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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

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

Case No. 2018-CP-40-3077

TRENTON M. BARNES,

PETITIONER,

V.

THE STATE,

RESPONDENT.

# NOTICE OF APPEAL

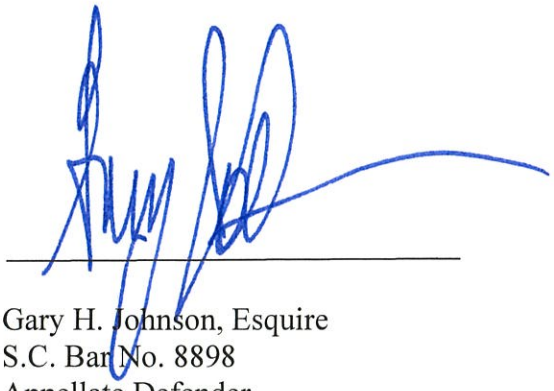
Trenton M. Barnes appeals the Supplemental Order of Dismissal entered by Hon. George M. McFaddin, Jr., signed August 15, 2025, which denied and dismissed his application for post-conviction relief with prejudice, and the Order Denying Applicant's Motion Pursuant to Rule 59(e), SCRCP, entered by Judge McFaddin signed October 27, 2025. Appellant received written notice this Order on October 27, 2025.

Those orders followed a remand from this Court on August 13, 2024, to hold a new evidentiary hearing on whether trial counsel was ineffective for failing to object to the introduction of testimony from two jail informants. Appellant also timely appeals the unresolved issues pertaining to his appeal of his denial of post-conviction relief denied by the original written order dated July 10, 2023. Appellant would request that this Court consolidate his original notice of appeal with this filing.

Attached and filed with this Notice of Appeal is the original order dated July 10, 2023, the Supplemental Order dated August 15, 2025, and the Order Denying Reconsideration dated October 27, 2025.

[ Signature page to follow]

November 6 2025.



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| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE FIFTH JUDICIAL CIRCUIT |
| Trenton M. Barnes, #362454,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | CASE NO. 2018–CP–40–3077<br><br>**ORDER OF DISMISSAL** |



This matter comes before the Court by way of an application for post-conviction relief (PCR). Respondent made its Return on September 10, 2018. Barnes was originally represented by Jonathan Waller, Esquire. Mr. Waller was subsequently relieved as counsel based on a conflict of interest. Ola A. Johnson, Esquire (PCR Counsel), was appointed to represent Applicant and filed an amended application on November 17, 2021.

An evidentiary hearing was convened on May 26, 2022, at the Richland County Courthouse. Applicant was present and represented by PCR Counsel. Josh Edwards, Esquire, and D. Russell Barlow, II, Esquire, represented the State. Applicant and the prosecutor, former Assistant Solicitor Dolly Garfield, testified at the hearing.[1] After hearing the testimony at the PCR hearing and a full review of the record, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

## PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In February 2014, the Richland County Grand Jury

[1] Counsel for the State explained that Mr. Schnee is no longer a member of the South Carolina Bar, lives out of state, beyond the reach of traditional subpoena power, and has previously been unresponsive.

indicted Applicant for second-degree burglary (2014-GS-40-0755), attempted armed robbery (2014-GS-40-0756), criminal conspiracy (2014-GS-40-0757), kidnapping (2014-GS-40-0754), and murder (2014-GS-40-0752). Mark Schnee, Esquire (Trial Counsel), represented Applicant. Assistant Solicitors Dolly Garfield, Kathryn Luck Campbell, and Nicole Simpson of the Fifth Circuit Solicitor's Office prosecuted the case.

