STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	THE EIGHTH JUDICIAL CIRCUIT
Karlita Desean PHILLIPS, #364809,	)	
	)	
Applicant,	)	**ORDER OF DISMISSAL**
	)	
v.	)	
	)	Civil Action No. 2018-CP-01-00059
The STATE of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court on application for post-conviction relief ("PCR") filed by Karlita Desean Phillips ("Applicant") on February 20, 2018, and amended on March 7, 2022, and August 13, 2024. An evidentiary hearing was held at the Laurens County Courthouse on August 19, 2024. Applicant was present and represented by Ashley A. McMahan, Esq. Assistant Attorney General Zachary W. Jones represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has not met the requisite burden of proof and, therefore, is not entitled to PCR. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. At the May of 2014 term, the Abbeville County Grand Jury returned indictments against Applicant for Using a Minor to Commit a Felony (2014-GS-01-0212) and Accessory Before the Fact of Murder (2014-GS-01-0213).

Assistant Public Defender Patricia Bolen and Circuit Public Defender Janna Nelson represented Applicant. Circuit Solicitor David Stumbo and Assistant Circuit Solicitor Yates Brown prosecuted the case. Applicant went to trial before Circuit Judge Frank R. Addy, Jr. and a jury on July 20-23, 2015. Applicant was found guilty of both charges and sentenced to concurrent terms of imprisonment of fifteen years for each conviction.

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Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals affirmed Applicant's conviction on December 28, 2017. *State v. Phillips*, Op. No. 2017-UP-649 (S.C. Ct. App. filed December 28, 2017). The remittitur was returned to the circuit court on January 18, 2018.

Factual Summary

On the night of March 25, 2013, Dale Phillips, Sr. was watching television in his home located in Abbeville, South Carolina, while his wife, Martha Phillips, cooked dinner for Jamil Phillips, one of their three sons. (Tr. pp. 142-146; pp. 155-158). That night, Jamil was scheduled to finish working at his job in Greenville, South Carolina, at 9:00 p.m., and Martha and Dale, Sr. were expecting him to arrive home around 10:00 p.m. (Tr. p. 146; p. 159). Likewise, they were expecting one of their other sons, Dale Phillips, Jr., to also arrive home from work around that same time. (Tr. p. 147; p. 159).

Just after 10:00 p.m., Martha heard one of their sons arrive home and put a key into the door. (Tr. p. 146; p. 159). Immediately after that, several gunshots rang out, and Martha and Dale, Sr. quickly rushed to their front porch to see what was going on. (Tr. pp. 146-147; p. 160). When they did so, they found Jamil lying face down on the porch trying to catch his breath and suffering from gunshot wounds.[1] (Tr. p. 148; p. 160). At that same time, Martha and Dale, Sr. heard someone running away from the home and, shortly after that, observed a car speed off from the area.[2] (Tr. p. 149; p. 162). Martha then quickly called 911 while Dale, Sr. held Jamil, who was crying and gurgling, and tried to comfort him until help could arrive. (Tr. p. 148; p. 160). However, within just a few minutes, Jamil stopped breathing and died in his father's arms before paramedics were able to make it to their location.[3] (Tr. p. 148; p. 150; p. 161; p. 163).

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[1] Initially, Martha believed Jamil was Dale, Jr. due to the fact Dale, Jr. was going through a contentious divorce at the time. (Tr. p. 147; p. 160; p. 163).

[2] On the night of the shooting, Martha and Dale, Sr.'s neighbors noticed a light-colored car parked next to a wooded area near Martha and Dale, Sr.'s home and observed the same car speeding away from the area shortly after the shooting occurred. (Tr. pp. 165-167; pp. 169-176).

[3] During trial, Dr. Brett Woodard, the expert forensic pathologist who conducted Jamil's autopsy, testified Jamil had gunshot wounds to his forehead, armpit, and hip. (Tr. p. 223; pp. 225-227). He further explained the bullet that struck Jamil's armpit travelled through Jamil's lungs and aorta and rapidly led to his death by causing fatal hemorrhaging and blood loss. (Tr. pp. 230-232).

Shortly thereafter, law enforcement officers from the Abbeville County Sheriff's Office arrived on the scene along with emergency medical personnel, the scene was secured, and the paramedics unsuccessfully attempted to revive Jamil. (Tr. p. 179; p. 183; p. 185; p. 187; p. 189). Crime scene investigators then arrived at the scene, discovered and collected fresh cigarette butts that had been left at a nearby wooded area, located tire marks in the same area, and took impressions of those marks. (Tr. pp. 191-192; pp. 200-202; p. 214; pp. 345-347). Additionally, Detective Nick Marshall from the Abbeville County Sheriff's Office interviewed witnesses and family members at the scene and learned a silver or light-colored car was believed to have been involved in the shooting. (Tr. pp. 238-242). Furthermore, based on the information he gathered, Detective Marshall determined Karlita Desean Phillips, who was the estranged wife of Dale, Jr., was a person of interest in the investigation based on the fact she drove a car similar to the one observed speeding away from the scene.[4] (Tr. pp. 241-243; pp. 347-348; p. 406; p. 408).

