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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. MORGAN JR., Circuit Court Judge

Case No. 2015-CP-23-02629

Clarence W. Jenkins # 323856 Petitioner,

v.

State of South Carolina..... Respondent.

NOTICE OF APPEAL

Petitioner appeals the Honorable G.D. Morgan Jr.'s Order of Dismissal dismissing petitioner's application for post-conviction relief. On October 6, 2025, the court signed an order dismissing Petitioner's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on October 6, 2025. A copy of the Order of Dismissal is attached.

October 30, 2025



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Attorney for Petitioner

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF GREENVILLE |) | FOR THE THIRTEENTH JUDICIAL CIRCUIT |
| |) | |
| Clarence W. Jenkins, SCDC #323856 |) | Case No.: 2015-CP-23-02629 |
| |) | |
| Applicant, |) | |
| |) | ORDER OF DISMISSAL |
| v. |) | <i>(with prejudice)</i> |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

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This matter comes before this Court by way of Applicant Clarence W. Jenkins’s application for post-conviction relief filed on April 20, 2015, and amended on January 23, 2023. In his original application, Applicant made several allegations of ineffective assistance of trial counsel. Respondent filed a return to the application on September 18, 2015, which disputed the claims of ineffective assistance but requested an evidentiary hearing to resolve those claims. By order dated October 26, 2018, and filed October 30, 2018, Sarah Henry, Esquire, was appointed to represent Applicant.¹ PCR counsel filed an amended application on January 23, 2023.

An evidentiary hearing was convened before this Court on January 30, 2023, at the Greenville County Courthouse. Applicant appeared with counsel, Ms. Henry. Assistant Attorney General Taylor Smith of the South Carolina Attorney General’s Office appeared on behalf of the State. Applicant proceeded on the claims raised in his amended application, with additional

¹ The public index reflects that Applicant was appointed a number of attorneys previously who were relieved by the court prior to the appointment of Ms. Henry in October of 2018. See <https://www2.greenvillecounty.org/SCJD/PublicIndex/CaseDetails.aspx?County=23&CourtAge=23002&Casenum=2015CP2302629&CaseType=V&HKey=1191011077249837499118104845156119100739075734389977011711810979104841074765102691126569851211105510869>

amendments submitted at the beginning of the evidentiary hearing and accepted by this Court.² (See PCR Tr. pp. 6-8). After accepting the amendments, the Court received testimony from Applicant, Laverne Ronnie Mitchell, James Gibbs and Shanek Robinson as part of Applicant's case. The State, in their case, presented testimony from former trial counsel, John Mauldin, Esq., Mark MacDougall, Esq., and Susannah Ross, Esq. Further, both parties offered a number of exhibits. (See PCR Tr. p. 4).

Following a thorough review of the record in its entirety, including the testimony presented at the trial and the testimony, evidence, and arguments presented in the subsequent PCR evidentiary hearing, this Court finds Applicant has failed in his burden of proof in showing any ineffective assistance entitling him to relief.³ Accordingly, the application as amended is denied and dismissed with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In November 2008 and September 2011, the Greenville County Grand Jury indicted Applicant for the murder (2008-GS-

² This Court deems the last amended issues to be controlling and the only issues to be considered by the Court. As such, the recitation of issues in this Order, (p. 7, *infra*), follows the amendments from PCR counsel as accepted by this Court.

³ By email dated February 6, 2023, this Court advised counsel for the parties that it had determined that relief would be denied and directed counsel for the State to prepare and provide a proposed order of dismissal. Due to changes of counsel for the State, the proposed order delayed. However, the State ordered the transcript of the hearing and provided counsel for Applicant the transcript, as well a copy to the undersigned, to ensure accuracy in this process. Further, Applicant's counsel has been provided a copy of the proposed order drafted by the State for this Court's review and has been encouraged to carefully review the order pursuant to *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019), particularly to bring to the Court's attention any argument or issue that Applicant believes was not sufficiently addressed.

23-8409) and kidnapping (2008-GS-23-007528A) of Mekole Harris. The Greenville County Public Defender's Office was appointed to represent Applicant, and then Chief Public Defender John Mauldin assumed the lead counsel role.

After the State served notice of intent to seek the death penalty, Susannah Ross, Esq., was appointed to assist in Applicant's defense. Mr. Mauldin also associated Mark MacDougal, Esq., of the Akin Gump Law Firm, to also assist in the defense. Solicitor Walt Wilkins, Assistant Solicitor Betty Strom and Assistant Solicitor George Campbell of the Thirteenth Circuit Solicitor's Office prosecuted the case. The State subsequently withdrew the death penalty notice.

A jury trial began on April 9, 2012, before the Honorable Edward W. Miller, Circuit Court Judge. The jury convicted as indicted, and Judge Miller sentenced Applicant to life in prison.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Susan Hackett of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented Applicant in the appeal. By published opinion filed May 21, 2014, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence. The South Carolina Supreme Court denied Applicant's petition for certiorari review, and the remittitur was returned to the circuit court in February 2015.

As referenced above, Applicant filed this action on seeking post-conviction relief which this Court now addresses.

FACTS OF THE CRIME

This Court has had the benefit of not only the entire trial transcript, and the appellate briefs, but also the Court of Appeals opinion. That opinion provides a good summary of the general case development and facts of the crime. As there has been no contest to the appellate court's summary of these facts, this Court includes that portion of the Court of Appeals opinion for context here:

On the morning of April 7, 2008, Sue Bostic discovered a garbage bag with unknown contents sitting on her front porch and a threatening note under the windshield wiper of her automobile. [FN 2]. Bostic contacted the Greenville City Police Department, and Officer Scott Odom responded to the call. Officer Amber Allen also arrived at the scene and spoke with Bostic while Officer Odom took the garbage bag to the back of his vehicle to inspect the bag's contents. Officer Odom discovered a severed human foot and hand and several severed toes. Officer Michael Petersen, who was employed with the forensic division of the Greenville County Department of Public Safety, then arrived to assist in processing the crime scene and collecting the evidence. Officers Allen and Petersen were informed that a similar note and garbage bag containing severed body parts had been left at the residence of Judon Burnside. They later proceeded to this residence to collect the evidence.