On November 10 – 19, 2014, Applicant and codefendant, Lorenzo Young, proceeded to trial before the Honorable Robert E. Hood. The jury found Applicant guilty as indicted. Without objection, Judge Hood granted deferred sentencing on Applicant due to the recent Aiken v. Byars[2] decision. On December 12, 2014, Judge Hood sentenced Applicant to imprisonment for concurrent terms of fifteen years for second-degree burglary, twenty years for attempted armed robbery, and fifty years for murder.[3] Applicant's kidnapping conviction remained in place, however, pursuant to S.C. Code Ann. § 16-3-910, the sentence for kidnapping was vacated.[4]

Applicant filed a timely notice of appeal. On June 7, 2016, Applicant filed a Final Brief of Appellant in the South Carolina Court of Appeals. The State filed its Final Brief of Respondent on May 24, 2016. Following oral arguments, the South Carolina Court of Appeals issued an opinion on July 12, 2017, affirming the convictions. The Remittitur was returned to the circuit court on September 5, 2017.

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[2] 410 S.C. 534, 765 S.E.2d 572 (SC 2014)

[3] The State did not proceed on the criminal conspiracy charge at trial.

[4] As Judge Hood explained, "a case that involves kidnapping and murder in the same incident, then the sentences are not allowed to run together, and the sentence must be vacated, so I'm beginning by vacating the kidnapping [sentence]." (Trial Tr. p. 1658, ll. 4 – 8).

## SUMMARY OF FACTS ADDUCED AT TRIAL[5]

In the early morning of July 1, 2013, Theresa Baskin (Baskin) heard the screams of terror from thirty-three-year-old Kelly Hunnewell (Victim), who worked the early morning shift in the off-site bakery for the Carolina Café. (R. p. 233, line 13 – p. 234, line 20). Baskin, who lived across the street from the bakery on Tommy Circle, heard the dying words of the mother of four after she was shot by Lorenzo Young (Young) and his co-defendant Trenton Barnes (Applicant) in a robbery. (R. p. 232, lines 21-23; p. 234, lines 15-20).

Victim arrived every morning at 3:00 am to make the bagels and sandwiches for the popular downtown deli. (R. p. 244, line 2-p. 245, line 6). Victim would typically work until 11:00 am so she could go home and care for her four young children. (R. p. 245, lines 1-18). On the morning of the murder, Applicant and Young intended to rob the nearby Original Ale House. (R. p. 229, lines 2-16). When they realized the bar was closed, Applicant and Young chose the next most convenient victim. Victim was in the bakery next door with the lights on and the door propped open. (R. p. 234, lines 3-6). The men approached Victim, who was working at the stove, and had her back to the door. (R. p. 828, line 20 – p. 829, line 2). The suspect in the red hoodie pointed his gun at her head. (R. p. 829, line 19 – p. 830, line 19). After a struggle in which Victim tried to defend herself, the men shot her multiple times. (R. p. 830, line 17 – p. 831, line 24). Victim collapsed on the floor with a bullet lodged in her back, drowning in her own blood. (R. p. 597, line 16; p. 604, lines 2-21).

Victim's neighbor heard her screams and called the police. (R. p. 235, lines 1-8). The police arrived within minutes and found Victim dead on the floor. (R. p. 235, lines 9-10; p. 223, line 14- p. 225, line 11; p. 236, lines 15-20). The police processed the scene, collecting four .45

[5] These facts were taken from the Final Brief of Respondent with slight alterations.

Glock Automatic Pistol (G.A.P.) shell casings and two .40 caliber Smith and Wesson casings, projectiles, and video surveillance footage. (R. p. 227, line 5- p. 228, line 9; p. 237, lines 3-11; p. 238, lines 10-14; p. 240, lines 20-25; p. 241; line 16-p. 242, line 11; p. 797, line 22 –p. 799, line 10). The bakery's security cameras recorded the murder from several different views. (R. p. 246, line 6 – p. 247, line 4). In the video, Victim is working at the stove when two suspects, one in a red hoodie and one in a grey hoodie, enter the bakery. (R. p. 281, line 9 – p. 282, line 3). The suspects point guns at her and shoot her. A third suspect comes to the door as the shooting begins, and the three suspects flee. (R. p. 282, lines 20-24).

