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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2016-CP-33-00802

Blaton W. Smith, #329045, ... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Blaton W. Smith, appeals the order of the Honorable George M. McFaddin, Jr., filed on or about June 23, 2025, and received by the undersigned on August 8, 2025.

August 10, 2025

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STATE OF SOUTH CAROLINA COUNTY OF MARION	)	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Blaton W. Smith, SCDC #329045, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2016-CP-33-0802 **ORDER OF DISMISSAL WITH PREJUDICE**

This matter comes before the Court by way of Applicant Blaton W. Smith's application for post-conviction relief (PCR) filed on December 12, 2016.[1] Respondent filed its Return and Motion for a More Definite Statement requesting an evidentiary hearing. On December 12, 2022, an evidentiary hearing was held at the Florence County Courthouse before the Honorable George M. McFadden, Jr. Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant proceeded on the allegations in his third amended application. In support, Applicant testified on his behalf and presented the testimony of co-defendant Jamie Williams. Applicant attempted to also call as witnesses Rachel Williams and Diamond Brown, but they were not present in the courtroom during the hearing. Respondent presented the testimony of Joshua A. Bailey, Esquire. (Trial Counsel). Following a thorough review of the record, along with testimony and evidence presented at the hearing, this Court finds Applicant has failed to prove any ground and, accordingly, denies and dismisses this action with prejudice.

[1] Applicant filed amended applications on December 4, 2018, August 31, 2021, and June 27, 2022.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In February 2013, the Marion County Grand Jury indicted Applicant for murder, discharging a firearm into a dwelling, possession of a weapon during the commission of a violent crime, and four counts of attempted murder (2013-GS-33-0097). On August 6-8, 2014, Applicant proceeded to a jury trial before the Honorable D. Craig Brown. Applicant was represented by Joshua A. Bailey, Esquire (Trial Counsel). Solicitor Edgar (Ed) L. Clements, III, prosecuted the case. Applicant was found guilty as indicted for murder, possession of a weapon during the commission of a violent crime, and all four counts of attempted murder. Applicant was found not guilty of discharging a firearm into a dwelling. Judge Brown sentenced the Applicant to consecutive sentences of life without parole for murder, thirty years for each count of attempted murder, and five years for the weapon charge.

Applicant filed a timely Notice of Appeal, which was perfected by Deputy Chief Appellate Defender David Alexander, by briefing the following issue:

> Where a witness told a psychiatrist that he smoked marijuana immediately before giving police a statement implicating the defendant, whether the trial judge erred when he refused to allow the defense to cross-examine the witness with his statements that he suffered from delusions when he smoked marijuana?

Following briefing, the South Carolina Court of Appeals affirmed, finding the issue unpreserved. State v. Smith, Op. No. 2016-UP-323 (S.C. Ct. App. filed June 22, 2016). The Remittitur was sent on July 8, 2016.

FACTS GIVING RISE TO THE CONVICTION

On the night of April 12, 2012, Gavin Graves (the victim), Derrick Wilson, Christopher Kollock, and Darrell Davis were hanging out at Grave's home. (Tr. 359). A little after midnight

they thought they heard a knock at the back door. (Tr. 362, 368, 432, 435) Davis got up to check, but there was no one there. (Tr. 368).

About three minutes later, a number of bullets were fired into the home from outside. (Tr. 368 - 369). According to Graves, "[i]t was like a rain of bullets, like ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping. Like—it was like it wouldn't never stop." (Tr. 369). Wilson testified "it sounded like at least 20—25" gunshots, but there might have been more. (Tr. p. 438). Victim was hit in the gunfire. (Tr. 369, 370, 439, 440).

The police were unable to recover any physical evidence that pointed to any suspects. Wilson had prior problems with Adrian Smith ("Adrian"), Applicant's cousin, and he told police about that. (Tr. 447). However, he told police that Victim had never had any problems with "the Smith boys" or anybody that Wilson knew of. (Tr. 446 – 447). Detectives followed up on those leads. (Tr. 224, 231). Applicant's mother took him to Marion County for an interview with police, but Applicant was uncooperative. (Tr. 228).