Officer Petersen took the garbage bags and their contents to the morgue and rolled fingerprint impressions from the severed hands. Captain Jackie Kellet, of the forensic division of the Greenville County Department of Public Safety, examined the fingerprints processed by Officer Petersen and matched them to fingerprints on file for Mekole Harris (Victim).

On April 10, 2008, police arrested Appellant and his wife, Carmen Jenkins (Wife), for the murder of Victim. On November 18, 2008, the Greenville County Grand Jury indicted Appellant for murder. In December of 2008, the State filed a Notice of Intent to Seek the Death Penalty against Appellant and Wife. In September of 2009, Wife advised investigators of the location of Victim's remains in exchange for the State's withdrawal of its Notice of Intent to Seek the Death Penalty against Wife.

On March 9, 2011, Wife entered into a plea agreement with the State, requiring her truthful testimony in Appellant's trial in exchange for the State's subsequent request for a reduction in Wife's sentence. On September 13, 2011, the Grand Jury indicted Appellant for the kidnapping of Victim. On March 27, 2012, Wife pled guilty to the murder of Victim and was sentenced to fifty years of imprisonment. On this same day, the State withdrew its Notice of Intent to Seek the Death Penalty against Appellant.

Appellant's trial took place on April 9 through 13, 2012. Captain Kellet, who had matched the fingerprints from the severed hands to Victim's fingerprints, was qualified as an expert in fingerprint analysis, and she explained the process she went through in identifying Victim's fingerprints. The first step was entering the

unknown fingerprints into the Automated Fingerprint Identification System (AFIS), a computerized database maintained by the South Carolina Law Enforcement Division (SLED). She explained that AFIS sends back a list of potential matches, and in this case “we ask for the top 25 people.” Here, Victim’s “State ID number” [FN 3] was the first number on the list of potential matches. Captain Kellet then pulled a fingerprint card for Victim from agency records and visually compared, point by point, Victim’s prints to the unknown prints. Once she determined the known and unknown fingerprints matched, she felt no need to examine any other fingerprints from the AFIS list of potential matches.

The State also presented the testimony of Wife, who testified about Appellant’s alleged plan to intimidate a former housemate, Grace Davis, into returning to their home and continuing to live with them. According to Wife, during the time Davis lived with Appellant and Wife, Davis developed an intimate relationship with both of them. Eventually, the Department of Social Services removed Davis’s children from the home and notified her that she could not regain custody of her children as long as she was living with Appellant and Wife. Therefore, Davis left the home. A few days later, Appellant told Wife that Davis “needed to come back to [their] relationship because she was a partner in [their] relationship” and “she knew too much about the organization that he was in.” Appellant also told Wife “the organization would kill all of [them] if she didn’t come back.” Wife testified that she had never heard about this organization until that day.

Appellant began executing his plan to intimidate Davis by mailing threatening letters to her and to members of her family. Next, on the evening of Friday, April 4, 2008, Appellant brought home Victim, a prostitute, and handcuffed her to a bed. Appellant told Victim that he and Wife were police officers and that Victim was “under arrest for prostitution and possession of crack.” Appellant also told Victim that the only way she would get out of those “charges” was for her to help Appellant and Wife with a “case.” The “case” Appellant referenced was his plan to intimidate Davis into returning to their home.

After Victim agreed to cooperate, Appellant removed the handcuffs. Appellant wrote out a script for Victim to read over the telephone to members of Davis’s family. Appellant then handcuffed Victim again and gave the script to her to memorize. Sometime around midnight, Appellant, Wife, and Victim went to a pay telephone at a nearby gasoline station, and Appellant dialed the telephone numbers for Davis’s mother, Judon Burnside, and Davis’s aunt, Sue Bostic.

During each telephone call, Victim recited the material from the script written by Appellant. Appellant and Wife then took Victim back to their home, and Appellant handcuffed Victim to a chair for the remainder of the day on Saturday.

On Saturday night, Appellant crushed up “some Tylenol PM and some other sleeping medicine,” mixed it into some ice cream, and gave it to Victim. However, Victim only ate a small amount of the ice cream. On the next day, Sunday, April 6, 2008, Appellant ordered Wife to kill Victim, who was still handcuffed to the chair. Wife attempted to strangle Victim with a cable cord, but as Victim struggled against Wife, Wife lost control of the cord. Appellant then tied the cord to the back of the chair, placed a plastic bag over Victim’s head, and suffocated her.

Appellant and Wife took Victim’s body to the bathroom and placed her body in the shower. Later that day, Appellant dismembered Victim’s body, forcing Wife to participate, and placed the dismembered hands and feet in the couple’s freezer. Appellant and Wife disposed of Victim’s body near a golf course on Paris Mountain and returned to their residence, where Appellant placed the dismembered parts into two separate garbage bags.

After midnight, Appellant and Wife went to Bostic’s apartment. Appellant “dropped [Wife] off right at the entrance of the apartments...” Wife took one of the garbage bags and threw it onto Bostic’s front porch. Wife then left a threatening letter on the windshield of Bostic’s car. Next, Appellant drove Wife to Burnside’s residence. Wife placed a second threatening letter in Burnside’s mailbox and placed the second garbage bag on Burnside’s front porch.

Robin Taylor, a SLED employee, also testified at Appellant’s trial. Taylor described the DNA analysis she performed on a swab from the severed hand. Taylor matched the DNA from this swab to the DNA from swabs of blood collected from (1) a wall near the ceiling in a bathroom at Appellant’s residence; (2) a wall on the right side of the medicine cabinet in Appellant’s bathroom; (3) a latex glove found on the floor of Wife’s van; and (4) the p-trap of the shower drain in Appellant’s bathroom.

[FN 2] The facts of this case are horrific; however, it is necessary to discuss them to give context to Appellant’s arguments regarding

circumstantial evidence and to explain the relevance of Appellant's arguments regarding the fingerprint identification of the victim.

[FN 3] The State ID number “is assigned to you by SLED if you’ve ever been fingerprinted.”

[FN 4] The record does not indicate when the swabs were taken from Appellant’s bathroom and Wife’s van.

State v. Jenkins, 408 S.C. 560, 564–67, 759 S.E.2d 759, 761–63 (Ct. App. 2014), *cert. denied* (Feb. 4, 2015).

