

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 30 2025

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Certiorari to Spartanburg County

S.C. SUPREME COURT

Honorable Heath P. Taylor, Circuit Court Judge

—————
DOMINICK ANTONIO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-002125

—————
APPENDIX
—————

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Joshua Schultz - Direct examination
By Mr. Barlow

1 as the consequences to you in the event that you went to
2 trial and the jurors were to find you guilty.

3 Do you understand what is being said here?

4 The Defendant: Yes, sir.

5 The Court: Do you understand that if you are found
6 guilty by the jury of burglary or armed robbery or
7 aggravated assault and battery, you must be sentenced to a
8 term of imprisonment of life without the only possible --
9 possibility of parole?

10 The Defendant: Yes, sir.

11 The Court: You understand that they have made an
12 offer which is substantially less than that?

13 The Defendant: Yes, sir, I do.

14 The Court: Have you had plenty of time to talk with
15 Mr. Schultz about your decision as to how you would like
16 to proceed?

17 The Defendant: Yes, sir.

18 The Court: Do you want to talk to him anymore?

19 The Defendant: No, sir.

20 Have you made --.

21 The Court: You have made a decision about what you
22 want to do?

23 The Defendant: Yes, sir.

24 The Court: What is that decision?

25 The Defendant: I want to proceed to trial.

Joshua Schultz - Direct examination
By Mr. Barlow

1 The Court: You are rejecting the State's offer?

2 The Defendant: Yes, sir.

3 The Court: Do you understand that, once a jury is
4 selected, if you wish to plead guilty, you will be
5 pleading on your own without any recommendation?

6 The Defendant: Yes, sir.

7 The Court: Do you wish to proceed with the trial and
8 reject the State's offer?

9 The Defendant: Yes, sir.

10 Q. Thank you, sir.

11 All right. So you were his trial counsel in his
12 first trial, and then, in the second trial, you
13 represented him. There's a -- an allegation about failure
14 to utilize the transcript to cross-examine the two
15 witnesses. I believe they were -- I don't have them right
16 in front of me.

17 There were two witnesses though that you failed to
18 cross-examine. It was---

19 A. Failed to cross-examine?

20 Q. I'm sorry.

21 I beg the Court's indulgence. I'm sorry. I
22 apologize.

23 (Pause.)

24 Q. You -- the allegation is failure to effectively
25 utilize the transcript on cross with the witnesses on

Joshua Schultz - Direct examination
By Mr. Barlow

1 their inconsistent testimony.

2 Do you recall cross-examining it was -- I think it
3 was Summer and Christine?

4 A. Yes, I do.

5 Q. Okay. Well, let me ask you this. Actually it was
6 five -- I believe five witnesses total.

7 Did you have the transcript from the day of their
8 testimony at the first trial?

9 A. I did.

10 Q. Did you utilize that?

11 A. Yes, I did.

12 Q. And can you tell us a little bit of how you utilized
13 that in your cross-examination in the second trial?

14 A. It was very helpful. In fact, I -- frankly I thought
15 that that trial transcript in 2018 trial helped me
16 immensely with cross-examination of the witnesses that the
17 State produced in the, in the 2019 trial.

18 Q. Were you able to utilize that to show where they were
19 inconsistent in their statements from the first to the
20 second trial?

21 A. Yes, I believe so.

22 Q. Okay. And moving onto the next allegation, it is
23 failure to impeach Summer Hall and Christine Richard based
24 off of 403 and 609.

25 Do you recall that?

Joshua Schultz - Direct examination
By Mr. Barlow

1 A. I do.

2 Q. And do you recall the Court -- do you recall arguing
3 403 to the Court?

4 A. I don't have anywhere in the transcript that I
5 impeached --.

6 Q. Well, let me ask you this.

7 Do you recall---

8 A. Yeah.

9 Q. Do you recall arguing to be allowed to impeach them
10 based off of their prior record and Judge Cole ruling
11 against you?

12 A. Could you point that out?

13 Q. Sure. That's gonna be Page 68. I believe it starts
14 on Line 12.

15 A. Thank you.

16 Q. I apologize. It's 65 of the record is where it
17 starts actually and it starts at Line 23 or actually it
18 starts at the very beginning.

19 A. Could you repeat the question again?

20 Q. Well, my, my question was now that you refreshed your
21 memory, do you recall that argument you made to the Court?

22 A. I do.

23 Q. And what did the judge ultimately find?

24 A. Well, I'm looking here. I argued vociferously for
25 it, for its introduction.

Joshua Schultz - Direct examination
By Mr. Barlow

1 Q. well---

2 A. "I think it does bear some relation to the case." I
3 said that to the Court.

4 Q. But it -- but what happened -- let me ask you this
5 way.

6 would you agree with me that the judge determined
7 that their drug charges were not related to this crime?

8 They also did not go to the truth of their statement
9 where prior or there were other witnesses with shoplifting
10 crimes which goes to their truth?

11 A. Yes.

12 Q. Okay.

13 A. Especially -- well, for Ms. Richard.

14 Q. Right.

15 A. For Ms. Richards.

16 Q. Okay. And --.

17 A. In the, in the Court's ruling, just to answer your
18 question, the Court -- and this is from Page 69.

19 without more, I do find that the probative value of
20 that testimony is substantially outweighed by the nature
21 of unfair prejudice. So it will be excluded.

22 Q. Thank you.

23 Do you recall the witness identification through
24 Facebook?

25 A. Yes.

Joshua Schultz - Direct examination
By Mr. Barlow

1 Q. And were you able to cross-examine them on their
2 low -- their location of Mr. Thompson through that?

3 A. Yes, I believe so.

4 Q. Okay. And did you discuss with Mr. Thompson his
5 right to testify?

6 A. I have.

7 Q. Did you do it at the first trial?

8 A. Yes.

9 Q. Did you do it at the second trial?

10 A. Yes.

11 Q. And what was his inclination?

12 A. His inclination was not to testify.

13 Q. And what was your inclination -- as his attorney,
14 what was -- what, what was your professional opinion?

15 A. My professional opinion in both trials was not to
16 testify.

17 Q. And why was that?

18 A. Because potentially his prior record could be
19 introduced.

20 Q. And was his record introduced at the second trial?

21 A. One conviction was. I believe it was a prior
22 burglary conviction I believe.

23 Q. Is there any other thing that you lose if you present
24 his testimony?

25 A. Any other convictions that --?

Joshua Schultz - Direct examination
By Mr. Barlow

1 Q. well, in, in terms of the trial. Like is, is -- are
2 there reasons, other than just the record coming in, that
3 you would not want to have him testify?

4 A. Yes, he, he would obviously expose himself to
5 cross-examination and have to explain to the jury his
6 whereabouts on that day and that could be a very dangerous
7 thing.

8 Q. And I know there's been some testimony here today
9 about Michale and her identification of the -- of Mr.
10 Thompson.

11 But, at trial, was -- Michale did identify Mr.
12 Thompson, correct?

13 A. Yes.

14 Q. And there was a back and forth about how she was able
15 to identify him by you when -- do you recall her saying
16 because he was in my face nose to nose?

17 A. Yes, I vaguely remember that, yes.

18 Q. okay.

19 MS. ROSS: I'd object to that. I think that's a
20 different witness. I don't think Michale said that.
21 She's a codefendant.

22 MR. BARLOW: Oh, I'm sorry. I apologize. I got the
23 name wrong. It was the, the victim. Not Michale.

24 I beg the Court's indulgence. I wrote the wrong one.

25 (Pause.)

Joshua Schultz - Direct examination
By Mr. Barlow

1 MR. BARLOW: It was the victim in this case. The --
2 I'll move on from that one.

3 Let's -- the last one here is -- well, two more.
4 Failure to a -- exception to the jury instruction of the
5 hand of one.

6 Is there any reason why you did not take an exception
7 to that?

8 A. I, I felt that it was applicable in this case because
9 there, there were several people involved weren't -- that
10 weren't all on trial at the same time.

11 Q. And is it your understanding of the law, in terms of
12 in South Carolina, that when person's act in accordance
13 with each other, they aid or abet, that they are each
14 considered the principal?

15 A. Yes.

16 Q. And the last question is about Danielle Krind.
17 Do you recall why you called her?

18 A. I recalled her to the stand.

19 Q. And that's 327 of the record.

20 A. Yes. And that was my last witness. Obviously I put
21 her under direct and the last question I asked her was yes
22 or no. Just part of the reiteration. You know, I'm
23 referring to Page 330. I didn't see the guys. I was
24 asleep.