Through their investigation, Detectives learned that a man named Willie Bethea[2] may have been involved in the shooting. (Tr. 227). Bethea met with police and admitted his involvement in the shooting. (Tr. 228, 230). As a result of their conversation with Bethea, the police arrested Applicant, Shaheed Hayes, Bethea, and Jamie Williams.[3] (Tr. 229).

At trial, both Williams and Bethea testified about the shooting. Williams testified that Applicant, Hayes, and Bethea picked him up from his home; Applicant was driving Adrian's car, Bethea sat in the front passenger seat, Hayes sat in the back seat on the passenger's side, and Williams sat behind the driver (Tr. 472, 474). According to Williams, they drove past a home and

[2] Also called "Boo Boo." (Tr. 531).
[3] Also known as "Lil Boosie." (Tr. 230, 468, 469).

Hayes saw Wilson's SUV parked out back. (Tr. 474). Applicant turned around and slowly drove back by the home while Hayes and Williams shot at the house. (Tr. 477, 480). Williams testified that Applicant told him to shoot. (Tr. 480). Hayes shot directly out of the rear, passenger window, while Williams hung out of the car and shot over the top of the car. (Tr. 479). Williams testified he only shot three to five bullets before he "froze up", but Hayes emptied a clip into the home. (Tr. 479 - 480). They then drove back to Latta where Applicant stopped at a house and took the guns inside. (Tr. 480, 482). After that, they dropped Williams off back at his house. (Tr. 482 – 483).

Two days after the shooting, Williams received a call from Applicant, who told him someone had died and warned him that he better not say anything. (Tr. 483). Williams went to Adrian's house later that day. (Tr. 483). Williams testified "they were kind of mad that they hit the wrong person." (Tr. 483). According to Williams, "Eyebrows" was the person who they intended to hit—"they wanted him dead." (Tr. 484, 489). Williams did not know Wilson. (Tr. 490). Williams testified he was scared of Adrian because although Adrian is a paraplegic,"[h]e got people too." (Tr. 484 – 485). Williams testified that when he first spoke with police, he lied and said that Applicant and Hayes were the shooters, but he later admitted he was one of the shooters and that Applicant was driving the car. (Tr. 485).

Bethea's testimony regarding the shooting was largely consistent with Williams'. Bethea testified that he and Applicant were cousins. (Tr. 531). He also identified Hayes as "[o]ne of my people from Latta." (Tr. 532). Bethea testified that he and Applicant were together all day on April 12, 2012, and they picked up Williams and Hayes later that evening. (Tr. 535 – 536, 538). Bethea believed they were going to a club; when they passed that club, he assumed they were headed to a different club. (Tr. 540). Applicant, who was driving, stopped in front of a trailer that Bethea identified as "Eyebrows' trailer." (Tr. 540 – 541). Applicant said: "This is the house right here.

That's the car in the back." (Tr. 541). Hayes and Williams then started shooting. (Tr. 543 – 547). After they finished, Hayes said he hoped he hit somebody in the house. (Tr. p. 547). They then drove back to Latta, and Applicant dropped the guns off at "Karen['s] house." (Tr. 547).

According to Bethea, afterwards, "[w]e just said don't say nothing about it and just keep your mouth closed." (Tr. 550 – 551). Applicant later told Bethea, "keep your cool" and advised him not to say anything about what had happened. (Tr. 552 – 553). Bethea testified it was Wilson who was the intended target because Wilson and Applicant had "bad blood". (Tr. 554). Bethea left town because he was "worried something crazy was going to happen. That somebody was going to get shot or something." (Tr.554). When asked if he left town because he was worried about Hayes or Applicant, Bethea responded, "They just told me—they kept calling me, like, don't say nothing or we're going to do something to you." (Tr. 555). Nevertheless, Bethea eventually turned himself in. (Tr. 558 – 559). After the police spoke with Bethea, they arrested him. (Tr. 559).

CURRENT ACTION

On December 12, 2016, Applicant timely filed an application for post-conviction relief alleging:

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel

Applicant requested his conviction be reversed and remanded.

On December 4, 2018, Applicant filed an amended application alleging:

> 1. After discovered evidence: Applicant's co-defendant Jamie Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.

On August 31, 2021, Applicant filed a second amended application alleging:

1. After discovered Evidence: Applicant's co-defendant, Jamie Williams, who testified against Applicant has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.

2. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.