ALLEGATIONS BEFORE THE COURT

Applicant submits that he is being held in custody unlawfully as a result of ineffective assistance of counsel. Applicant, thought he amendments submitted by his PCR counsel, makes the following specific allegation of ineffective assistance:

1. The Applicant submitted alibi witnesses to defense counsel who were available to testify at trial but were not called as witnesses;
2. Trial counsel was ineffective by indicating to the jury during opening statement that Applicant was untrustworthy;
3. Trial counsel failed to call witnesses to testify that they saw the victim during the time she was allegedly held captive;
4. Trial counsel failed to effectively use a witness to impeach the co- defendant’s timeline and story; and
5. Trial counsel failed to move to quash the indictment for murder for lack of specificity as no manner of death was alleged on the indictment, the indictment was based on hearsay testimony before the grand jury, and counsel failed to object to the State’s motion at trial to amend the indictment to change the date of the alleged crime.

SUMMARY OF THE EVIDENTIARY HEARING

Applicant's Case

Applicant called Laverne Ronnie Mitchell, who testified he saw the victim riding her bicycle on a Friday afternoon at approximately 5:30 p.m. on a Friday and he told law enforcement about it on April 7, 2008.⁴ On cross-examination, he testified he saw the victim on either the third or fourth, but asserted it was a Friday. Further, Mr. Mitchell's uncertain responses worked to cast doubt on his general ability to recall past events. He admitted he had a 2016 conviction for possession with intent to distribute cocaine base, first offense. (PCR Tr. pp. 11-21).

Applicant testified on his own behalf. He testified at length about his somewhat complicated relationship with his co-defendant, Carmen Jenkins, and another female. Applicant testified that he met the victim in early 2005 through an associate he sold drugs with, and he gave her some drugs. They married in December 2007 after she became pregnant. However, he testified their arrangement was open. Their relationship was also rocky, with several times of estrangement. In one time of estrangement, Jenkins met Grace Davis. Eventually, Carmen came back and the three began a relationship with each other. Applicant testified he left at one point but still used their trailer to cook crack cocaine. (PCR Tr. pp. 22-40).

Applicant testified that, specifically, around April 2008, he would to the trailer "off and on," but the three "we[re] not living together." Applicant testified that he had met the victim

⁴ According to the calendar, April 7, 2008, was a Monday. That would have been the weekend after the victim's disappearance according to testimony appearing in the trial transcript (which was provided to the Court). Carmen Jenkins testified at trial that Applicant brought the victim to their home around April 3rd or 4th and the victim was confined in a bedroom. (See Trial Tr. pp. 436-438). Ms. Vivian Young testified that she last saw the victim on April 3, 2008, and the victim was with Applicant. (Trial Tr. pp. 238-245). A credit card application in the victim's name was dated April 4, 2008, but had Applicant's home address, phone number and e-mail). (Trial Tr. pp. 347-349, 369-372).

initially in 2005, through a person he was in the drug business with, and Applicant provided the victim with drugs and he would see her occasionally since they knew a number of the same people who were also involved in drugs. Applicant testified that he would frequently see her at Labor Finders. The victim would assist him in finding “customers” for his drugs. They also became intimate. (PCR Tr. pp. 40-43).

Applicant was also working through Labor Finders, and, at the time the victim disappeared, he had been cleaning at the Easley Ingles. Applicant claimed when he left work around 4:00 am on Friday, he went to Labor Finders; the victim was not there. According to Applicant, he went to Carmen’s trailer, then on to his sister’s home, then back to Labor Finders. At that point, the victim was present. They made sells and also used drugs. She left for a lighter and, according to his PCR testimony, Applicant went to stay with family the rest of the night and on Saturday and was still with them on Sunday.⁵ (PCR Tr. pp. 43-51).

Applicant testified that Carmen came over to his sister’s home that Sunday and they argued. Eventually, he left with Carmen for the local library to attempt to set a “creeper thing” which lures someone for criminal activity and then extorts money. After the library activity, Applicant testified that he returned to his family at his mother’s home. (PCR Tr. pp. 51-54).

Applicant testified that the next day, Monday, he went back to Labor Finders where he received a work ticket. Carmen tried to talk to him there, as well. Applicant testified he thought she was upset because he had left drugs in her trailer. Applicant testified that he never saw the victim at Labor Finders that day. Carmen drove him to “pick up drugs,” and they eventually went

⁵ Applicant specifically referenced the family home on Cornelia Street. Applicant testified that it was his mother’s home (Myrtle Gibbs), but also that his sister (Jamese Gibbs) lived there with her children. (PCR Tr. p. 35). Ms. Jamese Gibbs testified that while her mother lived with her, the home was rented in Ms. Jamese Gibbs’ name. (PCR Tr. p. 135).

back, that evening to Carmen's trailer. Applicant testified the victim was dead when he arrived at the trailer. Applicant testified he felt he had "no choice but to help her cover up what happened." (PCR Tr. pp. 54 -65).

Applicant also testified that in his opinion it was Carmen who was the violent one in their relationship and that, contrary to her trial testimony, Carmen was not in fear of Applicant. Applicant opined that if he had testified at trial, he could have "refute[d] or impach[ed]" much of Carmen's testimony, but his attorneys advised him not to testify. (PCR Tr. pp. 70-77). Applicant denied the kidnapping and murder but admitted "hiding and disposing of [victim's] body." (PCR Tr. p. 79). Applicant testified that he advised the defense team of his alibi, giving his sisters' names (Jamese and Shanek). Applicant also disagreed with the opening statement that, to him, indicated he had a history of lying, and also disagreed with his attorney not challenging the indictment. (PCR Tr. pp. 79-89).

Applicant's sister, Jamese Gibbs, testified that Applicant and his two minor daughters moved in with her in March 2008 because Applicant and the co-defendant "were on the outs." On Friday, April 4, 2008, Ms. Gibbs went to work at 5:00 a.m. and returned home around 3:00 or 3:30 p.m.. She testified Applicant was at the home when she arrived and remained there until she went to bed around 7:00 p.m., but she did not know if he left after she went to bed, and she did not remember if Applicant was at the home on Saturday. Ms. Gibbs was off work on that Sunday and she testified that Carmen brought Applicant to her home at some point. She stated she went to bed at 7:00 p.m., and she did not remember if Applicant left at any point between the time the co-defendant dropped him off and when she went to bed. (PCR Tr. pp. 133-149).