In response, Detective Marshall travelled to Applicant's apartment in Greenwood, South Carolina, along with Investigator Michael Collins from SLED. (Tr. p. 243; p. 345; pp. 348-349). Upon arriving, the investigators observed Applicant's light-colored Toyota Camry parked in front of her apartment and noticed the vehicle had what appeared to be fresh mud on its wheels and side. (Tr. p. 203; p. 244; pp. 347-350; p. 354). Additionally, the investigators noticed the lights were on inside of Applicant's apartment, but someone turned the lights off shortly after they arrived at the scene. (Tr. pp. 246-247; pp. 349-350). The investigators then attempted to make contact with whoever was inside, but no one responded to their knocks or requests. (Tr. pp. 246-247; p. 350). However, shortly thereafter, a local police officer was dispatched to the scene in response to a 911 call placed by Applicant, and Applicant allowed the investigators to enter her home once the officer arrived on the scene. (Tr. p. 247; pp. 350-352). The investigators then informed Applicant of her rights and spoke with her about the shooting. (Tr. pp. 248-250; p. 352). During the conversation, Applicant denied any involvement in Jamil's death and prepared a written statement indicating she did not go to Abbeville on the date of the shooting, she did not have any knowledge of the

[4] Applicant was thirty-nine years old at the time of the shooting. (Tr. p. 275).

shooting, and no one borrowed her car that night. (Tr. pp. 250-251; pp. 353-354; State's Ex. # 1A (Statement)).

Following the interview, the investigators took custody of Applicant's car and obtained a warrant to search the vehicle. (Tr. p. 355). Tire impressions were then taken from the car and compared to the tire impressions collected at the scene, and Agent Vickie Hallman, a crime scene investigator from SLED and an expert in tire impressions, determined one of the tire impressions from the scene could have been made by Applicant's car, which she noticed had mud and dirt on its tires. (Tr. pp. 191-192; p. 196; pp. 211-214). However, she was unable to conclusively determine Applicant's car left that impression. (Tr. p. 215).

Subsequently, the investigation into Jamil's murder continued but did not lead to any arrests until Tavarious Settles, a juvenile who had been involved in a murder in Greenwood a few days after Jamil was shot and killed, was connected to the shooting through a DNA analysis of the cigarette butts collected from the crime scene.[5] (Tr. pp. 200-201; pp. 234-236; p. 302; p. 306; p. 309; p. 314; p. 443; p. 444; p. 450). After the connection was made, investigators met with Settles on December 10, 2013, and spoke with him about the crime. (Tr. pp. 453-454). During the interview, Settles denied any involvement in Jamil's killing but indicated Applicant had made an offer to him in regard to the crime. (Tr. pp. 453-454; p. 459). Additionally, Settles insisted he declined the offer and stated he informed a friend about it before providing the friend with Applicant's contact information. (Tr. pp. 454-455). Furthermore, Settles stated his friend committed the murder and framed him by planting the cigarette butts at the scene. (Tr. p. 456).

Based on Settles's statements coupled with the other evidence obtained during the investigation, Applicant was placed under arrest for using a minor to commit a felony. (Tr. pp. 357-358). Following her arrest, officers interviewed her for several hours on the afternoon of December 18, 2013. (Tr. p. 252; p. 256; p. 277). During that interview, Applicant waived her rights, admitted she knew Settles through her daughter, stated she had told her daughter she wanted Dale, Jr. to be dead, and indicated she let Settles use her car on the night of the shooting while claiming he left in it with an individual named "Mike." (Tr. p.

[5] Settles was sixteen years old at the time of Jamil's killing. (Tr. p. 274; p. 443).

280; p. 284; pp. 364-367). Furthermore, Applicant admitted she had talked to someone about "jumping" Dale, Jr. and indicated she believed her daughter asked Settles to commit the crime. (Tr. p. 376; p. 378).

Then, on the following morning, officers interviewed Applicant again and she again waived her rights before speaking with the officers. (Tr. pp. 368-370). During that interview, Applicant provided a written statement in which she indicated her car was only used to go to the store on the night of the incident, claimed she had said "things" in "the heat of the moment" but had never spoken of them again, denied driving Settles to Abbeville, denied going to Abbeville herself, blamed the incident all on Settles and "Mike," and insisted she never asked Settles to commit murder or do anything that involved going to Abbeville on the date of the incident. (Tr. pp. 370-373; State's Ex. # 51 (Statement)). However, Applicant also inconsistently wrote she "took him to house" and "got the ball rolling" while again insisting she did not force or tell Settles to do "anything." (Tr. p. 373; p. 375; State's Ex. # 51).