25 You said that to the officer, right, and the

Joshua Schultz - Direct examination
By Mr. Barlow

1 question -- answer, yes.

2 Q. Do you feel that testimony was detrimental to Mr.
3 Thompson?

4 A. Absolutely not. I think it was helpful.

5 Q. Do you stand by your representation?

6 A. Absolutely. In both trials.

7 Q. Thank you. Answer any questions Ms. Ross has for
8 you.

9 A. Thank you.

10 THE COURT: Ms. Ross, cross-examination.

11 CROSS-EXAMINATION

12 BY MS. ROSS:

13 Q. Wasn't -- just going to Page 331 of the transcript.

14 Under cross-examination, Ms. Krind, the, the woman
15 you put up as the last witness --?

16 A. 331 is what you said?

17 Q. Yeah.

18 A. Okay.

19 Q. Didn't she reconfirm that she saw Michale and
20 Dominick leaving the house together that night?

21 A. Yeah, that's, that's correct.

22 Q. So, the last thing that the jury heard from your
23 witness was that Dominick was with Michale, the
24 codefendant, who was known to the victims?

25 A. Yeah, it -- could I quote from the transcript?

Joshua Schultz - Cross-examination
By Ms. Ross

1 Q. Sure.

2 A. Okay.

3 Q. So you were, you were there when they left,
4 right?

5 A. Yeah. When they left, it was dark out.

6 who left?

7 Michale and Dominick.

8 Q. When did you see them get back?

9 It was still dark outside. I don't know the exact
10 time.

11 But you remember seeing the defendant and Michale?

12 Yes, walking through the side door.

13 what kind of car were they in?

14 It was a black car.

15 well, actual -- I'm sorry. That's, that's from
16 cross-examination. I apologize.

17 Q. Right.

18 A. That's, that's actually cross-examination.

19 Q. Right.

20 A. But---

21 Q. wouldn't you agree that that's detrimental that the
22 jury got to hear that?

23 A. Yes, I'm -- yes.

24 Q. Okay.

25 A. I thought you were referring to my testimony. Yes,

Joshua Schultz - Cross-examination
By Ms. Ross

1 that -- that's cross by Ms. Brown.

2 Q. All right. And isn't it true, while you argued to
3 bring in some -- Summer Hall and Christine's (sic)
4 Richards, the witnesses burglary -- prior burglary
5 conviction and drug convictions, you did not specifically
6 object to Judge Cole declining to allow impeachment based
7 on those?

8 A. Could, could I go back to the record there?

9 Q. Yeah. Sure. And I'm -- let's see. I would -- the,
10 the full argument is Page 65 to 72.

11 A. Thank you.

12 Q. And then so around 72 you didn't put that objection
13 on.

14 A. 771, this is me, "we just confirmed that she has
15 three shoplifting convictions. One in 2013, 2014, and one
16 in 2017. All of -- all of those can be used."

17 The Court: That is true.

18 Is that your specific question?

19 Q. I guess my specific question, did you make a specific
20 objection on the record saying I object to not being
21 allowed to impeach these witnesses on their prior crimes?

22 A. I argued for that -- for those convictions to come
23 in.

24 Q. All right.

25 A. But I don't see a -- an objection.

Joshua Schultz - Cross-examination
By MS. ROSS

1 Q. And did you proffer that testimony for the record --

2 A. I don't believe so.

3 Q. -- about their prior -- all right. And just going
4 to -- turning to Page 365, Line 8. This is State's
5 closing. They all think it's okay to steal but they're
6 not lying. They wouldn't lie to protect Dominick even
7 though his life is on the line. That is what they asked
8 you to appeal.

9 So, that's the State working with the shoplifting
10 convictions of your witnesses?

11 A. You said appeal?

12 Q. I'm sorry if I did.

13 A. Okay.

14 Q. I misspoke. I'm just referring to the, the State's
15 closing line page -- Lines 8, Page 365. The solicitor
16 comments to the jury saying all the witnesses you put up
17 in, in defense of Dominick, they think it's okay to steal.
18 why do you think they wouldn't lie.

19 And so they -- using that -- those convictions
20 against you in, in testimony. Yet you weren't allowed to
21 present a prior burglary or drug charge of the witnesses
22 Summer Hall and Christine.

23 Do, do you---

24 A. Correct.

25 Q. Christine Richard.

Joshua Schultz - Cross-examination
By MS. ROSS

1 Okay. And do you recall -- isn't it true the, the --
2 I believe the, the first transcript is part of the record
3 now that you were provided.

4 A. Yes.

5 Q. Isn't it true that they were impeached on a prior
6 burglary and drug charge at the first trial --

7 A. Yes.

8 Q. -- the victim?

9 Okay. And as far as the, the hand of all -- the
10 one -- hand of all objection, I guess my point here is the
11 State's theory of the case was not that there was a
12 shooting. We don't know who did it. It was Dominick was
13 the shooter and the robber. He was the principal.

14 So there was no question in the State's theory of the
15 case that he was the principal, correct?

16 A. Yes, I believe one of the principals.

17 Q. Right.

18 And yet they, they made that charge of it really
19 wouldn't matter. You know, even though this is our theory
20 of the case that he was the shooter, that's the evidence.
21 We're just gonna give you the hand of one, hand of all
22 charges as well just in case there's not enough evidence
23 to convict him as the principal.

24 A. Well, I can't really get inside the State's head as
25 to what they were thinking.

Joshua Schultz - Cross-examination
By Ms. Ross

1 Q. Okay. But you didn't object to that, take exception
2 to that instruction?

3 A. No, I did not.

4 MS. ROSS: All right. I have no further questions.

5 THE COURT: Anything on redirect?

6 MR. BARLOW: Very briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BARLOW:

9 Q. Mr. Schultz, one question.

10 Do you make determinations at -- in trial as to what
11 evidence is allowed in and what evidence is not?

12 A. No.

13 MR. BARLOW: Nothing further, Your Honor.

14 THE COURT: Is that all the questions of Mr. Schultz?

15 MS. ROSS: That's all my questions.

16 THE COURT: All right. You may step down, counsel.

17 THE WITNESS: Thank you, Your Honor.

18 MR. BARLOW: That concludes the State's case, Your
19 Honor.

20 THE COURT: Okay. Happy to hear any arguments.

21 MS. ROSS: Judge, this is, you know, just a, a sad
22 case where a life without parole was on the, on the line.
23 I, I put, you know, all this -- stand by the arguments in
24 the application just to save time.

25 As far as this impeachment value, the impeachment

1 value on these witnesses was strong in this case. They
2 had witnesses whose -- victim witnesses whose
3 identification was based on Facebook. There was little
4 addressing the suggestibility of that situation, and if
5 you read through the transcript, which I think is part of
6 the record, even one of them, I think the testimony was
7 they were searching through Facebook and saw a picture on
8 Michale's site that said something like Michale's little
9 shooter or something highly prejudicial, and, and then
10 those identifications came along through Facebook. But
11 then presentation was a number of alibi witnesses.

12 The first jury was hung when these priors were
13 allowed in for impeachment and we'd just argue that was a
14 misstatement of the, the law not to allow them in and it
15 wasn't preserved for appellate, that, that there was an
16 Anders brief again in this situation where Ms. Carter was
17 unable to put up more than an Anders brief, brief on that
18 argument because there was no specific objection or
19 proffer on the record.

20 THE COURT: well, there was a whole dialogue---

21 MS. ROSS: There was---

22 THE COURT: ---with the Court about it now.

23 MS. ROSS: That's true. That's true. When -- again,
24 you know---

25 THE COURT: I'm not sure what else he's supposed to

1 do in that regard.

2 MS. ROSS: Well, when I talked to Mr. Adams, she just
3 said she didn't have an objection or a proffer to work
4 with for the appeal.

5 THE COURT: All right. Just---

6 MS. ROSS: Ms. Carter. I'm sorry. I know two Wandas
7 and that's all right.

8 THE COURT: I'm just trying to figure out how, how do
9 you proffer the record. It was already -- I mean then the
10 convictions were there and they were arguing---

11 MS. ROSS: Right.

12 THE COURT: I mean lengthy argument about whether or
13 now they were admissible.

14 MS. ROSS: Right. I understand.

15 And then the hand of one, I, I understand that the
16 state of the law on the hand of one and accomplice
17 liability. I think that's kind of influx. I think it
18 reduces the State's burden of proof to say here's our
19 theory of the case. But we're gonna throw in hand of all
20 in case the jury's unsatisfied with that.