Ms. Gibbs testified that she talked with Applicant's defense teams multiple times after his arrest and she provided them with a detailed timeline of what she observed and knew about the weekend at issue. (PCR Tr. pp. 155-162).

Applicant's sister, Shanek Robinson, testified that Applicant was living with their sister Jamese in April 2008, and he helped take care of his children who were also living there. She stated that most of the time she went over to Jamese's home Applicant was sleeping or laying around. Ms. Robinson testified she usually went by the home once or twice a week on Wednesday and Friday. Applicant was sleeping when she went to the home the morning of Friday, April 4th, and she did not return to the home until the next week. She further testified about aspects of the what she perceived about the relationship between Applicant and Carmen, and that she was interviewed by Applicant's defense team and advised them of the "[t]imelines," "family history," and basically "[a] lot of stuff." (PCR Tr. pp. 164-185).

State's Case

John Mauldin testified he was the Chief Public Defender in April 2008 when he received the case. After the death penalty notice was issued, Susannah Ross was appointed as second chair on the case. Mr. Mauldin also obtained the assistance of a law firm he had worked with previously; Mark MacDougall was a partner at that firm and he became part of the defense team. The team met to assess the issues in the case and who should handle the various issues. Mr. MacDougall assumed responsibility for the forensic issues; Ms. Ross had developed a positive rapport with Applicant and assumed the responsibility of the direct client part of the case; and Mr. Mauldin assumed responsibility of handling the co-defendant and any mitigation evidence in the anticipated death penalty trial. The defense team secured "a number of different experts, mental health experts, mitigation, social worker," identified various others who may testify in a penalty phase,

and also investigated and retained experts for the guilt phase. Mr. Mauldin testified there were regular team meetings to discuss any developments in the case. The defense would also meet with Applicant's family to discuss the general trial procedures. (PCR Tr. pp. 190-200).

Mr. Mauldin testified that the team discussed the potential for an alibi defense. The information regarding "a potential alibi was maybe a year and a half or more into the case." (PCR Tr. p. 203). The defense found problems with the potential alibi. Mr. Mauldin testified that "one of the problems was that this information came after such a lengthy period of time" which gave the team "pause" on its legitimacy. (PCR Tr. p. 204). The team was also faced with a fluid report of Applicant's whereabouts, "that he was what was described as in and out of his mother's" home, "[t]hat he was, what you might say, coming and going," which created a "difficulty" in establishing an actual alibi. (PCR Tr. 204). Further, the "alibi" information came not only late in representation but from "family members," rendering it, in the defense team's opinion "suspect." (PCR Tr. 204). The team determined that the information was not credible and presenting it at trial could significantly adversely affect the credibility of the defense case. (PCR Tr. pp. 205-206). Mr. Mauldin also testified that about another year after the family alibi surfaced, the team was given information on another alibi theory, this one based on "an alibi in Florida." (PCR Tr. p. 207). Knowing that was not true at all also placed the team in a "very disconcerting situation," and "served to contaminate ... consideration of" the family alibi. (PCR Tr. p. 207). In addition, the team decided that the information provided by the family members would not have any impact on the credibility of the co-defendant's version of events. (PCR Tr. pp. 208-209). Further, Mr. Mauldin testified that he did not believe Applicant should testify because of some correspondence Applicant wrote while in jail that could be used to "totally impeach" him, and also that he was "worried" about what he might say on the stand. (PCR Tr. p. 212). Mr. Mauldin testified that

Applicant made the decision not to testify, and his sisters would not be called to testify in the absence of Applicant's testimony. (PCR Tr. pp. 209-213).

Mr. Mauldin did not recall ever hearing about Ronnie Mitchell and he was not aware of any evidence that would indicate the victim was somewhere other than the co-defendant's residence during the weekend of April 4-6, 2008. (PCR Tr. pp. 215-216). He testified that if he had known of a witness who would testify they saw the victim at another location, he would have "seriously considered investigating and perhaps using that person as a witness" at trial, but he did not recall being aware of such a witness. (PCR Tr. p. 216). This Court also took judicial notice of public records showing that Mr. Mitchell had a 2006 grand larceny that would likely have been available for use for impeachment at trial, had Mr. Mitchell been called at the 2012 trial. (PCR Tr. p. 222).

Mr. Mauldin testified he did not think there was a legitimate basis to challenge the indictment against Applicant; and, particularly, not on a failure to allege a specific cause of death or hearsay presented to the grand jury. (PCR Tr. pp. 224-225). He further testified it was not uncommon for the State to amend an indictment, and regardless of the date change at trial, the team was clearly on notice of what Applicant was charged with and the timeframe of the events. (PCR Tr. pp. 225-226).

On cross-examination, Mr. Mauldin again testified that the indictment gave the team the relevant timeframe to prepare the defense, they did not believe it was deficient for failing to specify a cause of death, and the date change at trial did not affect their trial preparation. He further testified that the team determined the potential alibi witnesses were not credible under the circumstances and presenting them at trial would have adversely impacted the defense strategy. Their overall strategy was to discredit the co-defendant and her story as much as possible, and they

did not believe those witnesses would have furthered that strategy. He reiterated that testimony on redirect examination and recross examination. (PCR Tr. pp. 226-264). Mr. Mauldin testified that the defense team considered it “a real victory” when the State withdrew the notice of intent to seek death. (PCR Tr. pp. 263-264).

Mark MacDougall testified⁶ that he joined Applicant’s defense team when the case was a death penalty case, and he assumed responsibility for the forensic aspects of the case. After the death penalty notice was withdrawn, Mr. Mauldin asked Mr. MacDougall to continue assisting with the case and he agreed. Mr. MacDougal testified that the defense team did discuss the potential alibi witnesses. Mr. MacDougall recalled that Applicant has at one point suggested that he had witnesses who were also in jail “willing to testify that he was somewhere other than Greenville when the crime was committed.” (PCR Tr. pp. 267-271). Mr. MacDougal assessed “that these were not credible witnesses” and would not advance the trial strategy to address the evidence that Carmen was the primary action. (PCR Tr. p. 272). In particular, Mr. MacDougal noted that the evidence in the case included video that confirmed Applicant was with Carmen in the library in Greenville when the computer was used, thus, the out-of-state alibi “would have been a lie by fairly compelling evidence that he was” in Greenville. (PCR Tr. p. 273).