Thereafter, on December 20, 2013, Lieutenant Bo Barton from SLED interviewed Applicant again after reviewing her prior written statements. (Tr. pp. 381-384). During the interview, Applicant again waived her rights and provided the investigator with an additional written statement. (Tr. p. 385; p. 388). In that statement, Applicant indicated she went to the store, gave her daughter a driving lesson, and got a car wash on the night of the incident. (Tr. pp. 393-395; State's Ex. # 53 (Statement)). She further insisted both she and her car were in Greenwood as opposed to Abbeville on the date of the shooting. (Tr. pp. 395-396; State's Ex. # 53). After Applicant finished her statement, Lieutenant Barton called a number of inconsistencies to her attention. (Tr. p. 397). Applicant then prepared a final written statement. (Tr. p. 385; p. 399). In that statement, Applicant indicted she believed Dale, Jr. had burglarized her apartment, asked Settles to beat him up in response, provided Settles with directions to Dale, Jr.'s home, and let Settles borrow her car on the night of the incident. (Tr. pp. 399-401; State's Ex. # 54 (Statement)). After that, Applicant indicated Settles returned the car and she later learned Jamil had been killed instead of Dale, Jr. (Tr. p. 401; State's Ex. # 54).

Applicant was indicted for Accessory Before the Fact to Murder and Using a Minor to Commit a Felony and proceeded to trial. (Tr. p. 7; Indictments). During trial, Martha and Dale, Sr. recounted the

horrific events they experienced on the night of March 25, 2013, and the investigators and other law enforcement personnel who responded on the night of the shooting discussed the details of their ensuing investigation into Jamil's killing, which culminated in the arrests of Settles and Applicant for their involvement in the crime after Applicant gave a number of differing statements. (Tr. pp. 141-153; pp. 155-163; pp. 179-183; pp. 191-221; pp. 238-291; pp. 300-314; pp. 345-358; pp. 363-378; pp. 381-401). Additionally, two of Settles's cousins indicated Settles was engaged in a sexual relationship with Applicant around the time of the killing, and, significantly, Ashanti Polk, who formerly dated Settles, recounted Settles admitted to her he was cheating on her with Applicant and had killed Jamil after "his friend" drove him to the crime scene. (Tr. pp. 331-342). Furthermore, testimony was presented establishing Applicant would have received the proceeds from Dale, Jr.'s $500,000 life insurance policy, which Dale, Jr. indicated Applicant was fully aware of, and personally renewed a $25,000 life insurance policy on Dale, Jr. several months after the two had separated. (Tr. pp. 406-411; pp. 416-418).

In addition to that testimony and evidence, Settles elected to testify for the prosecution and candidly admitted he shot and killed Jamil on the night of the crime while attempting to kill his intended target, Applicant's husband, at the request of Applicant, who was engaged in a sexual relationship with him at the time. (Tr. pp. 443-445). Regarding his motive for the shooting, Settles indicated Applicant asked him to kill her husband because she wanted insurance money and offered him $13,000 to commit the killing. (Tr. p. 445). He further stated Applicant drove him to the scene of the crime in her car, he waited for his victim to arrive home while hiding in some bushes and smoking cigarettes, and he shot and killed Jamil after Jamil walked onto the front porch of his home. (Tr. pp. 446-447). After that, he indicated they fled from the area and Applicant later informed him he killed the wrong person. (Tr. p. 447).

At the conclusion of trial, the jury convicted Applicant of both indicted offenses. (Tr. p. 526). Following the verdict, the trial judge sentenced Applicant to life imprisonment for accessory before the fact to murder along with a concurrent term of imprisonment of fifteen years for using a minor to commit a felony. (Tr. pp. 535-536).

Present Application

In her initial application for post-conviction relief, Applicant raised the following allegations:

1. "Ineffective Assistance of Counsel"
   a. "Counsel failed to properly submit proper challenges to court for consideration and to properly argue motion for directed verdict"
2. "Excessive sentence/wrongful sentence based on facts of case"
   a. "The facts of case do not support sentencing"
3. "Court failed to properly charge jury"
4. "Court's failure to grant Defendant's motion for directed verdict"

As relief, Applicant requested "resentencing/modification of sentence, release from confinement, parole eligibility."

On March 7, 2022, Applicant amended her application to allege that counsel was ineffective for the following reasons:

1. Failure to challenge trial court's opening remarks concerning "true facts";
2. Failure to object when Martha Phillips testified she initially thought the victim was her son Dale because Dale "was having a nasty divorce," as speculation by the witness;
3. Failure to object to testimony from Vickie Hallman, the State's expert in tire tread impression comparison, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions, and on the ground of relevancy because Hallman acknowledged the tire tread impression at the crime scene could have come from any car using the same tires as Applicant's car;
4. Failure to object to evidence obtained pursuant to the "knock and talk" interview conducted by Deputy Marshall and SLED Agent Collins on the ground that those officers lacked "reasonable suspicion" to approach Applicant's residence as required by *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015);
5. Failure to object to SLED Agent David Grubbs' authentication of photographs taken from two cell phones associated with the case, where Agent Grubbs had not been qualified as an expert in cell phone forensics;
6. Failure to object to testimony from SLED Agent Lily Gallman, the State's expert in DNA analysis, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions;
7. Failure to object to testimony from SLED Agent Michelle Eichenmiller, the State's expert in firearms identification, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions, and on the ground of relevancy where Eichenmiller explained testified she could not positively identify whether a gun depicted in a photograph was a .38 special or not;
8. Failure to object to testimony by SLED Agent Bo Barton on the ground that he was never qualified as an expert witness; that "criminal profiling is junk science" according to *State v. Tillman*, 433 S.C. 58, 67, 856 S.E.2d 168, 173 (Ct. App. 2021); and on the ground that he interviewed Applicant without informing her that she had a right to an appointed attorney prior to any questioning;
9. Failure to move to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of Dale Phillips, Jr.—"Who did you believe . . . that bullet was intended for[?]"—as a call for speculation;
10. Failure to move to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of the Amanda Fallaw—