Investigators canvased the area around the bakery to look for witnesses. (R. p. 257, line 11 – p. 258, line 24). The police released the video to the media in an effort to gain more information about the perpetrators. (R. p. 649, line 21 – p. 650, line 9). Police received tips identifying Applicant, his brother Troy Stevenson (Stevenson), and Lorenzo Young as the men who committed the crime. (R. p, 248, line 14 – p. 249, line 14; p. 259, line 4 – p. 261, line 4; p. 652, line 21 – p. 653, line 21; p. 657, lines 6-18). All three suspects lived near the bakery. (R. p. 394, lines 12-17; p. 642, lines 15-24; p. 698, line 11 – p. 699, line 20).

Donald Moore (Moore), a friend of Applicant and Stevenson, testified for the State. (R. p. 374, line 1 – p. 375, line 22). Though he recanted his story later, he testified that he contacted the police after he saw the story about the murder on television. (R. p. 376, line 10 – p. 377, line 15). Moore told police that Young and Stevenson talked about robbing the Ale House before the murder. (R. p. 378, lines 9-15). Moore also told police he saw Young showing off a Glock gun prior to the murder, and he told Young to put the gun away because of the nearby children. (R. p. 379, line 17 – p. 381, line 17). Moore also identified Young in the video as the man wearing the red hoodie. (R. p. 382, line 19 – p. 383, line 23).

Based upon Moore's information, the police obtained and executed a search warrant for Young and his girlfriend Rolanda Coleman's (Coleman) home, in which they found ammunition of the same caliber as those found near the body of Victim. The search produced live round bullets from a .40 caliber Smith and Wesson, a 9 mm Luger, and a .45 G.A.P. (R. pp. 472-475). Crime scene analysts also found a Glock magazine in Coleman's purse and several pairs of black gloves. (R. pp. 470-471). The police also confiscated a pair of black Nike shoes, a scan disc, a camcorder, a laptop, and two cell phones. (R. p. 482-485). Testing later revealed gunshot residue on the black gloves. (R. p. 486, lines 7-14).

Coleman told police he spent the evening before the murder with Stevenson, and he called his mother the morning after to pick him up from Stevenson's home. (R. p. 290, line 18 – p. 293, line 25). Young returned home the morning of the murder with his firearm, wrapped it in his shirt, and hid it in a crib. (R. p. 284, lines 17-24; p. 294, line 21 – p. 295, line 24). Coleman overheard a conversation between Young and his mother shortly after seeing a news video about the murder in which his mother told him to get rid of the gun. (R. p. 301, lines 1-9). Coleman also recognized the man wearing the grey hoodie in the video as Applicant. (R. p. 301, line 10 – p. 302, line 15).

Applicant's mother testified that her sons were with Young at her house the night of the murder. (R. p. 386, lines 1-24). She testified that Young and Applicant left the house around midnight. (R. p. 387, lines 5-14). Around three in the morning, she received a phone call from Young, asking to talk to another man staying at the house. (R. p. 388, line 14 – p. 389, line 8). Cell phone records confirmed these calls. (R. p. 605, line 8 – p. 606, line 3). The second time Young called, Ms. Barnes told him to send Applicant home. (R. p. 389, line 21 – p. 390, line 7). After a few minutes, she sent her other son, Stevenson, to locate the men to bring his brother home. (R. p. 391, lines 2-20). Ms. Barnes testified that Young was wearing a red hoodie when he left the

house, and Applicant was wearing a grey hoodie, which she could identify from a tear in the fabric. (R. p. 393, lines 3-19). When Stevenson left to look for his brother, he was wearing a dark jacket. (R. p. 393, line 23 – p. 394, line 8).

After Applicant was arrested, he wrote a letter to his mother implicating himself and Young in the crime:

> Your Son
>
> Trenton. B
>
> Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis and renzo was on the phone with his baby mama we was the only two up and he got off the phone was like let me talk tew you when you done. Then he was like I got this lul lick and then I was like I don't know bruh I'm koolin talking to my lady and he was like money come first. I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on the phone then Ty had text me renzo got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me do I have a gun and I said no but I know way one at he said way at and I said **I know way Shorty be putting his gun at out side** so I took him to it and he pulled out his gun and said which one you won't and **I said the small one** then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped' s and dirt bikes and he was like just a lul lick so we was at the bar down the street from the house it started raining hard and I was like I'm bout to go home and he said hold on lul bruh then he was like damm they closed so I said come on let's go back to my house then he said you see that lady over there. I said I don't see nobody he was like come on then we was by the door and **I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back then renzo walk into the place and I went behind him then he grabed her and put the gun to her head and told

me to get in front of her and **she swang at me and I closed my and jump I got scared ma I didn't want to do it.** I'm sorry. I said it was troy because I was scared to go to jail with renzo by myself im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just wanna come home and be with you people keep telling me **im going to prison for a long time** love you mama

I just wanna come home real soon not no grown man.

Love You MAMA

Your BaBy Boy

Trenton

(R. p. v, State's Exhibit 404 (errors in original)(emphasis added); R. p. 400, lines 1-22.) In his letter to his mother, Applicant admits telling Young where he can find a gun ("I know way Shorty be putting his gun out side"); he admits choosing which gun he wants to use in the robbery ("the small one"); he admits he knows the victim is inside the bakery ("I seen a lady walk pass"); and he admits shooting the victim after she resisted him ("she swang at me and I closed my and jump I got scared ma I didn't want to do it"). Applicant also admits he was complicit in Young's actions ("I should never listen to Renzo"), and he recognized the likely consequences of his actions ("im going to prison for a long time").

Mary Brown (Brown), a neighbor, and acquaintance of Applicant, Young, and Stevenson, also saw the men wearing the red and grey hoodie the night of the robbery. (R. p. 542-545). Brown saw the video released to the news media and recognized Applicant and his codefendant, but did not know their names. (R. p. 547, line 6 – p. 550, line 18).

Following Young's arrest, he approached inmate Dominique Wright (Wright) to assist him in the defense of his case. (R. p. 453, line 17 –p. 454, line 10). Wright was helping another inmate with some legal work, and Young overheard the men discussing the "stand your ground law." (R. p. 456, lines 7-10). Young told Wright he and two other men intended to rob a club, but because the club was closed, they went next door to a bakery. (R. p. 455, lines 5-13). Young told Wright

that when the woman in the bakery resisted, he shot her twice. (R. p. 455, lines 10-13). Wright testified that Young sought his advice to discuss how he could use the victim's efforts to defend herself as an advantage to reducing his charge. (R. p. 456, lines 13-15). Wright documented what Young told him and sent the information to an investigator, who passed it on to the solicitor's office. (R. p. 457, line 19 – p. 458, line 5).

Another inmate, Michael Peterson (Peterson), testified Young discussed the murder with him while they were in the law library together. (R. p. 488, line 11 – p. 489, line 8). Young heard Peterson was familiar with the law and asked for help. (R. p. 489, lines 7-10). Young explained to Peterson that he "went on this lick." (R. p. 489, lines 18-19). When Peterson asked Young if he meant the bakery job on Beltline, Young confirmed, saying, "yeah, it was all over the news." (R. p. 489, lines 18-20). Young told Peterson he shot the victim when she acted like she was about to use her phone to call the police. (R. p. 490, lines 1-4). Young told Peterson, "Yeah, my homies must have seen the blood and started running, so I turned around and started running, too." (R. p. 490, lines 8-10). Young told Peterson he was not concerned because the police only found shell casings and identified him from the clothing he wore that night. (R. p. 491, line 7 – p. 492, line 1). Peterson later overheard Stevenson and Young discussing the robbery in the prison showers. (R. p. 498, lines 1-11). Peterson said Young was nervous and reassured Stevenson the police only had shell casings. (R. p. 498, lines 1-25).

Michael Schaefer (Schaefer), another inmate at Alvin Glenn Detention Center, testified he had several opportunities to speak with Young while they were housed together in the same dorm. (R. p. 552, line 13 – p. 553, line 19). Schaefer and Young discussed their respective cases, and Schaefer testified to the following:

> Okay, he said him and two other people by the name of Trap [Stevenson] and Trigg [Barnes] went out to rob a nightclub in the

> area, but it was closed. They saw the bakery was opened. They took that as an opportunity to go in.
>
> The woman was in there. He said she went for a knife she was struggling so he shot her twice. He fled the scene. He said he was wearing a red hoodie and jeans.