Mr. MacDougall also echoed Mr. Maudin’s testimony that, while “the decision” to testify “is ultimately the defendant’s,” he assessed that Applicant “would have a very difficult time testifying,” and the cross-examination likely to be inconsistent with the strategy showing Carmen as the primary actor. (PCR Tr. p. 273, 275). Mr. MacDougall addressed the complaint about his opening statement referencing the Applicant’s “fantastical stories,” was meant to neutralize the evidence that Applicant claimed connection to some “organization ... involved in all kinds of

⁶ This Court allowed Mr. MacDougall to be presented via Webex. (See PCR Tr. 267).

activities,” by suggesting that Applicant “was someone ... given to making statements like that which were harmless,” essentially “that Clarence Jenkins is harmless.” (PCR Tr. p. 274-275). Mr. MacDougall had a vague recollection of an individual (perhaps a woman, though he was uncertain) that may have “seen the victim during the time that the State alleged Mekole Harris was being held,” but also testified that type of witness would not be his responsibility given the division of case responsibilities. (PCR Tr. pp. 277-278). Mr. MacDougall testified he had no issue with the indictments and added that “the circumstances of the homicide .. made a determination of cause of death problematic,” and, though he relied on the South Carolina lawyers to identify any specific error under state law, he was satisfied with the notice the indictment provided. (PCR Tr. p. 278).

Susannah Ross testified next and explained that her primary responsibility was meeting with Applicant and working on his social history. (PCR Tr. 280-282, 310-311). Ms. Ross testified that the defense team met biweekly and she discussed the case with Mr. Mauldin often; that she conducted numerous jail visits with Applicant (approximately two times a month); and that she met with Applicant’s mother and sisters. (PCR Tr. pp. 282-285). Ms. Ross testified that when she first met with the family member there was no mention of a possible alibi, just that “[h]e couldn’t have done this.” (PCR Tr. p. 285). Ms. Ross testified that the family advised that Applicant had been living with them, “but it was certainly not what [she] would call an alibi.” (PCR Tr. pp. 285-286).

Ms. Ross shared her file notes recording the information that the two residences were close; and around the time of the murder, *i.e.*, around April 5, 2008, while the family claimed Applicant lived with them, one sister was going to the other residence (the trailer where Carmen stayed) to request money to help care for a child. The alibi at best was “imperfect,” especially where there was video evidence that refuted their information. She recalled that Applicant asked what would

constitute sufficient evidence of alibi, Ms. Ross indicated as an example, “being in Florida for two weeks during the time of the crime,” after which she received letters purportedly from a friend indicating that Applicant had been in Florida the weekend in question. Presenting an alibi under the totality of the circumstances “would just be super damaging to the case,” and “would have killed the case.” (PCR Tr. pp. 286-290). She noted that the Florida alibi letters had been sent to law enforcement, so everything about the “forged weird letters” likely would have come in by the defense opening the door. (PCR Tr. pp. 289-291). She confirmed that that defense “made a strategic decision not to present an alibi defense because [they] thought it would be unbelievable and that the State had a lot of evidence they could make holes in that alibi.” (PCR Tr. pp. 294-295). Ms. Ross again noted that library visit on video, and noted there were witnesses who saw Applicant at the trailer “burning stuff at his grill,” and also that Applicant’s “fingerprint on a letter ... that was found in the couch of the trailer that would have been sent out over that weekend.” (PCR Tr. p. 297).

Further, Ms. Ross reiterated that the defense team considered “it was a big victory for [them] to get the death penalty off the table[.]” (PCR Tr. p. 298). She also agreed that after discussion, the defense team concluded that Applicant “would be a terrible witness on the stand most likely with the evidence they had against him.” (PCR Tr. p. 300). Ms. Ross recalled that the family, *i.e.*, Applicant’s mother and sisters, would likely have been called in a penalty phase, but an alibi was not contemplated. (PCR Tr. pp. 304-305). Ms. Ross did not recall any mention of Mr. Mitchell, or anyone who could possibly “testify that Ms. Harris had been seen somewhere in ... public during the time window in which the State alleged she had been kidnapped[.]” (PCR Tr. 306). She noted, however, that the evidence as to “exact time of death ... was a very open question there,” such that a lone sighting in or round the weekend in question would not likely be helpful.

(PCR Tr. pp. 306-307). Ms. Ross testified that the killing could have occurred anytime that specific weekend, and “obviously she was killed.” (PCR Tr. pp. 306-307).

As to the amending the indictment, Ms. Ross testified that at most that may secure a continuance, but the State could simply reindict. Further, Ms. Ross had no quarrel with sufficient notice and believed a challenge to notice would be unavailing. (PCR Tr. pp. 308-309). Likewise, an argument that hearsay was presented to the grand jury as a basis to undermine the indictment had been rejected a number of times and was not a sound basis for challenge. (PCR Tr. p. 309).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearings and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance Claims: Standard of Review

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel’s representation fell below an objective standard of reasonableness, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* “Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. “ *Strickland*, at 700.

To conduct a fair review of counsel’s performance, a reviewing court must “eliminate the

distorting effects of hindsight” and attempt “to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689. Further, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant’s burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

Moreover, courts must apply the *Strickland* standard with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, at 689-690. For a fair analysis of an applicant’s claim, the claims must be considered within the context of the case: “The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*, at 690.

“[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Id.*, at 690–91. As a general matter, where counsel testifies as to his or her trial strategy, and that strategy is consistent with the facts and laws, counsel will not have failed in his duty to provide adequate and acceptable representation. *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). *See also Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530, 531 (1992) (“Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.”).

This Court will address the following claims not only in light of the *Strickland* standard as set out, but also having made its credibility determinations based on the presentation at the evidentiary hearing.

Allegation Trial Counsel was ineffective for failing to call certain alibi witnesses who were available to testify at trial but were not called as witnesses.

This Court reviewed the trial record and has carefully considered trial counsel's testimony on this point. This Court credits counsel's testimony on investigation and finds the team's assessment of the information on purported alibi sound based on the known facts (particularly the library video). (*See* PCR Tr. pp. 203-206, 285-295). This Court, in fact, agrees with counsel, though the standard is not this Court's agreement, but *Strickland's* requirement which Applicant has not met.