"Is it common for an employee who is going through a divorce to elect the life insurance on their spouse at that time?"—as a call for speculation;

11. Failure to object to the solicitor's references to "truth," to his comment about Applicant seeking a life insurance policy on the victim, and to his reference to the "community" of Abbeville County during closing argument;
12. Failure to object to trial judge's jury instructions that used the phrase "until you reach a verdict of guilty" rather than "unless you reach a verdict of guilty," that informed the jury it must find Applicant guilty if it was "firmly convinced that the Defendant is guilty of the crime charged," that included references to "truth," and that failed to expressly mention Applicant's right to have an appointed attorney prior to any questioning.

On Augsut 13, 2024, Applicant again amended her application to allege that counsel was ineffective for "failure to call Applicant's daughter, Dayleashia Wideman, as an alibi witness."

At the evidentiary hearing, Applicant proceeded only on the allegations of ineffective assistance of counsel raised in her amended applications.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before the Court are Applicant's record from the South Carolina Department of Corrections, the transcript of Applicant's trial, the record from the Abbeville County Clerk of Court regarding the subject convictions, Applicant's appellate record, and the record of the present PCR action. This Court has considered the evidence presented, the record and any legal argument by counsel. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel, Generally

In a PCR action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-

pronged test outlined in *Strickland*. First, Applicant must prove that Counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons Counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, Applicant must prove that Counsel's deficient performance prejudiced her such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783,

858 (4th Cir. 2011)).

The evidence establishing Applicant's guilt in this case is overwhelming. Tavarious Settles testified at length that he killed the victim following Applicant's instructions to murder her husband and share in the proceeds from his life insurance policy. Settles claimed Applicant drove him to the scene of the crime in her car, and Settles remained in the car smoking cigarettes and waiting for his target to arrive. Settles' testimony was corroborated by the fact his DNA was discovered on cigarette butts found at the scene of the crime, a car that looked like Applicant's car was seen leaving the area shortly after the shots were fired, tire marks left in the mud near the spot where the cigarette butts were found matched the tread pattern on Applicant's car, and police observed fresh mud on the wheels of Applicant's car when they went to her house shortly after the shooting. In addition, Applicant was going through a contentious divorce at the time, and she was the beneficiary of two life insurance policies on her estranged husband. Finally, Applicant gave a series of starkly inconsistent statements during the investigation and, at one point, admitted that she asked Settles to attack her husband, although she claimed she did not want her husband killed. To prove prejudice, Applicant must show a reasonable likelihood—one that is "substantial, not just conceivable"—that the outcome of her trial would have been different but for Counsel's alleged errors. *Harrington*, 562 U.S. at 112. Accordingly, any purported prejudice resulting from Counsel's allegedly deficient performance must be considered in light of the considerable evidence of guilt in this case.

The Court also notes the record of this case indicates that Counsel was attentive and engaged throughout the trial, interposing numerous objections, introducing numerous exhibits, extensively cross-examining the State's witnesses, raising various legal issues before the trial court, and vigorously arguing the case before the jury. This record reflects that Counsel put up an effortful, thorough, and professional defense in the face of an extremely challenging case. The Court must now consider all the individual allegations of ineffective assistance raised by Applicant. However, in doing so, the Court stresses that the Sixth Amendment "guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6. The Court will not lightly conclude that isolated errors or omissions will suffice to render Counsel's otherwise conscientious performance constitutionally inadequate.

1. Trial court's references to "true facts"

Applicant claims Counsel was ineffective for failing to object when the trial court explained the role of the jury in determining the "true facts" of the case. This allegation is meritless.

The trial court's challenged comments were all made in the context of the jury's role as the trier of fact in this case and its prerogative to evaluate witness credibility. At the time of Respondent's trial, controlling Supreme Court precedent held that such statements were not error in that context. *State v. Aleksey*, 343 S.C. 20, 27–29, 538 S.E.2d 248, 251–53 (2000) ("There is not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt. The trial court's instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses.").