21 So, we would stand by that argument and then
22 certainly the damaging effect of her recalling Danielle
23 Krind as the last witness that the jury heard from.

24 THE COURT: Is that all?

25 MS. ROSS: Yes, Your Honor.

1 THE COURT: All right. Mr. Barlow.

2 MR. BARLOW: Thank you, Your Honor.

3 Just to address these real quickly, I'll start with
4 the, the hand of one, hand of all, that -- Your Honor, the
5 case -- the controlling case on that is Yates v. Aiken.
6 It's 484 U.S. 211 and it cites -- it's a United States
7 Supreme Court case that cites to State v. Hicks, which is
8 a South Carolina case.

9 And, Your Honor, in that case, they find that the --
10 that -- when two or more persons aid, abet, and encourage
11 each other in the commission of a crime, all being
12 present, each is guilty as a principal.

13 So, Your Honor, my argument there would be that hand
14 of one applied because he was present with multiple
15 people. The jury can decide what they want to decide with
16 that. But it does apply in this case.

17 Your Honor, I would argue that, that recalling the
18 State's witness, he got favorable testimony out of her on
19 cross. That's always a gamble. But he -- it, it -- it's
20 his job to make those determinations and you have the
21 right to effective assistance of counsel, not perfect
22 assistance of counsel.

23 And as to the 403 argument, that's all in the record.
24 Again, Judge Cole ruled on that. Whether Judge Lee ruled
25 it on the first one has no bearing in the second trial.

1 Judge Cole made his specific findings on the record
2 regarding that evidence and the prior charges of, of drugs
3 and I believe one of the witnesses was -- she had actually
4 completed the program that she was ordered to take.

5 So, that was one of his considerations in doing that
6 because it had no bearing on the truth. It wasn't a -- it
7 wasn't on a moral turpitude crime and that -- and so, Your
8 Honor, I, I just -- there's no teeth to the argument
9 because he made the argument and I'm not sure what else he
10 could do other than what he did. And once a judge has
11 ruled, the judge has ruled. He -- you can't argue that.

12 THE COURT: Well, it -- it's often the case in a
13 retrial---

14 MR. BARLOW: Right.

15 THE COURT: ---the State is -- was anticipating it
16 appears at that point and moved preemptively. So, yeah, I
17 mean it was -- it's all on the record.

18 MR. BARLOW: Right.

19 THE COURT: Certainly a lot harder from a defense
20 prospective to retry a case than it is for the State.

21 MR. BARLOW: And, Your Honor, the, the eye witness ID
22 expert, I think that was brought up. There was no ID
23 at -- ID witness expert brought here.

24 The ammo, it was argued that what -- had no
25 relevance. He was charged with possession of ammo --

1 ammunition by a felon. So, it definitely did have
2 relevance and I believe that covers the arguments.

3 THE COURT: Okay.

4 MR. BARLOW: And the State would just ask that you
5 deny this application as the applicant has not met his
6 burden.

7 THE COURT: Anything in response, Ms. Ross?

8 MS. ROSS: Judge, as far as the, the impeachment,
9 again, I did find, you know, State -- there's State v.
10 Robinson which has a lot of talking about applying the
11 Colf factors and going through how you make a
12 determination of whether to accept any priors for
13 impeachment.

14 But there was no argument made of giving the
15 distinction between -- Colf was a defendant. A lot of
16 these cases that they're going in to look at the
17 impeachment of witnesses are not adequately considering
18 the, the rule within 609 that, that distinguishes between
19 when a defendant testifies and when a witness testified
20 and I, I think that needs to be argued effectively to be
21 considered on appeal and we state that it was not.

22 THE COURT: Okay. All right. I will take it under
23 advisement and let y'all know something.

24 MR. BARLOW: Thank you, Your Honor.

25 MS. ROSS: Thank you, judge.

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 20th day of May, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 19th, 2024

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Dominick A. Thompson, #346147,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2022-CP-42-02810

) **ORDER OF DISMISSAL**
) **WITH PREJUDICE**

Presiding Judge:	Hon. Heath P. Taylor
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsel:	E. Joshua Schultz, II, Esq.
Date of Hearing:	May 20, 2024
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant Dominique A. Thompson on July 27, 2022. Respondent made its Return and Motion for a More Definite Statement on September 8, 2022. Applicant filed his Amendment to his application for PCR on May 14, 2024. An evidentiary hearing was held on May 20, 2024, at the Spartanburg County Courthouse before the Honorable Heath P. Taylor.

Applicant was present and represented by Susannah C. Ross, Esquire (PCR Counsel). Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant testified on his behalf and presented the testimony of Kenshawn Goode, Deidra Mills, and Latoya Thompson. Respondent presented the testimony of E. Joshua Schutz, Esquire (Trial

Counsel).
CLERK OF COURT
SPARTANBURG COUNTY
ANN W. COX

2024 DEC 16 AM 11:34

FILED

Following a thorough review of the trial transcripts, the record on appeal, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its June 2017 term, the Spartanburg County Grand Jury indicted Applicant for possession of a firearm or ammunition by a person convicted of a violent crime (2017-GS-42-02886) and attempted murder (2017-GS-42-02889). During its June 2018 term, the Spartanburg County Grand Jury indicted Applicant for first-degree burglary (count one) and possession of a weapon during a violent crime (count two) (2017-GS-42-02885). During its August 2018 term, the Spartanburg County Grand Jury indicted Applicant for first-degree assault and battery (2017-GS-42-02887) and armed robbery (2017-GS-42-02888).

Applicant proceeded to his first trial on August 6–9, 2018, before the Honorable Lee Alford, circuit court judge, and a jury. Applicant was represented by Trial Counsel. Seventh Circuit Assistant Solicitors Sara B. Bozarth and Spenser H. Smith prosecuted the case. Judge Alford declared a mistrial due to a hung jury.

On June 10, 2019, Applicant proceeded to his second trial before the Honorable J. Derham Cole, circuit court judge, and a jury. Applicant was represented by Trial Counsel. Seventh Circuit Assistant Solicitors Lauren Brown and Spenser H. Smith prosecuted the case. Applicant was found guilty as indicted on all counts. Judge Cole sentenced Applicant to life imprisonment for

AMY W. COX
 CLERK OF COURT
 SPARTANBURG COUNTY

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FILED

first-degree burglary and armed robbery, assault and battery of a high and aggravated nature¹, and ten years' imprisonment for first-degree assault and battery.

Applicant filed a timely notice of appeal on June 25, 2019, that was perfected by Deputy Appellate Defender Wanda H. Carter, Esquire, through filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Thompson, Op. No. 2022-UP-154 (S.C. Ct. App. filed Mar. 30, 2022). The Remittitur was returned to the lower court on April 25, 2022.

FACTS GIVING RISE TO THE CONVICTION

At trial, Summer Hall Donahue (Summer) testified that she was at a hotel in Spartanburg County on November 23, 2016, along with her husband Russell Donahue, her sister-in-law Christine Richard (Christine), and brother-in-law Brandon Logan (Brandon) when Christine received a message from Makayla Richard (Makayla) requesting marijuana. Shortly after that, Makayla arrived at the hotel, and Christine went downstairs to meet her. When Christine and Makayla came up to the hotel room, three men appeared and entered the hotel room with Makayla and Christine. Summer stated that the men had guns, and Applicant put a gun to her head and went over to her husband to search his pockets. The men began pistol-whipping Brandon, and the gun fired/discharged, and a stray bullet struck Christine, who was later transported to the hospital. The men asked about it and looked for the marijuana. Summer added that before the men left, they took money from her husband's wallet and her phone. (ROA pp. 73–88).

Christine testified that after she left the hotel room to meet Makayla and they were headed to the hotel room, three black men with guns came running toward her. Christine stated that

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APPLICANT WAS FOUND GUILTY OF ABHAN UNDER THE ATTEMPTED MURDER INDICTMENT BECAUSE THE JURY WAS ONLY PERMITTED TO CONSIDER THE LESSER-INCLUDED OFFENSE OF ABHAN.