This Court notes the very fact that Applicant presented counsel with two different alibi scenarios gave his trial attorneys reasonable pause. Further, the alibi evidence was not immediately relayed but only mentioned long after the initial interviews – a red flag to defense counsel, and logically so. Further still, the out-of-state alibi was known to be false considering the library video from the very weekend in question. Additionally, the family alibi evidence as offered in the hearing before this Court, even if taken as true, never formed a complete alibi. Applicant was with Carmen at differing times that weekend even according to them, and the residences were close to each other. “[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all.” *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am.Jur.2d Criminal Law § 136)).

Moreover, this Court, having considered the testimony presented to it in context of the totality of the available facts, finds that the family witnesses presented at the PCR hearing,

Ms. Gibbs and Ms. Robinson, are not credible in their attempts to provide an alibi given the delay in relaying the information and the incompleteness of the whereabouts testimony. Specifically, though it is possible that Applicant was at the family home at times similar to those the witnesses described in their PCR testimony, the residences are not far apart, and the library video places Applicant with Carmen. That powerful evidence continues to exist, consequently, even liberally construing the PCR testimony the potential alibi is never complete.

Additionally, as Ms. Ross credibly testified, other evidence in or near the trailer (a witness who saw Applicant use the grill at the trailer,⁷ and a print from an envelope that could have only been created that weekend)⁸ soundly rebuffs the contention that Applicant was absent. This Court finds counsel's decision not to use the purported alibi(s) not only sound strategy, but an ethical response to prevent the presentation of false evidence, particularly as to the out-of-state alibi evidence brought to their attention.

This Court credits counsel's consistent and persuasive testimony. Counsel made a reasonable determination that presenting the testimony would seriously adversely affect the defense strategy and certainly cause a loss of credibility. Critically, the evidence was not ignored or dismissed out of hand. Counsel had many meetings and discussions regarding the alibi defense, investigated and considered the potential alibi witnesses' information, and made a strategic decision not to present it at trial. Thus, based on the record before this Court, counsel's strategic

⁷ Carmen testified at trial that she and Applicant used the grill on Monday night to get rid of evidence, (Tr. p. 468), and a neighbor (Brandi Bolt) confirmed that Applicant was the one "feeding the fire" in the grill, (Tr. p. 511).

⁸ Not of little impact is the fact that Applicant, in his PCR testimony, admitted to being at the trial using the grill, and that he helped dispose of the body. (*See* PCR Tr. pp. 60-64, 79).

decision was well supported. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation Trial Counsel was ineffective by indicating to the jury during opening statement that Applicant was untrustworthy.

This Court finds Applicant has failed to meet his requisite burden of proof as to this allegation. At the evidentiary hearing, Mr. MacDougall testified he used the reference to Applicant's "fantastical stories" in his opening statement to minimize the impact of evidence the State intended to present. This Court finds counsel's testimony credible, considering that the facts of record that the jury would hear about references to some shadowy "organization" for criminal activity that would be attributed to Applicant. (*See* PCR Tr. 274). It is reasonable for an attorney to intentionally reframe the evidence to attempt to dampen the effect of what may otherwise be reference to "some ominous organization[.]" (PCR Tr. 274; *see also* Trial Tr. pp. 425-426 and 687). This is a clear and reasonable strategy. As such, in context of this case, counsel's strategy as articulated must be afforded *Strickland* deference. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation Trial Counsel was ineffective for failing to call certain witnesses to testify they saw the victim during the time she was allegedly held captive.

Mr. Mauldin testified that he was not aware of anyone who said they saw the victim during the weekend in question after the victim went into the co-defendant's trailer with Applicant. He stated that if he had learned of such a witness, he would have "seriously considered investigating and perhaps using that person as a witness. (PCR Tr. p. 216). Ms. Ross testified she did not recall receiving information that people had seen the victim during the weekend at issue, but she did not believe that information would have been helpful because no one knew the exact day or time the

victim was killed. (PCR Tr. pp. 306-307). As recited above, Applicant presented Mr. Mitchell who testified that he saw the victim on Friday evening.⁹

It is clear from the record that trial counsel thoroughly investigated and considered any and all information they received regarding the events of the weekend at issue. Further, the team worked together to assess a wealth of information. Here, Mr. MacDougall vaguely recalled some information but possibly from a female witness though he was not sure and advised that would not have been his area of responsibility; while Mr. Mauldin and Ms. Ross simply did not recall such a witness. (*Compare* PCR Tr. p. 277-278 *with* PCR Tr. p. 216, 306). This Court finds that it is likely either that the team had identified or interviewed Mr. Mitchell but did not consider the information of note, or that they did not identify or interview Mr. Mitchell but his evidence would not have prompted further necessary investigation; however, this Court need not make a clear finding of fact on that matter. The critical fact here is the one that Ms. Ross noted – the time of death was not specific but the death surely occurred. This Court agrees with Ms. Ross that even if given information that the victim had been seen during the weekend, the murder could have occurred anytime that weekend. Further, given that Mr. Mitchell’s testimony only referenced Friday afternoon – the eve of the weekend – the testimony simply is of no significant value in addressing

⁹ Taking the totality of Mr. Mitchell’s testimony into consideration, this Court is not convinced that Mr. Mitchell has accurate recall as to the Friday in question. Though his PCR testimony on direct appeared sure that he saw the victim on her bike late Friday afternoon, why he would remember is unclear. Notably, Mr. Mitchell deemed the event non-momentous, indicating he often saw the victim riding a bicycle in the area, even agreeing that would be considered “routine.” (PCR Tr. p. 17). Moreover, Mr. Mitchell’s uncertain responses on matters such as the date he lived in the Tindal Road area (which, curiously, is where Carmen and Applicant had their trailer) cast doubt on his actual ability to recall past events. (*See* PCR Tr. pp. 15-16 and Trial Tr. 422-423, 488, 508). This Court does not credit the testimony as accurate; even so, the Court will consider the information as it would fit into the known facts of this case and counsel’s description of those known facts. That shows counsel the information would have no impact on the case for the reasons cited in this section.

the victim's death which likely occurred sometime over the weekend. Further still, that sighting on April 4th, if accurate (which has not been established, *see n. 7, supra*), does not even clearly go to the time of the kidnapping, as the 4th clearly continued after Mr. Mitchell's purported, brief, late afternoon sighting. (*See generally* Trial Tr. pp. 436-438). Again, the information, if accurate, simply holds little to no value to the case.