Applicant claims the trial court's comments were improper under the holding of *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018). In that decision, the Supreme Court held "a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict." *Id.* at 34, 813 S.E.2d at 506. However, the Court acknowledged that the general sessions benchbook promulgated by the Court to all circuit judges contained language virtually identical to the disapproved language used in the lower court. *Id.* at 34 n.2, 813 S.E.2d at 506 n.2. Although it held the trial court's use of "seek the truth" language was improper, the Court in *Beaty* ultimately held the error did not merit reversal. *Id.* at 34, 813 S.E.2d at 506.

The trial in this case occurred in 2015, many years before *Beaty* was decided. Counsel could not have known that, years afterward, a change in the law would render the trial court's instructions objectionable. This Court cannot find Counsel was ineffective for failing to object to comments that, under the law existing at the time, were perfectly proper. *Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016); *see Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law. . . ." (citing *Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999).

In addition, "jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." *Aleksey*, 343 S.C. at 27, 538 S.E.2d at 251. The transcript reflects that the trial court's jury instructions as a whole adequately and correctly conveyed the State's burden of proof, the presumption of innocence, and the reasonable doubt standard to the jury. Applicant has not met her burden of proving that the trial court's isolated references to "truth" were likely to mislead the jury, where the jury instructions as a whole were free from error.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

2. "Speculation" concerning Dale Phillips, Jr.'s divorce

Applicant claims Counsel was ineffective for failing to object when Martha Phillips, the victim's mother, testified that when she first found the victim's body on her front porch, she initially believed it was the body of her other son, Dale Phillips, Jr. Martha Phillips testified she jumped to that conclusion because Dale was going through "a nasty divorce." Applicant argues this testimony was "rank speculation" because "the fact that Dale was involved in nasty divorce proceedings in no way should have led this witness to conclude that the body on her front porch was Dale's."

The Court is unable to perceive any prejudice from the mere fact that Martha Phillips briefly "speculated" that the body belonged to Dale Phillips, Jr. Martha Phillips acknowledged that her initial conclusion was mistaken, and the fact that body on the front porch actually belonged to the victim was undisputed at trial. The fact that Applicant and Dale Phillips, Jr., were going through a contentious divorce at the time was also uncontested at trial, and Martha Phillips' testimony on that point was merely cumulative to substantial other testimony in the record and could not reasonably have impacted the outcome of the trial.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is

no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

3. Vickie Hallman's testimony

Applicant claims Counsel failed to object to Vickie Hallman's expert testimony because the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in eliciting her expert opinion that the tire tread impression found at the scene of the murder was consistent with the tread pattern found on the tires of Applicant's car. This allegation is meritless.

Applicant has cited no authority for her oft-repeated claim that expert testimony is improper unless couched in language reflecting "a reasonable degree of certainty." However, Applicant appears to be relying on the rule that medical experts, testifying in civil court on the issue of proximate cause in negligence cases, must ordinarily express their conclusions "to a reasonable degree of medical certainty." *See Armstrong v. Weiland*, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976) ("[W]hen the opinions of medical experts are relied upon to establish causal connection of negligence to injury, the proper test to be applied is that the expert must, with reasonable certainty, state that in his professional opinion the injuries complained of most probably resulted from the alleged negligence of the defendant."). However, this rule does not apply to expert testimony in other contexts. *See id.* ("When the testimony of an expert witness is not relied upon to establish proximate cause, it is sufficient for plaintiff to put forth some evidence which rises above mere speculation or conjecture."); *see also State v. Rowland*, 444 S.C. 84, 101–04, 905 S.E.2d 825, 834–35 (Ct. App. 2024) (holding trial court did not err in admitting handwriting expert's opinion that it was "probable" defendant wrote the challenged document; such testimony met the threshold for reliability and sufficed to merit consideration by the jury).

Moreover, "there is nothing magical about the phrase, 'to a reasonable degree of scientific certainty.' It is not derived from the language of Rule 702 itself, and this Court has been unable to find any authority to support the position that questions regarding the expert's 'degree of scientific certainty' categorically renders expert testimony inadmissible." *United States v. Mornan*, 413 F.3d 372, 381 (3d Cir. 2005). In the case of *United States v. Cyphers*, 553 F.2d 1064, (7th Cir. 1977), the defendants argued:

> that the district court erred in admitting opinion testimony of a government witness that hairs recovered from articles used by the robbers were "microscopically like" hair samples taken from the defendants. According to the witness, "microscopically like" means that the hairs found on the items used in the robbery definitely "could have come" from the defendants, but that there was an insufficient basis for saying that the hairs did come from the defendants.
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> . . .
>
> [D]efendants argue that the testimony was inadmissible because it was not "to a reasonable scientific certainty. As we understand their rather opaque argument, defendants appear to be saying that an expert's opinion testimony must be expressed in terms of a reasonable scientific certainty in order to be admissible. There is no such requirement. . . . We adhere to the rule that an expert's lack of absolute certainty goes to the weight of his testimony, not to its admissibility.

Id. at 1071–73; *see also United States v. Longfellow*, 406 F.2d 415, 416 (4th Cir. 1969) ("A government witness testified that the paint on one stolen vehicle had similar characteristics to paint seized under the search warrant. We reject as absurd the defendant's contention that such expert testimony cannot be received in evidence because lacking scientific certainty that the paint on the car was in fact the same paint seized under the warrant.").