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Applicant was one of the gunmen who took her necklace and phone and that the men ordered her to take them and Makayla to the hotel room. Christine added that the men pistol-whipped Brandon until the gun fired and struck her body. (ROA pp. 101–11).

Makayla testified that she and Applicant and two other guys rode out to the hotel to get marijuana from Christine and that there was no intent to pay for the marijuana. Makayla stated that the men entered the room with guns and that they all left when the gunshot was fired. (ROA pp. 139–63).

CURRENT ACTION BEFORE THIS COURT

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Malicious prosecutions:
 - a. ". . . the photo lineup that the State use[d] to identify me by Makayla Richard to receive a[n] arrest warrant for me, Makayla who was clearly charge[d] with the crime refused to sign the photo she chose which was my picture and she also refuse[d] to sign the 'affidavit of photo identification' which is strongly supported in my Rule 5 [] Brady motion."
2. Violation of my due rights:
 - a. "The prosecutor violated my due rights and made a[n] action of misconduct by tak[ing] my criminal record to the jur[y] while they were deliberating for a verdict."
3. Violation of my 5th, 6th amendment
 - a. "I was violated by prosecutors showing my criminal record to the jury paint them a picture of character, the reason I remain silent and didn't testify on my behalf is to avoid by record being presented to the jury."
4. Inconsistent statements
 - a. "[E]veryone of testify on me at my first trial, they statement wasn't consistent with the statement that they gave during the second trial, not only that but it was also multiple statements by only one person that was inconsistent."
5. Prosecutorial misconduct
 - a. "[G]overnments knowing of false testimony was abused discretion; defendant were entitled to a new trial if false testimony of prosecutor witness, which was known by the government and not corrected could in reasonable likelihood

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have affected the judgment of the jury which in my case the prosecutor's witnesses in by case gave and written multiple statement that the prosecutor knew was false but still use them against me to convict me, knowing that his witnesses were taking the stand under oath to fabricate[] a story and to make false allegations against he still chose to follow through with the knowledge of know they were lying to use them to testify on me."

6. Falsely Identified

- a. "[T]he whole time I was being held in jail until the point of my trial I was never identified until the day of my trial 2 ½ years later. Everyone that identified me the day of my trial never once when to the police or sheriff office to give no identification of me. Also, there's police bodycam strongly supporting my claim and also pervious statement form the same witnesses who testify hey saw my face in my Rule 5 Brady motion they stated that they couldn't see no one face."

On May 20, 2024, Applicant, through retained Counsel, amended his PCR application with the following allegations:

1. Ineffective Assistance of Trial Counsel

- a. Failure to explain the plea offer.
- b. Failure to effectively utilize transcript and cross-witnesses on inconsistent testimony in the prior trial.
- c. Failure to effectively argue SCRE 403 and 609 allowed impeachment of witnesses Summer Hall and Christine Richard with prior record and failed to object to the judge's ruling. ROA pp. 65–72; p. 365, l. 8; p. 397.
- d. Failure to effectively address witness identification of Applicant through Facebook and where testimony was improbable. p. 106, l. 12; p. 86; p. 110.
- e. Misadvising Applicant not to testify due to his prior record when prior burglaries came in any way because the State was not required to stipulate to prior burglaries. ROA p. 260.
- f. Failure to take exception to the jury instructions regarding the 'hand of one' and accomplice liability when the testimony and State's theory of the case was the Applicant was the principal. ROA p. 410, l. 11; p. 421. 1. 19. p. 106. 1. 17, p. 345.
- g. Recalling State witness Danielle Krind. ROA p. 327.

Before this Court is the Spartanburg County Clerk of Court records regarding the subject's

convictions and sentences, Applicant's records from the South Carolina Department of Corrections, the complete trial transcript, Applicant's complete appellate records, the records of the current PCR action, and Applicant's amended PCR application.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C.

288, 291, 199 S.E.2d 761, 762 (1973).

² S.C. Code Ann. §§ 17-27-10 to -160.

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In a post-conviction relief action, the applicant 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. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). 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. at 687. 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)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome

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the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be substantial, not just conceivable." Richter, 562 U.S. at 112.

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Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. 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. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Trial Counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J.,

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concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCF (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417

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S-E.2d 529:531 (1992).

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*INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS***Allegation (1a): Trial Counsel failed to explain the plea offer.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to explain the plea offer. This Court finds this allegation is without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169–70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145. Also, misadvising a defendant such that he rejects a plea offer and instead proceeds to trial may constitute deficient performance. See, e.g., Lafler, 566 U.S. at 161 (counsel misadvised defendant "that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist.").

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal

process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147;

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citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

Trial

At trial, the following colloquy occurred:

THE COURT: Have there been numerous offers by the prosecution?

MR. SMITH: There have been numerous negotiations pretrial, the last being a 15-year active sentence for Burglary in the first degree, followed by a probationary sentence . Consecutive with the armed robbery, we have the ABHAN reduced to assault and battery first, and the other assault and battery in the first degree, he would get a ten-year sentence concurrent with the burglary first active sentences.

THE COURT: Mr. Schultz, does that comport with your understanding of the offer?

MR. SCHULTZ: It does, Your Honor. This offer was given recently by Mr. Smith, just a couple of hours ago. I conveyed that offer to Mr. Thompson. Mr. Thompson, from my understanding, has rejected that. Now, the offer, as I understand it, would be a 15-year active sentence followed by some term of probation in the Court's discretion. He is 26 years old. We have calculated the time in that respect to approximately two-and-a-half years in jail on these charges that he is statutorily required to get. Time credit. I have done the math. Assuming that the legislature keeps the sentence at 85 percent, he would have to do approximately 12.5 half years with no credit for time served. He has credit for one hundred some-odd days. I have discussed that with my client. He has rejected that. He is well aware of the consequences if the jury comes back with a guilty verdict on one of the violent charges . So burglary, armed robbery, or the other charge. This could make this case a life-

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without -parole charge. I have talked with him about this. I have talked to his mother about this, with the client's permission. My understanding is that unless that is changed over the course of the past couple of minutes here, he has rejected that offer.

THE COURT: So he has a previous criminal history that subjects him to a sentence of life without parole if he is convicted of burglary in the first degree or armed robbery.

MR. SMITH: The ABHAN would do it as well. He has a burglary in the first degree, violent, 2011; two attempted murders in 2015; he has a most serious and serious .

THE COURT: So any of those would result in a mandatory life sentence.

MR. SMITH: Yes, Your Honor.

THE COURT: Mr. Schultz, have you talked to Mr. Thompson about that?

MR. SCHULTZ: I have, Your Honor.

THE COURT: Do you believe he understands?

MR. SCHULTZ: I do believe he understands it.

THE COURT: Mr. Thompson, you have heard what the solicitor and your lawyers has told me about the charges and about the offer that they have made, as well as the consequences to you in the event that you went to trial and the jurors were to find you guilty. Do you understand what is being said here?

[APPLICANT]: Yes, sir.

THE COURT: Do you understand that if you are found guilty by the jury of burglary or armed robbery or aggravated assault and battery, you must be sentenced to a term of imprisonment of life without the possibility of parole?

[APPLICANT]: Yes, sir.

THE COURT: You understand that they have made an offer which is substantially less than that?

[APPLICANT]: Yes, sir, I do.

THE COURT: Have you had plenty of time to talk with Mr. Schultz about your decision as to how you would like to proceed?

[APPLICANT]: Yes, sir.

THE COURT: Do you want to talk to him anymore?

[APPLICANT]: No, sir.

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THE COURT: You have made a decision about what you want to do?

[APPLICANT]: Yes, sir.

THE COURT: What is that decision?

[APPLICANT]: I want to proceed to trial.

THE COURT: You are rejecting the State's offer?

[APPLICANT]: Yes, sir.

THE COURT: Do you understand that once the jury is selected, if you wish to plead guilty, you will be pleading on your own without any recommendation.

[APPLICANT]: Yes, sir.

THE COURT: Do you wish to proceed with the trial and reject the State's offer?

[APPLICANT]: Yes, sir.

(ROA pp. 20–23).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel failed to advise him about the plea offer's details fully. (PCR Tr. p. 7).

On cross-examination, Applicant testified that Trial Counsel discussed the plea offer with him, but he felt it was rushed because it came on the day of the trial. Applicant testified that he was offered a plea offer at his first trial and rejected it. (PCR Tr. p. 15). Applicant testified that he had pled to stuff before but did not understand this particular plea. (PCR Tr. p. 16). Applicant testified that he did not have time to process the details. Id.