This Court concludes that Applicant has failed to show either deficient performance or prejudice. Consequently, this Court denies and dismisses this allegation with prejudice.

Allegation Counsel was ineffective for failing to effectively use a certain witness to impeach the co-defendant's timeline and story.

Applicant primarily presented testimony from his sisters, and apparently also relies on his own testimony, to assert that counsel failed to impeach Carmen's testimony. At base, Applicant would testify that Carmen failed to take care the home and was aggressive toward him on several occasions; however, that testimony would have to come from him testifying. Trial counsel testified, consistently, that would not be a good option in this case, especially given attempted false out-of-state alibi attempt. Moreover, the choice was Applicant's to make and he advised the trial judge, on the record, that he had decided not to testify. (Trial Tr. p. 668-670, 673-674).¹⁰ Further, Applicant's sisters offered little toward impeachment of any value.

Ms. Gibbs testified that Applicant and Carmen's two young children moved in with her around late March of 2008, just after the baby was born in early March, and that Applicant and Carmen "were on the outs." (PCR Tr. pp. 139-141). Ms. Gibbs testified that she had chided Carmen about failing to be with her newborn. (PCR Tr. p. 143). She testified that though

¹⁰ The trial transcript shows that the judge reviewed the right to testify with Applicant and afforded Applicant time over a lunch break to, if he so chose to do so, consult with counsel and make his final decision. (*See* Trial Tr. pp. 670 and 673-674).

Applicant was at the home helping her with the children, Carmen still provided transportation. (PCR Tr. p. 144). Ms. Gibbs challenged Carmen's trial testimony that Carmen had spoken to Ms. Gibbs at Carmen's trial on Saturday, in light of Ms. Gibbs' work schedule and that she did not remember speaking with Carmen that day. (PCR Tr. p. 148). She, however, confirmed Applicant was with Carmen the Sunday of that weekend. (PCR Tr. pp. 148-149). Ms. Gibbs also testified that Carmen's assertion that Carmen and Applicant were together at their trailer over the weekend in question was not correct, because he had been in her house. (PCR Tr. p. 151). Ms. Gibbs also generally testified to Carmen's character but was not aware of any instances of violence toward Applicant. (PCR Tr. pp. 152-153). She also testified that Applicant treated Carmen well. (PCR Tr. pp. 154-155).

Ms. Robinson testified similarly: that Applicant had moved in with Ms. Gibbs with the child and that he and Carmens "were having difficulties" at that time; Applicant was seeking Grace; Carmen was not caring for the girls at that time; and, that Carmen was still providing transportation for him at times. (PCR Tr. pp. 167 – 170). She added that Carmen was depressed, or in her precise word, "sad" at that time. (PCR Tr. p. 176). Like Ms. Gibbs, Ms. Robinson did not know of any instances when Applicant was violent toward Carmen. (PCR Tr. p. 177, 179). However, she testified they both confirmed to her that Carmen had hit Applicant and given him a black eye once. (PCR Tr. p. 178). She testified that she could speak to Applicant's general "jovial" nature, and that he did not handle seeing blood very well. (PCR Tr. pp. 179-181). Even though Applicant admitted in his PCR testimony that he helped dispose of the victim's body, (PCR Tr. p. 62, 79), Mr. Robinson continued to believe that was unlikely. (PCR Tr. p. 182). She added that Carmen was an "in charge" type of personality. (PCR Tr. p. 182).

Applicant has failed to in his burden of proof. First, this was not an average case; rather, this case was investigated and prepared as a capital case. The defense team included experts and investigations far beyond the scope of the average non-capital trial. (*See* PCR Tr. p. 195). This Court finds credible Ms. Ross's testimony that she spoke with the family members and developed testimony for mitigation or information to attempt to convince the State to withdraw the notice of intent to seek death. (*See* PCR Tr. pp. 256-257, 281, 285-286, 304-305). Applicant has failed to show a lack of reasonable investigation. Defense counsel was well-aware of the evidence—particular the timeline and evidence as to Applicant's whereabouts—but as explained above the evidence never made a complete alibi and the suggestion of alibi would have greatly damaged the defense's credibility.

As to other cross-examination, the type and quality of cross-examination Applicant has suggested goes to character; that Carmen was a bad mother and, though not witnessed, one sister believed that Carmen had once given Applicant a black eye. This Court finds that if somehow admissible, which is unlikely, *see* Rule 404(b), SCRE, Applicant has failed to show a reasonable probability of a different result. In this case, Carmen admitted that the children "mostly ... stayed" with Applicant's mother. (Trial Tr. p. 436). Moreover, without personal knowledge of the black eye event, Applicant has failed to show not only mere character evidence which carries a problem with admissibility, but also the lack of personal knowledge which carries its own hurdle to admissibility. *See* Rule, 404(b), SCRE; Rule 602, SCRE. Further, the type of character evidence that would be allowable goes to truthfulness, not violence. *See* Rule 608, SCRE. Applicant has failed to show any admissible evidence was actually available for additional impeachment.

However, as noted, even if somehow available, the offered evidence would be cumulative or otherwise of little if any impact given the totality of the evidence at trial concerning the events

of the murder. Notably, this includes not just Carmen's testimony about the murder but also evidence linking Applicant to intimidation prior to the murder, (*see* Trial Tr. 429-432, use of library computer for letters to Grace's family,¹¹ destruction of evidence of the murder (by use of the grill), and active participation in using the victim's name to attempt to gain financial benefit. The evidence shows Applicant's deep involvement in this crime and supports the jury verdict. Applicant has shown nothing to establish a reasonable probability of a different result.

This Court concludes that Applicant has failed to show either deficient performance or prejudice. Consequently, this Court denies and dismisses this allegation with prejudice.

Allegation Trial Counsel was ineffective by failing to move to quash the murder indictment for lack of specificity as to cause of death and that it was based on hearsay testimony before the grand jury, and by failing to object to the State's motion to amend the murder indictment at trial by changing the date set forth in the indictment.