Applicant also argues Hallman's testimony that the tire tread impression "could have been" caused by Applicant's tires was not probative and, therefore, not relevant. This argument is also meritless. Hallman was able to narrow the range of cars that could have left the tell-tale tire marks at the crime scene from the vast universe of all possible cars to a specific, identifiable group of cars: those with a certain tire tread pattern. That identifiable group included Applicant's car. This testimony may not have been damning by itself, but it was at least probative of Applicant's involvement in the murder.

There was, therefore, no proper ground for objecting to Hallman's testimony, and Applicant has not met her burden of proving either deficiency or prejudice as to this allegation. Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

4. Constitutional right to privacy

Applicant claims Counsel failed to move to suppress the evidence obtained following the "knock and talk" procedure used by Deputy Marshall and Agent Collins. Applicant contends the evidence was inadmissible because, by walking up to her front door and knocking on it, Deputy Marshall and Agent Collins violated her constitutional right to privacy. This argument is meritless.

Applicant claims the officers involved did not have "reasonable suspicion" to target her residence, as required by *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015). However, Applicant herself acknowledges that she was a "person of interest," that her name was provided to Deputy Marshall, that multiple people described seeing a silver or light-colored car leaving the crime scene, that Applicant's silver car was visibly parked in front of her residence, and that Agent Collins noticed fresh mud on the wheels, and that Collins knew Applicant and Dale Phillips, Jr., were getting a divorce.

Counts held that, under the right to privacy guaranteed by S.C. Const. art. I, § 10, "law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door." *Counts* then found the "reasonable suspicion" standard had been satisfied, under the facts of that case, because the officers received two anonymous tips of Counts' drug use and corroborated some details of those tips before approaching his residence. The *Counts* Court found, based on this evidence, that the officers had not "randomly" targeted Counts' residence but had reasonable suspicion to support the knock and talk. *Counts*, 413 S.C. at 173, 776 S.E.2d at 70.

Here, it is likewise clear that officers did not approach Applicant's residence "randomly" or "indiscriminately," but did so based on substantial evidence specifically connecting Applicant to the murder. That evidence certainly met the threshold for "reasonable suspicion"; therefore, law enforcement did not unreasonably invade Applicant's privacy by going up to her front door and knocking on it. There was, accordingly, no ground on which Counsel could have challenged the resulting evidence.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

5. Authentication of cell phone photographs

Applicant claims Counsel was ineffective for failing to object to the authentication of certain photographs through SLED Agent David Grubbs on the ground Grubbs had not been qualified as an expert in cell phone forensics. However, Grubbs merely testified that State's exhibits 38, 39, 40, and 41 were true and accurate copies of the photographs he had extracted from the cell phones. This constituted testimony of a witness with knowledge, which is sufficient to authenticate evidence pursuant to Rule 901(b)(1), SCRE. No technical or specialized opinion testimony was called for, nor did Grubbs offer any. Therefore, the Court finds there was no valid objection to be made.

Regardless, the authenticity of the cell phone photographs was never disputed. Even if it had been, authentication is a low bar, which was easily met here. *See, e.g.*, *State v. Benton*, 435 S.C. 250, 262, 865 S.E.2d 919, 925 (Ct. App. 2021) (the burden to authenticate evidence is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic).

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

6. Lily Gallman's testimony

Applicant claims Counsel failed to object to Lily Gallman's expert testimony because the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in eliciting her expert opinion regarding DNA analysis. This allegation rests on the same incorrect legal premise as the allegation concerning Vickie Hallman's testimony discussed above. Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

7. Michelle Eichenmiller's testimony

Applicant claims Counsel failed to object to Michelle Eichenmiller's expert testimony because the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in eliciting her expert opinion regarding identification of the firearms depicted in State's exhibits 39, 40, and 41. This allegation rests on the same incorrect legal premise as the allegations concerning testimony of Vickie Hallman and Lily Gallman discussed above.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

8. Bo Barton's testimony

Applicant claims Counsel was ineffective for failing to object to testimony by SLED Agent Bo Barton on the ground that he was permitted to testify as to his credentials as a trained criminal profiler and head of SLED's behavioral science unit but was never qualified as an expert witness. Applicant claims *State v. Tillman*, 433 S.C. 58, 67, 856 S.E.2d 168, 173 (Ct. App. 2021), stands for the proposition that "criminal profiling is junk science." This proposition is not supported by the portion of *Tillman* cited by Applicant or by any other language in that opinion. Regardless, Applicant has failed to prove either deficiency or prejudice on this ground. The transcript reveals that Agent Barton never offered any opinion testimony; rather, his testimony was limited to the circumstances of his December 20, 2013, interview with Applicant and of Applicant's two subsequent written statements. Therefore, qualified or not, there was no improper expert testimony to which Counsel could have objected.