On direct examination, Trial Counsel testified that he fully explained the details of the plea offered to Applicant and all of that was placed on the record. (PCR Tr. pp. 34–37).

Findings

This Court finds the combination of the record and Trial Counsel's **credible** and **persuasive**

~~testimony~~ that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant

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decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that Trial Counsel **credibly** testified that he communicated and explained the plea offer to Applicant. Furthermore, the trial court had an extensive colloquy with Applicant and Trial Counsel regarding Applicant's choice to reject the plea offer. Applicant told the trial court he did not need more time with Trial Counsel, that Trial Counsel had explained everything to him, and he was rejecting the offer even though he knew that he could be sentenced to life without parole and the State's offer was substantially less than that. This Court finds Applicant cannot establish that he would have accepted the plea offer where the record provides Applicant rejected the plea offer. Thus, Applicant cannot satisfy the aforementioned standard.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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Allegation (1b): Trial Counsel failed to effectively utilize transcript and cross-witnesses on inconsistent testimony in the prior trial.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to utilize the transcript from the first trial to cross-examine the witnesses on their inconsistent testimony. This Court finds this allegation is without merit.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*, see also Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) ("[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998). Examples of such decisions include which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*") (emphasis added).

Here, Applicant failed to present testimony or evidence of how Trial Counsel was ineffective in their cross-examination of the witnesses and what they could have discovered through a more thorough cross-examination that would have affected the outcome of Applicant's trial. See Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993) (mere speculation as to what a witness's testimony would have been, by itself, cannot satisfy applicant's burden of showing prejudice).

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Furthermore, from the record, this Court finds Trial Counsel did utilize the transcript from the first trial to cross-examine Summer Hall Donahue, Christine Richard, and Makayla Richard on the inconsistencies in their testimony at the second trial. (ROA p. 92; pp. 99–100; p. 116; pp. 171–72). Thus, the record directly refutes Applicant's allegation.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1c): Trial Counsel failed to effectively argue Rules 403 and 609, SCRE, which would have allowed the impeachment of witnesses Summer Hall [Donahue] and Christine Richard with prior records and failed to object to the judge's ruling. ROA pp. 65–72; p. 365, l. 8; p. 397.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively argue Rules 403 and 609, SCRE, to allow the impeachment of Summer Hall Donahue (Summer) and Christine Richard (Richard) with their prior record and failed to object to the trial court's ruling. This Court finds these allegations to be without merit.

Rule 403, SCRE, provides:

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Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations

of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 609, SCRE, provides in part:

- (a) General Rule. For the purpose of attacking the credibility of a witness,
- (1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
 - (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. At trial, Trial Counsel argued that he should be allowed to use Summer's prior drug charge to impeach her. After conducting an analysis of Rule 403, SCRE, the trial court found that the probative value of testimony on that charge was "substantially outweighed by the nature of unfair prejudice." (ROA p. 69). Trial Counsel also argued for the admission of Richard's prior shoplifting and child neglect charges. The trial court found the prior shoplifting charges of Richard fell under the exception because those charges were crimes dealing with dishonesty, and they would be allowed to come in. (ROA pp. 69-70, p. 102). However, the trial court found that the child neglect charges were irrelevant

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and the "probative value being substantially outweighed by the danger of unfair prejudice." (ROA pp. 70–71).

The record before this Court provides that Trial Counsel argued for the admission of all the priors on Richard and Summer. Albeit, while Trial Counsel was successful on some and not successful on others, his unsuccessful argument does not rise to the requisite level that this Court should find his actions deficient. This Court further finds Trial Counsel arduously and effectively argued for the admission of all priors. Trial Counsel cannot be deficient when a well-reasoned argument is presented to the trial court, and the trial court rejects the argument. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

Applicant further argued that Trial Counsel did not preserve the issue for appeal because Trial Counsel did not object to the trial court's ruling and did not proffer the testimony for the record. This Court finds there was nothing to proffer as the arguments from Trial Counsel and the State were on the record, and the trial court issued its ruling on the records. This Court further finds there was no legal basis for an objection as the argument of Trial Counsel was placed on the record, and the trial court issued its ruling. Moreover, this issue was raised on appeal and the South Carolina Court of Appeals affirmed Applicant's convictions and sentences.³

³ To any extent Applicant argues that the issue was not preserved because appellate counsel filed an Anders brief is wholly unsupported by the record. An Anders brief is submitted to the court when appellate counsel believes the issue is frivolous, but appellate counsel must submit "anything in the record arguably supporting the appeal." Anders, 384 U.S. at 744. The issue raised by appellate counsel was preserved for review, and the South Carolina Court of Appeals affirmed Applicant's convictions and sentences.

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Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1d): Trial Counsel failed to effectively address the witness identification of Applicant through Facebook and where testimony was improbable. p. 98⁴, l. 12; p. 86; p. 110.

Allegation: Trial Counsel failed to hire/consult an eyewitness expert.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively address the witness identification of Applicant through Facebook and for failing to hire/consult an eyewitness expert. This Court finds these allegations to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel was ineffective for failing to move to suppress the witness identification of him through Facebook and for failing to hire an eyewitness expert. (PCR Tr. pp. 10–11). Applicant testified that he was allegedly identified in a

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⁴ Applicant erroneously had this as page 116 when it is page 98 of the trial transcript and record on appeal.

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post on Makayla's Facebook, but that was impossible because Makayla testified that Applicant and Makayla never had contact on Facebook. (PCR Tr. p. 12).⁵

On direct examination, Kenshawn Goode, Applicant's co-defendant, testified that there was a picture on Facebook of him and Applicant.

On direct examination, Deidra Mills, Applicant's mother, testified that Makayla and Applicant were not Facebook friends.

On direct examination, Latoya Thompson (Latoya), Applicant's sister, testified that Applicant was identified from a picture on Facebook of Applicant, Kenshawn Goode, and her other brother at the club. (PCR Tr. pp. 30–31). Latoya testified that it was possible that Makayla liked the picture on Facebook. (PCR Tr. p. 31). Latoya testified that Trial Counsel did his job in the first trial, but the second trial seemed scripted. Id.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*, see also Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) ("[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998). Examples of such decisions include which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the

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⁵ At trial on cross-examination, Makayla testified that she did not think she was friends with Applicant on Facebook, but she could not answer with certainty. (ROA p. 177).

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admission of evidence, *[and] whether and how a witness should be cross-examined.*") (emphasis added). This Court finds the record provides Trial Counsel thoroughly cross-examined these witnesses on this issue, and Trial Counsel's actions were reasonable under the circumstances. See Mazzell, supra.

Applicant further argued that Trial Counsel failed to hire/consult an eyewitness expert. The South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony per the rules of evidence at the PCR hearing to establish prejudice from the witness' failure to testify at trial. See, e.g., Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his Trial Counsel's failure to hire an expert because he failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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Allegation (1e): Trial Counsel misadvised Applicant not to testify due to his prior record when prior burglaries came in any way because the State was not required to stipulate to prior burglaries. ROA p. 260.

Applicant alleges Trial Counsel was constitutionally ineffective for misadvising Applicant not to testify due to his prior record when his prior burglaries came in anyway because the State was not required to stipulate to the prior burglaries. This Court finds these allegations to be without merit

"The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. [However], if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." Id. "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." Id.

Trial

At the beginning of trial, the following occurred:

MR. SMITH: . . .The defendant should be aware he has two prior burglary convictions. That is one of the ways we are trying to enhance. We do intend to call somebody from the Clerk of Court's office. Assuming that is not stipulated to, that is an element that we are pursuing.

THE COURT: You don't have to stipulate to that.

(ROA p.26)
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Later in trial, the following colloquy occurred:

THE COURT: Have you talked to Mr. Thompson about his right to testify as well as not?

[TRIAL COUNSEL]: I have, Your Honor.

THE COURT: Has he indicated to you what his decision is?

[TRIAL COUNSEL]: He has, Your Honor.

THE COURT: Mr. Thompson, have you and Mr. Schultz discussed your right to remain silent, as well as your right to testify if you want to?

[APPLICANT]: Yes, sir.

THE COURT: Do you understand that when you are charged with a crime, you have an absolute right to remain silent, which means that nobody can call you as a witness?

[TRIAL COUNSEL]: Yes, sir.

