Carter Man" was armed with a revolver, much less a .38 caliber revolver, as Applicant now speculates. Second, multiple witnesses denied hearing or seeing any shots fired by anyone other than Applicant on the night of the shooting. The only witness at trial who claimed to see "Carter Man" fire a shot was Demetrice Brooks, and she was adamant that

Applicant—not “Carter Man”—was the person who shot Archie.² Finally, Counsel credibly testified that he investigated the possibility that “Carter Man” was the shooter, but his investigator determined that the direction in which “Carter Man” allegedly fired a shot would not have put him in a position to hit Archie, which is consistent with Brooks’ testimony that “Carter Man” could not have fired the shot that killed Archie. On the other hand, there was substantial direct evidence from multiple witnesses that Applicant fired numerous shots in the direction of Archie.

For all of these reasons, the Court finds Applicant has not met his burden of proving that Counsel’s failure to investigate the ballistic evidence in the case was ineffective. Chapin’s testimony that the dimensions of the gunshot wounds appeared to have been caused by a projectile smaller than a .45 bullet was merely cumulative to Dr. Ross’s testimony, and Applicant’s claim that “Carter Man” could have fired the shot that killed Archie is speculative and was expressly contradicted by the greater weight of the evidence from Applicant’s trial. The Court finds that none of the ballistic evidence pointed out by Applicant at the evidentiary hearing was sufficient to create a reasonable probability of a different result. Therefore, this allegation is denied and dismissed with prejudice.

6. Failure to identify other individuals who were shooting guns

Applicant alleges Counsel failed to identify the other individuals who were shooting guns on the night of the incident. The only other individual alleged to have fired a gun that night was “Carter Man,” and the feebleness of the evidence implicating him as the killer has already been discussed. Applicant has not even asserted, much less proved by a preponderance of the evidence,

² Shatae Rivers’ statement also mentions “Carter Man” firing a weapon, but both Rivers and Brooks claimed that “Carter Man” was shooting at the car they were driving away in. Neither claimed “Carter Man” was shooting at Archie or Jenkins.

that anyone else ever fired a gun that night. Accordingly, this Court finds this allegation is meritless and must be denied and dismissed with prejudice.

7. Failure to identify caliber of other shooters' weapons

Likewise, Applicant's claim that Counsel was ineffective for failing to identify the caliber of the other alleged shooters' weapons is meritless. The only other alleged shooter at the scene was "Carter Man," and although Applicant speculates that he may have used a .38 caliber revolver, Applicant has not presented any evidence to substantiate this. Therefore, the Court finds Applicant has not met his burden to prove either deficiency or prejudice as to this allegation.

8. Failure to effectively cross-examine the State's witnesses

Finally, Applicant claims Counsel failed to adequately cross-examine the State's witnesses. Specifically, Applicant claims Counsel should have more thoroughly questioned Demetrice Brooks as to what kind of guns "Carter Man" was carrying and should have questioned the lead investigator as to why "Carter Man" was not a suspect. However, Applicant has not provided any evidence as to what those witnesses would have answered in response to those questions. *See, e.g., Martin*, 427 S.C. at 455, 832 S.E.2d at 280 (holding an applicant's "mere speculation" as to what a witness's testimony would have been cannot, by itself, support a finding of prejudice). Therefore, the Court finds Applicant has not met his burden of proving he was prejudiced by Counsel's failure to question the State's witnesses more thoroughly on these points. Therefore, this allegation must also be denied and dismissed with prejudice.

IV. CONCLUSION

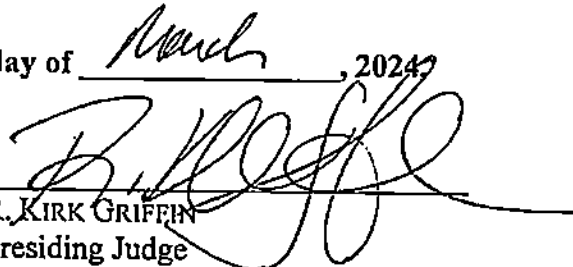
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 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's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 20th day of March, 2024


R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sunter, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions

The Honorable R. Kirk Green, Circuit Court Judge, Third Judicial Circuit

Case No.: 2019-CP-43-01022

Rodney R. Green #335829Respondent

V.

State of South CarolinaAppellant

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 16th day of April, 2024, I served the foregoing Notice of Appeal as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on 1^{6th} of April, 2024 addressed to the following as indicated below:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

The Honorable James C. Campbell
Sumter County Clerk of Court
215 North Harvin Street
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P.O. Box 11549 Columbia, SC 29211

Dated: April 16, 2024

RECORDED

2024 APR 16 PM 1:29

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.



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