Applicant also claims Counsel should have objected to the introduction of Applicant's written statements on the ground Agent Barton did not properly read Applicant her *Miranda* rights.[6] However, Applicant acknowledges that Agent Barton explained the following rights to Applicant prior to the

[6] *Miranda v. Arizona*, 384 U.S. 436 (1966).

interview:

> She has a right to remain silent. Anything she can—anything she says can and will be used against her in a court of law. She has a right to an attorney. If she cannot afford an attorney, one will be appointed to represent her, if she wished. She could stop answering any questions at any time until she's retained an attorney.

(Tr. p.388, lines 17–22). Agent Barton's testimony reflects that he adequately explained the *Miranda* rights to Applicant before taking her interview.

Even if there had been some hyper-technical defect in Agent Barton's recitation of the *Miranda* rights, Applicant had already been read her *Miranda* rights multiple times before she was interviewed by Agent Barton. Agent Barton interviewed Applicant on the 20th of December, 2013; both Deputy Marshall and Sergeant Talbert testified that Applicant was read her *Miranda* rights on the 18th and the 19th as well. Taking all these facts into consideration, there is no reasonable likelihood that Applicant's interview with Agent Barton or her subsequent written statements would have been deemed inadmissible, had Counsel objected.

In addition, Applicant acknowledges that Counsel *did* demand a *Jackson v. Denno* hearing[7] on the ground that Applicant's statements were taken in violation of *Miranda*, and the trial court ruled that law enforcement complied with *Miranda*. (Tr.pp.38–39).

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

Counsel's objection to "speculation" by Dale Phillips, Jr.

Applicant claims Counsel was ineffective for failing to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of Dale Phillips, Jr., regarding who he believed the bullet was actually intended for. This allegation is

[7] *Jackson v. Denno*, 378 U.S. 368 (1964).

without merit. Counsel clearly interposed a timely objection to the question, and the court sustained the objection before the witness was able to answer. Therefore, there was no testimony to strike, no reason for the court to give a curative instruction, and no ground for seeking a mistrial.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

9. Counsel's objection to "speculation" by Amanda Fallaw

Applicant claims Counsel was ineffective for failing to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of Amanda Fallaw regarding whether it was common for employees going through divorce to seek life insurance for their spouses. This allegation is without merit. Counsel clearly interposed a timely objection to the question, and the court sustained the objection before the witness was able to answer. Therefore, there was no testimony to strike, no reason for the court to give a curative instruction, and no ground for seeking a mistrial.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

10. Closing arguments by Solicitor

Applicant claims Counsel was ineffective for failing to object to the solicitor's references to "truth" during his closing argument. Applicant complains that "the jury's duty isn't to determine the truth," but to decide "whether the State has proved the allegations contained in the indictments beyond a reasonable doubt." This argument is meritless. Immediately after using the phrase "seek the truth," the solicitor expressly acknowledges the reasonable doubt standard in the very next sentence. (Tr. p.478, lines 3–8). Mere isolated uses of the word "truth" do not, by themselves, imply that Applicant should not enjoy the

presumption of innocence, that the State does not bear the burden of proof, or that the jury should apply any standard less stringent than reasonable doubt. Counsel need not reflexively object to every mention of "truth," as though the very concept of truth should be excluded from the jurors' deliberations. In a criminal trial, the jury is the finder of fact and the arbiter of credibility; to exercise those roles appropriately, the jury must consider whether a given evidentiary fact is true, or whether a given witness is telling the truth. These duties are not inconsistent with the jury's ultimate responsibility to determine whether the State has proven guilt beyond a reasonable doubt. The Court finds Counsel was not ineffective for failing to object to isolated references to "truth" in the solicitor's closing argument.

Applicant also claims the solicitor misrepresented the evidence in stating that Applicant had requested a life insurance policy on her husband after she initiated the divorce. The Court finds the solicitor did not misrepresent the evidence. During the trial, the solicitor elicited from Amanda Fallaw, human resources manager at Applicant's workplace, Wesley Commons, that in September of 2012, Applicant had elected a $25,000 life insurance policy on her husband covering the period of October 1st, 2012 – September 30th, 2013. (Tr.pp.413–16). On cross-examination, Counsel elicited from Fallaw that Applicant had made the same election for several preceding years. (Tr.p.417–18). The mere fact that Applicant had made the same election in past years, however, did not rebut the solicitor's claim. The evidence supported the solicitor's claim that Applicant had requested a life insurance policy on her husband after initiating a divorce. The solicitor was entitled to comment on this fact in his closing argument and to argue the implication that Applicant sought to profit from her husband's death. Although Applicant's previous pattern of electing the same kind of coverage in prior years weakens that inference, the solicitor was within his rights, in closing argument, to portray the evidence in the light most favorable to the State. The comment did not misstate the evidence and was not objectionable.

Finally, Applicant claims Counsel should have objected to the solicitor's reference to the jury as the "consciousness of this community in Abbeville County." Applicant complains that a prosecutor should not urge the jury to convict a defendant merely "to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted

for reasons wholly irrelevant to his own guilt or innocence."