3. Counsel was ineffective for failing to object to the incorrect instruction of the law to the jury; specifically with regards to the instructions for the charge of Attempted Murder.

4. Counsel was ineffective for failing to move for a directed verdict with respect to the charge of Possession of a Weapon during the Commission of a Violent Crime.

On June 27, 2022, Applicant filed a third amended application alleging:

1. Applicant's co-defendant Jamie Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.

2. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.

3. Counsel was ineffective for failing to properly object to impermissible testimony and argument during the course of Applicant's trial, allowing the jury to hear impermissible testimony and thus failing to preserve the issues for direct appeal

4. Counsel was ineffective for failing to object to the incorrect instruction on the law to the jury; specifically with regards to the instructions for the charge of Attempted Murder.

5. Counsel was ineffective for failing to object to improper vouching testimony during the testimony of Investigator Charlie Watson.

6. Counsel was ineffective for failing to move for a directed verdict

with respect to the charge of Possession of a Weapon During the Commission of a Violent Crime.

2025 JUN 23 P 2:37

7. Counsel was ineffective for failing to object to, and/or move for a mistrial, due to two jurors sleeping during various portions of the trial.

At the PCR hearing, Applicant proceeded forward on the allegations of the third amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Marion County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are the Court's findings of fact and conclusions of law as required by S.C. Code §17-27-80.

Newly Discovered Evidence

Applicant alleges that his co-defendant, Jamie Williams, gave a statement that he provided false testimony during Applicant's trial, which he contends constitutes newly discovered evidence. Applicant has not proved this ground.

A person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code §17-27-20(A)(4). To prevail, Applicant must show the newly-discovered evidence:

1. is such as would probably change the result if a new trial was had;

2. has been discovered since the trial;
3. could not by the exercise of due diligence have been discovered before the trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011). "Where a motion for a new trial is based on recantation of testimony given at the trial, such recantation is looked upon with utmost suspicion." United States v. Johnson, 487 F.2d 1278, 1279 (4th Cir. 1973) (internal quotation omitted). "Where the circumstances surrounding the recantation suggest it is the result of coercion, bribery, or misdealing, the court . . . is justified in disregarding it." Id.

In his application, Applicant submitted an affidavit from co-defendant Jamie Williams, which stated: "I gave a false testimony at the trial" and "Shaheed Hayes and Blaton Wakeem Smith did not have anything to do with the crime accused and committed for this trial." (Applicant's Exhibit 1). At the PCR hearing, Jamie Williams testified to the opposite of what was in his affidavit. (PCR Tr. 14). Specifically, Williams testified he told the truth at trial and Applicant was the driver of the car. This Court finds this evidence fails to meet the first prong of the Hayden test and would not have *any* impact on the result if there was a new trial. Thus, Applicant did not meet his burden, and this claim is denied.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117,

386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to received relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 117-18, 386 S.E.2d at 625.

Failed to Investigate

Applicant alleged Trial Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant. Applicant did not prove this ground.

At the PCR hearing, Applicant testified Trial Counsel met with him and reviewed the discovery and told him there were two witnesses against him. (PCR p.34, lines 8-9). Applicant testified he told Trial Counsel about an alibi defense, but they concluded that it would not be a good idea to present. Applicant testified Trial Counsel told him that he was going to try and impeach and discredit the witnesses. (Id. at lines 17-22.) On cross examination. Applicant testified that after his conversation with Trial Counsel, he believed the alibi defense was not his strongest defense. (PCR p.41, lines 5-20). He recalled that Williams was cross-examined about prior inconsistent statements, so the jury had that information. (PCR p.42, lines 19-24).

Trial Counsel could not recall anything specific that Applicant asked him to investigate, and there was not a whole lot of evidence to investigate. (PCR p.29). Trial Counsel testified that Applicant's position throughout his representation was he was not involved and was not there. Trial

Counsel testified that there was no actual physical evidence linking Applicant to the shooting.

This Court finds Trial Counsel's foregoing testimony credible. Further, this Court finds Trial Counsel's investigation was reasonable under prevailing professional norms and not deficient. Critically, Applicant failed to produce evidence of what Trial Counsel may have discovered upon further investigation and thus failed to prove prejudice. *See* Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial; Moorehead v. State, 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). Based on the foregoing, this allegation is denied and dismissed.