(R. p. 554, lines 10-17; 555, lines 7-15). Schaefer told his lawyer about the exchange, and his lawyer advised him to turn the information over to the solicitor's office. (R. p. 557, lines 11-24). Schaefer also testified he spoke to Young around the holidays, expressing remorse for his crime of robbing a bank. Young responded, "Well, I shouldn't have shot that bitch." (R. p. 558, lines 1-7).

Samples taken from the crime scene and the victim's body did not produce a large enough DNA sample suitable for comparison to a complete DNA profile. (R. pp. 568 – 595). However, a small portion of DNA found on the front of the large metal spoon Victim used to defend herself could not exclude the DNA of Young and Barnes. (R. pp. 243, lines 12-17; p. 582, lines 8-18).

## CURRENT ACTION BEFORE THIS COURT

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

1. "By denying the motions for severance, the jury was not able to make a reliable judgment of my guilt."
2. "Denied my right to confront witness on statements that was not even to be proven true. Allow the self-inculpatory statements by Young to come [in]. Location of hearsay within hearsay. Improper impeachment of Latoya Barnes."
3. "The court abused its discretion in denying severance given the circumstances of Rolanda Coleman's testimony. The need for severance arises in the added fact that Ms. Coleman shares criminal charges for burglary with Defendant young in a different matter."

On November 19, 2021, Applicant, through PCR Counsel, filed amendments to his application for post-conviction relief and alleged the following:

1. Applicant's trial counsel, Mark Schnee, failed to discuss a defense strategy with applicant.
2. Applicant's trial counsel, Mark Schnee, failed to review evidence with Applicant or provide a copy of the evidence to applicant.
3. Applicant's trial counsel, Mark Schnee, failed to properly investigate the case.
4. Applicant's trial counsel, Mark Schnee, failed to object to the leading question of Ms. Baskin regarding screams "did they seem scary" (p. 306, line 18).
5. Applicant's trial counsel, Mark Schnee, failed to hearsay statement stating "they said there was a victim inside" (p. 312, line 9-10).
6. Applicant's trial counsel, Mark Schnee, failed to object to the leading question regarding information regarding make and model of a firearm, type of ammunition (p. 370, line 19-20).
7. Applicant's trial counsel, Mark Schnee, failed to object to DNA swabs (p. 376, line 25).
8. Applicant's trial counsel, Mark Schnee, failed to object to evidence regarding a spoon containing DNA evidence (p. 382, line 5).
9. Applicant's trial counsel, Mark Schnee, failed to object to hearsay "that's what I was told by Lorenzo" (p. 524, lines 6-10).
10. Applicant's trial counsel, Mark Schnee, failed to object to a testimony that the defendant wrote a letter and the letter introduced into evidence EX 403, 404 that implicated the defendant (p663, line 11-24) (p.683, line 13) (p.685, line 25) and was published to the jury (p703, line23) with an enlarged version entered into evidence without objection EX 405, 419 (p711, lines 3).
11. Applicant's trial counsel, Mark Schnee, failed to review evidence when invited to do so by the state (p. 1216, line 22-24) and was unfamiliar with notes referred to by Inv. McCoy.

Applicant proceeded on all of the amended allegation claims at his evidentiary hearing.

## SUMMARY OF RELEVANT PCR EVIDENTIARY TESTIMONY

### *APPLICANT'S TESTIMONY*

On direct examination, Applicant testified that Trial Counsel never discussed a defense strategy, reviewed evidence with Applicant, provided a copy of discovery, investigated his case, and never hired an investigator. Applicant testified that Trial Counsel failed to object to or explain why he did not object to the following:

1. Leading question about screams on page 306 l. 18;
2. Hearsay statement about a victim inside on page 312 l. 9-10;
3. To leading regarding make and model of firearm on page 370 l. 19-20;
4. Admission of DNA evidence on page 326 l. 25;
5. Admission of spoon DNA evidence on page 382 l. 5; and
6. Hearsay at page 524 l. 6-10.