Although Applicant cites no authority for this proposition, the language is taken verbatim from *United States v. Monaghan*, 741 F.2d 1434, 1441 (D.C. Cir. 1984). In that case, however, the appellate court held there was no error in the prosecutor's comment urging the jury to issue "a public condemnation of Mr. Monaghan for his behavior with respect to Todd Bart by finding him guilty in a public forum by citizens of his own community of guilt beyond a reasonable doubt on each of the five charges." *Id.* The court held this comment "clearly lay within the range of advocacy permitted to the prosecutor." *Id.*

South Carolina likewise recognizes that appeals to the needs of the community do not, in and of themselves, overstep the legitimate bounds of prosecutorial argument:

> So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he conceives it to be their duty to return under the evidence, and may employ any legitimate means of impressing on them their true responsibility in this respect, as by stating that a failure to enforce the law begets lawlessness. Thus, he may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of, the law; he has the right to dwell on the evil results of crime and to urge a fearless administration of the criminal law; and he may ask for a conviction, or assert the jury's duty to convict. He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.

State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975).

The solicitor's brief, isolated reference to the "community in Abbeville County" was plainly within the scope of such legitimate subjects of comment. It was not an attempt to play on the passions and prejudices of the jury. Nor would it have induced any reasonable jury to disregard the State's burden of proof beyond a reasonable doubt, which the solicitor repeatedly articulated in his closing argument. The overall thrust of the solicitor's argument was properly based on the considerable evidence of Applicant's guilt.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is

no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

11. Trial court's jury instructions

Applicant claims Counsel should have objected when the trial court instructed the jury that "the presumption of innocence does not end . . . until you reach a verdict of guilty based upon evidence satisfying you of that guilt beyond a reasonable doubt." Applicant complains that the trial court erred in using the word "until" rather than "unless." The Court finds this allegation is without merit. There is simply no reasonable probability that the jury somehow inferred, from the subtle sematic difference between "until" and "unless," that the trial court expected the jury to convict Applicant, notwithstanding the trial court's lengthy discussion of the presumption of innocence, the State's burden of proof, and the reasonable doubt standard. The trial court's instructions as a whole clearly conveyed the correct law to the jury.

Next, Applicant claims Counsel should have objected when the trial court instructed the jury that, if it was "firmly convinced that the defendant is guilty of the crime charged," it "must find her guilty." Applicant claims, citing no authority, that this is an incorrect statement of law, because "a jury can acquit for any reason."

Applicant appears to be referring to the "popular myth" of the right to jury nullification—the idea "that the jury has a right to acquit a criminal defendant on bad as well as good grounds." *United States v. Kerley*, 838 F.2d 932, 937 (7th Cir. 1988). However, there is no such "right"; rather, as a practical matter, the jury "has the *power* to acquit on bad grounds, because the government is not allowed to appeal from an acquittal by a jury. But jury nullification is just a power, not also a right." *Id.* at 937–38. Notwithstanding the *power* of the jury to bring in a verdict of acquittal in defiance of the law and the facts, the *duty* of the jury "is to apply the law as interpreted and instructed by the court." *United States v. Trujillo*, 714 F.2d 102, 105 (11th Cir. 1983). There is no error in the trial court's instruction to the jury to do its duty.

Applicant also claims Counsel should have objected to the trial court's use of "truth" language in its jury instructions. This allegation rests on the same faulty premise as the allegation concerning the trial court's mention of "true facts" in its opening remarks to the jury. This claim is meritless for the reasons

already discussed in the Court's response to that allegation.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

12. Failure to call alibi witness

Applicant claims Counsel failed to call her daughter, Dayleashia Wideman, as an alibi witness. Applicant testified at the PCR hearing that Wideman could have corroborated Applicant's statement that her apartment had been burglarized and that Applicant thought her husband was responsible. However, Wideman did not testify at the PCR hearing. Therefore, Applicant has failed to meet her burden of proof as to this allegation. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing). In addition, the mere fact that Applicant blamed her husband for breaking into her apartment is not inconsistent with Applicant's guilt. If anything, it would have been further proof of the bad blood between Applicant and her husband.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violation or deprivation that would entitle her to post-conviction relief.

The **APPLICATION** for post-conviction relief should be and **IS** therefore **DENIED** and **DISMISSED** with prejudice and Applicant remanded to custody for service of the sentence imposed.

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30)

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

AND IT IS SO ORDERED this 4th day of June, 2025.

J. DERHAM COLE, Presiding Judge
The Eighth Judicial Circuit Court

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ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

Karlita Desean Phillips, # 364809
Plaintiff,

v.

) CERTIFICATE OF SERVICE BY MAIL
2018- CP -01 -00-059

State of South Carolina
Respondent,)

The undersigned, an employee of the Office of the Clerk of Court for Abbeville County, hereby certifies that this certificate of service, and clocked Order of Dismissal was made upon the following by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 12th day of June, 2025.

Asst. Attorney General
Post Conviction Relief
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Tra Tanus Agnew

Tra Tanus Agnew, Common Pleas Clerk