Failing to Object – Impermissible Testimony and Argument

Applicant alleged Trial Counsel was ineffective for failing to object to impermissible testimony and argument during trial, thereby failing to preserve the issues for direct appeal. Applicant did not prove this ground.

When questioned at the PCR hearing about whether there was a strategy behind not objecting when the solicitor told the jury that Investigator Watson testified about Mr. Bethea's cooperation, Trial Counsel testified that he probably should have objected. (PCR p.27, lines 3-7). However, the only reference to Investigator Watson in the closing argument was: "Now Charlie Watson came to start off the next day. He testified about the investigation and what it led to and how they followed it up, what they found, who they talked to and what charges were made." (Tr. 631). At no point in the solicitor's closing argument did the solicitor tell the jury that Investigator Watson testified about Bethea's cooperation. Applicant did not point to any other testimony that

counsel should have objected to that would have possibly changed the outcome of his trial or his direct appeal, and thus failed to meet his burden of proving deficiency or prejudice. Therefore, this claim is denied.

2025 JUN 23 P 2:37

Failed to Object – Jury Charge

Applicant alleged counsel was constitutionally ineffective to object to the jury instruction in regard to Attempted Murder. Applicant did not prove this ground.

At the PCR hearing, Applicant testified that counsel should have objected when the judge instructed the jury that specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. (PCR p.39, lines 10-20). Trial Counsel testified that he did not believe he objected to the jury instructions. (PCR p.27, lines 10-20). This Court finds that the instruction on the law to the jury was correct at the time of trial, and therefore Trial Counsel was not deficient for not objecting. Although, the South Carolina Supreme Court later determined attempted murder required proof that the defendant had specific intent to kill, this case was decided after Applicant's 2014 trial. *See* State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) (Attempted murder required proof that defendant had specific intent to kill). Trial Counsel is not expected to anticipate the changes in the law. *See* Thornes v. State, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.") Thus, Applicant did not prove counsel was deficient.

Additionally, Applicant's reliance on State v. Sutton,[4] is misplaced. In Sutton, the South Carolina Supreme Court stated that *common-law* attempted murder requires specific intent. Applicant correctly testified that he was charged under the attempted murder statute and not the

[4] State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000).

common law offense. Therefore, Sutton is inapplicable. Based on the foregoing, this claim is denied.

2025 JUN 23 P 2:37

Failed to Object - Vouching

Applicant alleged Trial Counsel was ineffective for failing to object to improper vouching by Investigator Charlie Watson. Applicant did not prove this ground.

At trial, the following occurred on direct examination of Investigator Charlie Watson:

> Q: Okay. When you talked to Willie Bethea, can you describe for us what was his demeanor and how did he act?
>
> A: Mr. Willie Bethea was very cooperative. Out of all the co-defendants involved in this, he was probably the only person that I can give an honest opinion of 18 years of law enforcement to be sincere and apologetic and remorseful for what happened.

(Tr. 230).

At the PCR hearing, Trial Counsel did not recall if there was any trial strategy to not objecting to this testimony. Trial Counsel testified there probably should have been an objection. Trial Counsel did not know what his objection would have been. (PCR p.26, lines 15-25).

This Court finds Trial Counsel was not deficient for not objecting to this answer. The question was framed to Investigator Watson as to what Bethea's demeanor was and how he acted. Investigator Watson made no comments on the credibility or truthfulness of Bethea's testimony in his answer. From context, Investigator Watson was describing Bethea's emotional demeanor. He was not offering an opinion on the credibility of Bethea's testimony. Stating that Bethea was cooperative, sincere, apologetic and remorseful for what happened does not rise to the definition of improper vouching. *Contra* Chappell v. State, 429 S.C. 68, 75, 837 S.E.2d 496, 499 (Ct. App. 2019) (State's forensic interviewer improperly vouched for and bolstered the victim's credibility by testifying, "Children don't often life about sexual abuse incidents."). Thus, Trial Counsel was

not deficient for not objecting.