THE COURT: Your lawyer can't call you; the prosecutor can't call you; I can't call you. Nobody can make you testify if you don't want to. At the same time, if you want to testify, now is the only opportunity that you will have to do so. In other words, you can't wait until after a decision has been reached by a jury and then change your mind about that decision. Now has come the time for you to present evidence. You can do that by presentation of your own testimony, or, if you choose not to testify, you can still call other witnesses or introduce other evidence. The choice is yours. Have you had time to talk to Mr. Schultz about your decision about whether or not you will testify?

[APPLICANT]: Yes, sir.

THE COURT: Has he discussed with you the advantages and disadvantages of testifying as well as not testifying?

[TRIAL COUNSEL]: Yes, sir.

THE COURT: Do you appreciate what those advantages and disadvantages are?

[APPLICANT]: Yes, sir.

THE COURT: Do you understand that if you elect not to testify, I will instruct the jury that they cannot consider that or hold it against you in any way?

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[APPLICANT]: Yes, sir.
 THE COURT: And if you do testify, you have to answer not only your lawyer's questions, but you have also got to answer any questions posed to you by the prosecutor, to the extent they are relevant, even if the responses to those questions might tend to prove your guilt? Do you understand your right to testify as well as not?

[APPLICANT]: Yes, sir.
 THE COURT: Have you had time to reflect upon your decision?

[TRIAL COUNSEL]: Yes, sir.
 THE COURT: Have you reached a decision?
 [APPLICANT]: Yes, sir.
 THE COURT: What is that decision?
 [APPLICANT]: I will not testify.
 THE COURT: You will not testify?
 [APPLICANT]: No, sir.
 THE COURT: Is that a decision that you made of your own free will and accord?

[TRIAL COUNSEL]: Yes, sir.
 THE COURT: Has anybody forced you into it?
 [APPLICANT]: No, sir.
 THE COURT: Has anybody pressured you into it?
 [APPLICANT]: No, sir.
 THE COURT: Has anybody even suggested that that is the decision that you ought to make in this case?

[APPLICANT]: No, sir.
 THE COURT: You made that decision on your own?
 [APPLICANT]: Yes, sir.
 THE COURT: You are satisfied with it?
 [APPLICANT]: Yes, sir.

(ROA pp. 259–262).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he was not sure if testifying would have helped him or hurt him. (PCR p. 13). Applicant testified that his priors would have hurt him more than helped him. ^{Id.} Applicant testified he did not know that his priors would come out even if

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he did not testify. Id. Applicant testified that had he known his priors would come out independent of his testifying he "probably" would have changed his mind about testifying. Id.

Findings

As an initial matter, this Court finds that the record provides the trial court conducted a thorough colloquy with Applicant regarding his right to testify. Applicant indicated he had enough time to consider his right to testify, and Trial Counsel had discussed the advantages and disadvantages of testifying. Applicant indicated that his choice not to testify was his own, and he was not coerced. Furthermore, this Court finds from the record Applicant was aware from the start of his trial that the State intended to call someone from the Clerk's office to enter his prior burglary charges as enhancements. Additionally, the record provides that Applicant's prior record was entered into the record through the testimony of Gail Moffitt the prior day before the trial court conducted the colloquy with Applicant on his right to testify. (ROA pp. 210–212). Therefore, any contention by Applicant that had he known his record would come in whether he testified or not, and he probably would have changed his mind about testifying is refuted by the record.

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant presented nothing to this Court to indicate how, if he had testified, the result of his trial would have been different.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient

evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has

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failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1f): Trial Counsel failed to take exception to the jury instructions regarding the 'hand of one' and accomplice liability when the testimony and State's theory of the case was the Applicant was the principal. ROA p. 410, l. 11; p. 421. l. 19. p. 106. l. 17, p. 345.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to take exception to the jury instructions regarding the 'hand of one' and accomplice liability when the testimony and State's theory of the case was the Applicant was the principal. This Court finds this allegation to be without merit.

Findings

As an initial matter, this Court finds this allegation fails as a matter of law. "It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." State v. Condrey, 349 S.C. 184, 562 S.E.2d 320, 325 (Ct. App. 2002) (quoting State v. Dickman, 341 S.C. 293, 534 S.E.2d 268, 269 (2000)). "Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Id. at 324 (citing State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999)). "Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common

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design, aid, abet, or assist in the commission of that crime through some overt act.' " Id. at 325 (citing Langley, 515 S.E.2d at 101). " 'The law is that when two or more persons aid, encourage, and abet each other in the commission of a crime, all being present, all are principals and equally guilty.' " State v. Hicks, 257 S.C. 279, 185 S.E.2d 746, 748 (S.C.1971) (quoting State v. Williams, 189 S.C. 19, 199 S.E. 906 (S.C.1938)).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant's allegation fails a matter of law and Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1g): Trial Counsel was constitutionally ineffective in recalling Daniellc Krind, who was a State's witness. ROA p. 327.

Applicant alleges Trial Counsel was constitutionally ineffective for recalling Danielle Krind (Krind). This Court finds these allegations to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he did not think recalling Krind "hurt" his case. (PCR Tr. p. 14).

On cross-examination, Trial Counsel testified that Krind testified that she saw Applicant with Makayla getting into a black car. (PCR Tr. p. 45).

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Findings

This Court has reviewed the entirety of Krind's testimony when called as the State's witness and on recall by Trial Counsel and finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. In a review of the record, this Court finds that Trial Counsel had a strategic reason for recalling Krind as her testimony was inconsistent with her statements. When reading Krind's recall testimony as a whole, Trial Counsel's strategic reason can be reasonably inferred. Krind was an important eyewitness whose testimony was inconsistent with her statements and prior testimony. See Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

A strategic or tactical decision does not have to be articulated by counsel on the record before the Court may acknowledge it, nor does counsel have to personally identify his or her thinking. It is enough that the record reflects strategic design, such that the Court may fairly infer from the record what the strategy was, even if Trial Counsel cannot or will not subsequently articulate it. See Wood v. Allen, 558 U.S. 290 (2010) (finding the PCR court was reasonable in inferring from evidence in the record that trial counsel's failure to pursue or present evidence of defendant's mental deficiencies was a strategic decision); Koon v. Rushton, 364 Fed.Appx. 22, 29 (4th Cir. 2010) (upholding PCR court finding that applicant failed to carry his burden where trial counsel had an articulable strategy behind his method of impeaching a witness); McNair v. Campbell, 307 F.Supp.2d 1277, 1312 (M.D.Ala 2004) ("Generally, courts have found that where

counsel had an *articulable* strategy at sentencing, and where mitigation evidence at issue contradicted or weakened that strategy, counsel's decision not to enter the mitigation evidence was reasonable." (emphasis added); Gerals v. State, 111 So.3d 778, 794 (Fl. 2010) (finding trial strategy from the record where trial counsel was deceased, and therefore not able to testify).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS NOT PLED BUT RAISED AT THE PCR EVIDENTIARY HEARING

Allegation: Trial Counsel failed to object to the prior attempted murder sentencing sheets being used to support LWOP where the violent, serious, and most serious boxes were not checked.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the murder sentencing sheets being used to support LWOP where the violent, serious, and most serious boxes were not checked. This Court finds this allegation to be without merit

PCR Evidentiary Hearing

On direct examination, the following occurred:

Now, what about your priors -- there were sentencing sheets where it wasn't checked serious or most serious on some of the prior sentencing sheets that were used to convict you.

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- A. Yes, ma'am, I had two attempted murders from 2015, April 1st. It was a 2015 sentencing and I think -- like neither one of the boxes was checked on the attempted murders. The most serious and serious box, neither one of them was checked. And I brought it to his attention numerous times before the trial and it wasn't -- and he never addressed it before my trial. He never put in the motion for it.
- Q. Do you think that might have effect on the State's ability to give you a life sentence?
- A. Yes, ma'am.
- Q. And did he ever explain to you that does not matter at all, you're gonna get a life sentence if you're convicted?
- A. I mean he told me that. But I felt like it still could of changed something. I, I felt like it could of -- I felt like it basically gave the State grounds to, to really push for the LWOP.

(PCR Tr. pp. 8–9).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court has reviewed that sentencing sheet and the violent box is checked contrary to Applicant's assertion. While the serious and most serious boxes are not checked, that is controlled by the offense for which Applicant was convicted. Applicant provided no caselaw or evidence to support his speculation. Mere speculation and conjecture are not sufficient to substantiate an allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)..