When questioned about the contents of the murder indictment, specifically the failure to state a cause of death, all trial counsel testified the defense team had sufficient notice of the allegations against Applicant and ample time to investigate and prepare his defense. This Court credits counsel's testimony. Mr. Mauldin testified he did not see a basis to challenge the indictment for failing to state a cause of death, particularly because that "simply in many, many cases it's not contained in the body of the indictment." (PCR Tr. p. 237). Under common practice, and other acceptable indictments, counsel assessed there was no viable challenge. (PCR Tr. pp. 238-239). Further, the cause of death was problematic because of the treatment of the body; the body was burned. (PCR Tr. p. 237). As to amendment allegation, Mr. Mauldin testified that the amendment regarding dates was of no surprise as they had prepared a defense based on the

¹¹ These acts were also linked by use of the victim's body parts to attempt further intimidation of Grace's family. (*See* Trial Tr. 455-460).

weekend dates. (PCR Tr. pp. 234-235). As to presentation of hearsay, Ms. Ross testified that the issue had been raised and rejected in other cases. (PCR Tr. 309). Notably, Ms. Ross testified that a challenge to the indictment, at most, would garner merely delay. (PCR Tr. p. 308-309). Based on consideration of this testimony and the controlling case law, this Court find Applicant has failed to show any ineffective assistance on these points.

“[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong[.]” *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). An indictment does not control subject matter jurisdiction; rather, the indictment is a notice document. *Id.*, at 102, 610 S.E.2d at 500. “ In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances” and it matters not “whether the indictment could be more definite or certain is irrelevant.” *Id.*, at 103, 610 S.E.2d at 500 (citations omitted). A challenge to an indictment that it is “insufficient or defective” must be made before the jury is sworn and jeopardy attaches. *Id.*, at 101, 610 S.E.2d at 499.

Applicant raised the issue of S.C. Code §17-19-30 (2014), which states that indictments are considered “sufficient” if it includes a plain statement of the manner of death, as a basis for showing counsel was deficient in not challenging the indictment. However, given that indictments still remain notice documents, *Gentry, supra*, this statute could only be guidance for making the indictment more detailed but cannot affect basic jurisdiction of the court. Moreover, § 17-19-30 does not alter or amend the elements of murder. *See* S.C. Code § 16-3-10 (defining murder as “the killing of any person with malice aforethought, either express or implied”); *see also Joseph v. State*, 351 S.C. 551, 562-563, 571 S.E.2d 280, 286 (2002) (“17-19-30 is a procedural statute not intended to alter the elements of the offense of murder”), *overruled on other grounds by State v.*

Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)).¹²

Of note, even before *Gentry*, our Court did not demand strict adherence to other portions of this procedural statute. For instance, the statute also provides for sufficiency that an indictment should indicate “that the defendant did feloniously, willfully” commit the murder; however, in *State v. Joseph*, the Court found the indictment sufficient without those precise words. In doing so, the Court noted not only the procedural nature of the statute, but also that the Legislature’s “obvious intent in promulgating § 17-19-30 was to simplify indictments” not to impose additional burdens in drafting indictments. 351 S.C. at 562, 571 S.E.2d at 285. Applicant has shown no meritorious basis for a challenge to the indictment.

Additionally, this Court credits Mr. Mauldin’s further analysis in which he acknowledged that Applicant’s and the co-defendant’s actions in dismembering the victim’s body and burying most of it in a location so it would not be found, made determining the cause of death difficult. Taken to its logical conclusion, Applicant’s argument would mean that no murder indictment would be sufficient without a statement of cause of death, regardless of the circumstances, and a person could avoid being held accountable if he successfully disposes of the body such that the cause of death could never be determined. Interpreting and applying §17-19-30 in that way would lead to an absurd result that could not have been intended by the Legislature, a result to be avoided. *See State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022) (citation omitted).

Moreover, as a factual matter, counsel logically did not raise a notice issue because counsel had no reason to – counsel had prepared and was aware of the evidence to be presented. As Ms.

¹² The portion of the opinion indicating that the indictment was tied to subject matter jurisdiction was overruled by *Gentry*. In *Joseph*, the Court concluded: “We find the indictment was sufficient to *confer subject matter jurisdiction* because it informed petitioner of the elements of murder.” (emphasis added). 351 S.C. at 563, 571 S.E.2d at 286.

Ross credibility testified, a challenge would only lead to delay which was not needed based on counsel's preparation for trial. Applicant has failed to show counsel provided deficient representation in regard to the indictment, much less that he suffered any prejudice from counsel not challenging the indictment.

Applicant's next argument that a challenge could be raised based on hearsay presented to the grand jury similarly lacks merit. As Ms. Ross correctly noted, this has been raised and rejected before. Our Supreme Court has long held that an indictment founded upon hearsay evidence is not a basis to dismiss. *See State v. Williams*, 263 S.C. 290, 295-296, 210 S.E.2d 298, 301 (1974). Accordingly, this Court denies this allegation and dismisses it with prejudice.

Lastly, Applicant argues counsel should have objected to the amendment to the indictment on the days at issue. Mr. Mauldin credibly testified he saw no reason to object to the State's request at trial to change the date in the indictment from April 10 to April 6 because both dates were within the timeframe the defense team focused on during preparation. (PCR Tr. pp. 233-235). Changing the dates at issue did not catch the defense by surprise at all. Again, having no factual basis to make a challenge, Applicant has failed to show any deficiency in representation in this regard.

This Court denies the allegation in its entirety.

CONCLUSION

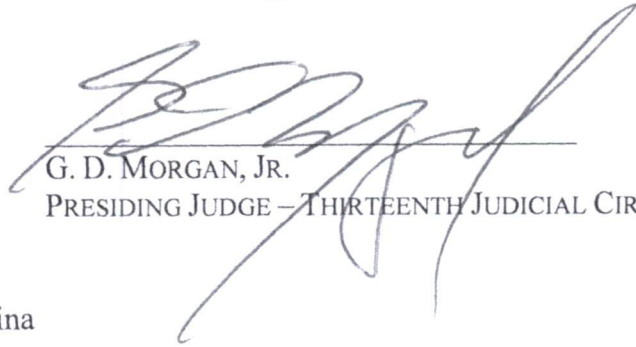
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations requiring this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied in its entirety and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in custody to serve his sentences imposed as a result of his convictions.

AND IT IS SO ORDERED this 3rd day of October, 2025.



G. D. MORGAN, JR.
PRESIDING JUDGE – THIRTEENTH JUDICIAL CIRCUIT

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