Further, Applicant has failed to prove any prejudice from Investigator Watson's single statement. This Court finds the outcome of Applicant's trial did not hinge on this one-off statement nor would the outcome of the trial have been different had this statement from the investigator had not been made at all. Additionally, Bethea was thoroughly cross-examined on his inconsistent statements made to law enforcement—thereby highlighting to the jury that Bethea's credibility was questionable and diluting Investigator Watson's single statement. Furthermore, this single instance was not so crucial as to undermine the results of the proceedings. Based on the foregoing, this claim is denied.

Failed to Move for Directed Verdict

Applicant alleges Trial Counsel was ineffective for failing to move for a directed verdict with respect to the charge of Possession with a Weapon During the Commission of a Violent Crime. This Court finds this allegation to be without merit.

When ruling on a criminal defendant's motion for directed verdict, a trial court is concerned with the existence of evidence, not its weight. State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998). If there is any direct or substantial evidence tending to prove the guilt of the accused, or from which guilt may be fairly and logically deduced, the case should be submitted to the jury. State v. Johnson, 334 S.C. 78, 84, 512 S.E.2d 795, 798 (1999).

At the PCR hearing, Applicant testified that there was an allegation that he was the shooter when he testified that in one of Jamie Williams's statements, he said Applicant was the shooter. (PCR p.38, lines 19-24). Applicant testified that at trial the State said he was not the shooter, he was just driving the car. (PCR p.39, lines 2-5). Trial Counsel recalled the evidence showed the guns were in the front seat with Applicant and he handed them out. (PCR 30).

This Court finds there was no basis for making a directed verdict motion in this case. At

trial, Williams testified that Applicant handed him a gun to shoot out the window (Tr. 521). Additionally, Williams testified that the first time he talked to investigators, he said Applicant and Shaheed were shooting. (Tr. 486). The record clearly reflects the existence of evidence to support this charge. Whether or not the witness Jamie Williams' testimony was credible was a question for the jury. However, the testimony supports the existence of evidence that Applicant was in possession of a weapon. *See* Wiggins *supra*. Trial Counsel cannot be found deficient for not making a directed verdict motion in this case when there was no basis. Applicant did not set forth an argument counsel should have made that reasonably would have resulted in a directed verdict on the possession of a weapon charge, and thus did not meet his burden of proving deficiency or prejudice. Thus, this claim is denied.

Sleeping Jurors

Applicant alleges Trial Counsel was ineffective for failing to object to and move for a mistrial when two jurors were allegedly sleeping during various portions of the trial. This Court finds this allegation to be without merit.

At the PCR hearing, Applicant testified that he witnessed two different jurors asleep during his trial. Applicant testified he told Trial Counsel about it. Applicant testified that "at the beginning of the trial, Juror Rachel Williams was sleeping, and the judge woke her up and told her to take her outside of the jury". Applicant testified he did not tell Trial Counsel about it at the specific moment because something was going on, but he thought he told Trial Counsel shortly after.[5] (PCR p.37, lines 3-25). Trial Counsel had no recollection of sleeping jurors during the trial and did not recall Applicant talking to him about it at later in the trial. Trial Counsel testified that if he had

[5] Applicant was allowed to supplement the record with the transcript of Juror Rachel Williams's testimony from co-defendant's PCR hearing. The undersigned presided over the co-defendant's hearing and was in a position to observe her demeanor and assess her credibility at that time.

noticed a juror sleeping, he would have brought it to the judge's attention and moved for a mistrial. (PCR p.45, lines 12-18).

This Court finds Applicant's testimony on this matter to be not credible. The credible testimony entered by the alleged sleeping juror from co-defendant Shaheed Hayes' PCR hearing indicates that she may have dozed off, but she was not asleep to the extent that she could not hear anything. Trial Counsel credibly testified he had no recollection of a sleeping juror. Applicant did not talk to him about a sleeping juror, and if he had noticed a juror sleeping, he would have brought it to the judge's attention and moved for a mistrial. Applicant has not presented any credible evidence other than his own self-serving testimony to support this allegation. Contrary to Applicant's testimony, the transcript does not mention or note any juror falling asleep. Therefore, this Court finds that Trial Counsel was not deficient. Applicant did not prove deficiency or prejudice and thus this claim is denied.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. 2025 JUN 23 P 2:37 Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

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

AND IT IS SO ORDERED this 13 day of June, 2025.

THE HONORABLE GEORGE M. McFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

Sumter, South Carolina