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**

Allegation: Trial Counsel failed to object to Exhibit 35 which was a box of bullets that had nothing to do with the crime.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to a box of bullets that had nothing to do with the crime. This Court finds this allegation to be without merit

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the

outcome." Id. at 694

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PCR Evidentiary Hearing

On direct examination, the following occurred:

- Q. Are there any other allegations of ineffective assistance of counsel that you're alleging?
- A. Yes, ma'am, I, I got another one that I, I would like to address to the Courts.
- Q. Okay.
- A. I -- my lawyer was ineffective due to deficient performance which caused prejudice to my defense. I said my counsel was ineffective due to refusal to object to multiple occasions during my trial that I told him to. I said one being Exhibit 35--
- Q. Well--
- A. ---which was a box of bullets that had my fingerprint on it. It's -- I said there's no evidence that Exhibit 35 was even a part of the crime or part of the case. I said there's no caliber that -- I said there's no caliber or type bullets that saying that this was a part of the crime and---
- Q. And did you -- give some context. The -- this was a box of bullets that was found in --
- A. It was found in---
- Q. -- a codefendant's house?
- A. Yes, ma'am.
- Q. And that had nothing to do with this case and he didn't object to that?
- A. It didn't have nothing to do with the case. He, he didn't object to it when they used it against me and I brought that to his attention. He never object to it when they use it against me even though it being at they house.
- Q. All right.
- A. He ain't fight to suppress the evidence to me.

(PCR Tr. pp. 9–10).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any

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resulting prejudice from that alleged deficiency. See Butler, supra. Applicant's contention that the bullet container had nothing to do with the crime is demonstrably false. This container was found in Applicant's co-defendant's home during a search within hours of the crime occurring. Applicant's fingerprints were found on the inside of the container. Here, Applicant has failed to provide what legal basis Trial Counsel would have had to make the objection and must prove that the objections would have been sustained. This Court is not persuaded with this and finds that even if Trial Counsel had objected, the objection would have been overruled. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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CONCLUSION

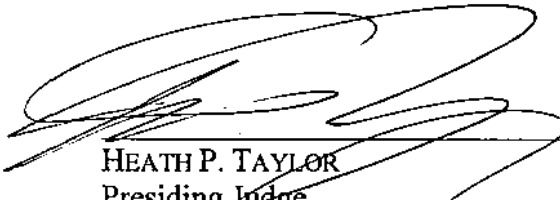
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This Court finds Trial Counsel provided effective representation. Therefore, this application for post-conviction relief **must be DENIED and DISMISSED WITH PREJUDICE.**

Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment. 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). Pursuant to Rule 71.1(g), SCRPC, 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. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 10th day of December, 2024.



HEATH P. TAYLOR
Presiding Judge
Seventh Judicial Circuit

Orangeburg, South Carolina

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SPARTANBURG COUNTY
AND W. COX
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WITNESSES

SCSO

James W. Bowen

ARREST WARRANT NUMBER

Count One- 2016A4210203993 (AMENDED)

Count Two-2016A4210203991

ACTION OF GRAND JURY

True Bill

JUN - 8 2018

Foreperson of Grand Jury
Date:

VERDICT

Count I: Guilty

Count II: Guilty

Foreperson of Petit Jury
Date:

6/13/19

DOCKET NO. **17-GS-42- 2885**

The State of South Carolina
County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 11 2018.

TERM

THE STATE
vs.

Dominick Antonio Thompson

Indictment for

**BURGLARY FIRST DEGREE AND
POSSESSION OF WEAPON DURING
VIOLENT CRIME**

SC Code: 16-11-0311, 16-23-490

CDR Code: 0079; 549

Class: FEL/EXM (V); FEL-F

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JUN 25 2019
SC Court of Appeals

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CLERK OF COURT
SPARTANBURG COUNTY

2018 JUN 13 AM 10: 01

M. HOPE BLACKLEY

A CERTIFIED COPY

Barry Barnette
CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]* S.B.C.

DATED 6/13/19

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 08 2018

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

(DWELLING)

That the Defendant, Dominick Antonio Thompson, did in Spartanburg County, on or about November 24, 2016 enter the dwelling located at [REDACTED] Mobile Dr. Room 249, Spartanburg, SC, ~~without consent and entered with the intent to commit a crime therein, and that the~~ defendant did while entering the dwelling, and/or while inside, and/or while in immediate flight from the dwelling either:

- (1) enter in the nighttime and/or
- (2) arm himself with a deadly weapon; and/or
- (3) use or threaten the use of a dangerous instrument; and/or
- (4) cause physical injury to any person who is not a participant in the crime; and/or
- (5) displayed what was or appeared to be a handgun or other firearm and/or,
- (6) the defendant has two or more prior convictions for burglary

In violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

COUNT TWO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That Dominick Antonio Thompson, did in Spartanburg County on or about November 24, 2016, possess or visibly display a firearm or what appeared to be a firearm during the ~~commission of a violent crime, to-wit: Burglary 1st Degree, in violation of Code §16-23-490,~~
CODE OF LAWS OF SOUTH CAROLINA

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS.)
 Dominick Antonio Thompson)
 AKA:)
 Race: ASIAN BLACK Sex: M Age: 27)
 DOB: [REDACTED] SS#: [REDACTED])
 Address:)
 City, State, Zip:)
 DL#: [REDACTED] SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4202883A
 A/W#: 2016A4210203991
 Date of Offense: 11/24/2016
 S.C. Code §: 16-23-0490
 CDR Code #: 0549

RECEIVED
JUN 25 2019
SC Court of Appeals

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

TO: Possession of weapon during violent crime, if not also sentenced to life without parole or death (5yr)

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEY: [Signature] SC101370 [Signature] SCB74518
 SMITH, SPENSER H SC Bar# 103317 Defendant Schertz, E. Joshua SC Bar#
 Attorney for Defendant

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

CONCURRENT or CONSECUTIVE to sentence on: sentence not imposed due to life sentence imposed for burglary 1st degree 16-23-0490.

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75
TOTAL		\$ 128.75

Obtain OED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/ Deputy Clerk: KG McKinney
 Court Reporter: Kymerlee Williams

Presiding Judge: [Signature]
 Judge Code: 2073
 Sentence Date: June 13, 2019

ACERTIFIED COPY
 CLERK OF COURT
 SPARTANBURG COUNTY
 BY: [Signature]
 DATED: 6/18/19

WITNESSES

Spartanburg County Sheriff Office

- 1. REPORT MADE
- 2. REPORT INDEXED
- 3. CARD FILED
- 4. INDEXED
- 5. CLERK OF COURT FILED
- 6. CLERK OF COURT INDEXED
- 7. ASSESSOR FILED
- 8. ASSESSOR INDEXED

ARREST WARRANT NUMBER

2017A4210203989

ACTION OF GRAND JURY

JUN 02 2017

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 17-GS-42-2886

The State of South Carolina
County of Spartanburg
Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 05 2017 TERM

THE STATE
vs.

Dominick Antonio Thompson

Indictment for

POSSESSION OF A FIREARM OR
AMMUNITION BY PERSON
CONVICTED OF A VIOLENT CRIME

SC Code: 16-23-500 (A) (B)
CDR Code: 3434
Class FEL/F

RECEIVED
JUN 25 2019
SC Court of Appeals

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 JUN -8 PM
M. HOPE BLACKLEY



A CERTIFIED COPY

Barry J. Barnette
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature] D.C.

DATED 6/18/19

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2017GS4202886

AKA: Dominick Antonio Thompson

A/W#: 2016A4210203989

Race: ASIAN Sex: M Age: 27

Date of Offense: 11/24/2016

DOB: [redacted] SS#: [redacted]

S.C. Code § : 16-23-0500(A)

Address: [redacted]

CDR Code #: 3434

City, State, Zip: [redacted]

DL#: [redacted] SID#: [redacted]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: Possession of Firearm or Ammunition by person convicted of violent felony 0-5 years [X] CONVICTED OF or [] PLEADS

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434 [X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials) The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: SMITH, SPENSER H SC101370 SC Bar# Defendant Schultz, E. Joshua SCB74518 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 5 days/months/years or [] under the Youthful Offender Act not to exceed [] years and/or to pay a fine of \$ []; provided that upon the service of [] days/months/years and/or payment of \$ []; plus costs and assessments as applicable*; the balance is suspended with probation for [] months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on: [] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. [] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS: [] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP Total: \$ [] plus 20% fee: \$ [] days/hours Public Service Employment

Payment Terms: [] Set by SCDPPPS Obtain GED [] Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling []

Recipient: Random Drug/Alcohol Testing [] Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ [] beginning \$ [] paid to Public Defender Fund SPARTANBURG COUNTY BY: []

Table with 3 columns: Description, Amount, Total. Rows include assessments for §14-1-206, §14-1-211(A)(1), §14-1-211(A)(2), §56-5-2995, §56-1-286, Proviso, §14-1-212, §14-1-213, §50-21-114, §56-5-2942(J), and 3% to County. TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Court Reporter: [Signatures]

A CERTIFIED COPY... DATED 6/18/19

[] Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Judge Code: Sentence Date: [Signatures]

RECEIVED JUN 25 2019 SC Court of Appeals

WITNESSES

Spartanburg Sheriff's Office

Kevin [Signature]

WARRANT NUMBER

2016A4210203992 (Amended)

ACTION OF GRAND JURY

True Bill

AUG 24 2018

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

6/3/19

DOCKET NO:

17-GS-42- 2887

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2018

TERM

THE STATE

vs.

Dominick Antonio Thompson

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600(C)(1)

CDR Code: 3412

Class FEL/E

RECEIVED

JUN 25 2019

SC Court of Appeals

A CERTIFIED COPY

CLERK OF COURT

SPARTANBURG COUNTY

BY: *[Signature]*

DATED *6/18/19*

564

CLERK OF COURT
SPARTANBURG COUNTY

2018 AUG 29 PM 2:46

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 24 2018 the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 1st Degree

That the Defendant, Dominick Antonio Thompson, did in Spartanburg County on or about November 24, 2016 commit an assault and battery on the victim, [REDACTED] by unlawfully,

(a) Injuring the victim, and the act:

(i) occurred during the commission of a robbery, burglary, kidnapping, or theft; or


(b) did offer or attempt to injure the victim with the present ability to do so, and the act:

(i) is accomplished by means likely to produce great bodily injury or death, or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

To wit: hitting the victim repeatedly in the head with a handgun, in violation of §16-3-600(C)(1), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS.)
 Dominick Antonio Thompson)
 AKA:)
 Race: ASIAN/BLACK Sex: M Age: 27)
 DOB: [REDACTED] SS#: [REDACTED])
 Address:)
 City, State, Zip:)
 DL#: [REDACTED] SID#:)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4202887
 A/W#: 2016A4210203992
 Date of Offense: 11/24/2016
 S.C. Code §: 16-03-0600(C)(1)
 CDR Code #: 3412

RECEIVED
 JUN 25 2019
 SC Court of Appeals

SENTENCE SHEET

CONVICTED OF or PLEADS

In violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEY: SMITH, SPENSER II SC101370 [Signature] SCB74518
 SC Bar# 10337 Defendant [Signature] Schultz, E. Joshua
 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center
 for a determinate term of 10 days/months/years under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

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

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$1.50	\$
§50-21-114 (DUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

Clerk of Court/ Deputy Clerk: KG McKunney
 Court Reporter: Kymberlee Williams

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [Signature]
 Judge Code: 2043
 Sentence Date: JUNE 18, 2019

A CERTIFIED COPY

CLERK OF COURT
 SPARTANBURG COUNTY
 BY: [Signature]
 DATED: 6/18/19

WITNESSES

Spartanburg Sheriff's Office

Kevin [Signature]

ARREST WARRANT NUMBER

2016A4210203990- (Amended)

ACTION OF GRAND JURY

True Bill

AUG 24 2018

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date:

6/3/19

DOCKET NO.

17-GS-42-2888

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2018

TERM

THE STATE
vs.

Dominick Antonio Thompson

Indictment for

ARMED ROBBERY.

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL1A

RECEIVED

JUN 25 2019

SC Court of Appeals

COURT OF COURT
SPARTANBURG COUNTY

2018 AUG 29 PM 2:46

M. HOPE BLACKLEY

A CERTIFIED COPY

Ann [Signature]

CLERK OF COURT

SPARTANBURG COUNTY

BY: *[Signature]*

DATED *6/18/19*

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 02 2017

At a Court of General Sessions, convened on _____ the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Dominick Antonio Thompson, did, in Spartanburg County, on or about November 24, 2016, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of [REDACTED] by means of force or intimidation goods or monies of, described as follows: money and/or goods, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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

J. J. S. Mills
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS.)
 Dominick Antonio Thompson)
 AKA:)
 Race: ~~ASIAN~~ BLACK Sex: M Age: 27)
 DOB: [REDACTED] SS: [REDACTED])
 Address:)
 City, State, Zip:)
 DL#: [REDACTED] SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4202888
 A/W#: 2016A4210203990
 Date of Offense: 11/24/2016
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

RECEIVED
 JUN 25 2019
 SC Court of Appeals

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery, robbery while armed or allegedly armed with a deadly weapon(10-30yr)

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lowd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Spencer H. Smith SC101370 Defendant Schwartz, E. Joshua SCB74518 SC Bar# 103317 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of life days/months/years or under the Youthful Offender Act not to exceed — years and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. summary to 17-25-49.

CONCURRENT or CONSECUTIVE to sentence on: —
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP — days/hours Public Service Employment

Total: \$ — plus 20% fee: \$ —
 Payment Terms: —
 Set by SCDPPPS —

Recipient: —
 *Fine: \$ —
 §14-1-206 (Assessments 107.5%) \$ —
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ —
 §56-5-2995 (DUI Assessment) \$12 \$ —
 §56-1-286 (DUI Breath Test) \$25 \$ —
 Proviso (Public Def/Probation) \$500 \$ —
 §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 §14-1-213 (Drug Court Surcharge) \$150 \$ —
 §50-21-114(BUI Breath Test Fee) \$50 \$ —
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ —
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75
 Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk KG McKinney
 Court Reporter: Kymerlee Williams

Presiding Judge [Signature]
 Judge Code: 2093
 Sentence Date: June 19, 2019

A CERTIFIED COPY
 Clerk of Court
 SPARTANBURG COUNTY
 BY: [Signature]
 DATED 6/18/19

WITNESSES

SCSO

WARRANT NUMBER

2016A4210203988

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

6/13/19

DOCKET NO. 17-GS-42-2889

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

Dominick Antonio Thompson

Indictment for
ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE

SC Code 16-3-600(B)(1)

CDR Code: 3411

Class FEL/C

RECEIVED

JUN 25 2019

SC Court of Appeals

A CERTIFIED COPY

Craig W. Col

CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]*
DATED: 6/18/19

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

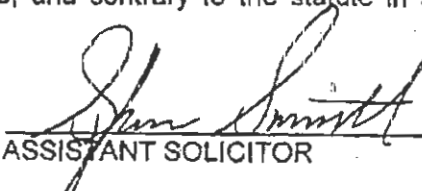
INDICTMENT

At a Court of General Sessions, convened on AUG 24 2018 the Grand
 Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That Dominick Antonio Thompson, did in Spartanburg County on or about November 24, 2016, while armed with a deadly weapon, being handgun, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present at the time reasonably believed to be a deadly weapon, did feloniously take from the person or presence of [REDACTED] by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: a wallet, and/or a social security card, and/or a driver's license, and/or U.S. currency belonging to [REDACTED] with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

INDICTMENT/CASE#: 2017GS4202889

Dominick Antonio Thompson

A/W#: 2016A4210203988

AKA:

Date of Offense: 11/24/2016

Race: ASIAN-BLACK Sex: M Age: 27

S.C. Code § 16-03-0029

DOB: [REDACTED] SS [REDACTED]

CDR Code #: 3410

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Assault and Battery of a High and Aggravated Nature (0-20yr)

SENTENCE SHEET

RECEIVED

JUN 25 2019
SC Court of Appeals

CONVICTED OF or PLEADS

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant's initials)

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

ATTEST: Spencer Bennett SC Bar# 109317 Defendant Sevitz, E. Joshua SC Bar# SCB74518 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

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

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk KG McKinney

Court Reporter: K. Williams

SCCA/217 (04/2018)

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge:

Judge Code: 2093

Sentence Date: June 13, 2019

A CERTIFIED COPY
CLERK OF COURT
SPARTANBURG COUNTY
BY: 6/13/19