Applicant testified that Trial Counsel never explained why he did not object to the letter used in evidence that implicated him. Applicant further testified that Trial Counsel never explained why he did not object to the enlarged version of the letter being entered into evidence.

Applicant testified that Trial Counsel "implicated" him and that it was evidence of his guilt. Applicant testified that the judge asked him if he wrote the letter, and it "implicated" him. Applicant testified that Trial Counsel never explained why he did not review discovery with the solicitor. Applicant testified that Trial Counsel failed to test the credibility of the two-jailhouse informants and their letters. Applicant testified that the main thing Trial Counsel told him was "to remain silent." Applicant testified that Trial Counsel implicated him in that he wrote the letter to his mother to free his brother. Applicant testified and asked how Trial Counsel could say Applicant wrote that letter incriminating him.

On cross-examination, Applicant testified that his mother provided the letter and testified at trial that it was Applicant's handwriting. Applicant was asked if he admitted to the murder in the letter to which he replied, "[he] did not write it." Applicant was asked if when going to the police station with his mom did he state he was the lookout man to which he replied, "I do not recall." Applicant testified that he did not recall telling law enforcement that he was at the scene. Applicant testified that he did not ever say his brother shot Ms. Hunnewell.

On redirect examination, Applicant was asked what he wanted to testify to the letter, and he replied that he never admitted to writing that letter – there was no benefit to writing that letter

– Trial Counsel said he wrote it to free his brother – he never confessed – he never said he did nothing – Trial Counsel put that on the record.

***DOLLY GARFIELD'S TESTIMONY***

On direct examination, Dolly Garfield (Garfield), who prosecuted the case testified that she authenticated the letter entered at trial through a handwriting expert at the Schmerber[6] hearing. Garfield testified that it was the mother who gave the letter to law enforcement. Garfield testified that Applicant's mother also testified that it was Applicant's handwriting. Garfield testified that she admitted the evidence as an admission against Applicant's own interest. Garfield testified that Trial Counsel took every opportunity to object when he could.

Garfield testified that she had worked with Trial Counsel for over nineteen years. Garfield testified that Trial Counsel was a prepared, zealous, and tenacious lawyer who understood the law. Garfield testified that Trial Counsel made objections with arguable merit. Garfield testified that Trial Counsel did not neglect this case and he did his job. Garfield testified that she did not recall any objections to the opening statement. Garfield testified that Trial Counsel filed extensive pretrial motions including a motion to sever. However, that motion was denied. Garfield testified that Trial Counsel fully litigated this case. Garfield testified that she never introduced Applicant's gang activity because of Trial Counsel's motion. Garfield testified that Trial Counsel filed a Belcher[7] motion and motion to exclude photos and some of the photos were excluded.

Garfield testified that the case against Applicant was very strong because Applicant was on video – there was partial DNA evidence linking Applicant – Applicant's letter confessing to his role – evidence from a cell phone – Applicant's mother implicated Applicant on video and recognized Applicant on video. Garfield testified that Applicant's interview with law enforcement

[6] Schmerber v. California, 384 U.S. 757 (1966).
[7] State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

was not credible and was not used. Garfield testified that Trial Counsel served her office four days after Applicant was charged and he was very thorough. Garfield testified that Trial Counsel asked for thirty years, but Applicant got fifty years' imprisonment.

On cross-examination, Garfield testified that the DNA samples used were swabs. Garfield testified that the letter Applicant wrote to his mother was helpful. Garfield testified that she did not know what legal theory Trial Counsel would have objected to. Garfield testified that Trial Counsel made extensive objections to the jailhouse conversations.

On redirect examination, Garfield testified that there was nothing of substance that would have made a difference at trial because it could not be shown it was exculpatory.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the trial transcript, and the testimony and evidence presented at the evidentiary hearing establish Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

### *INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL*

Applicant alleges that he received ineffective assistance from his Trial Counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective

assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so

undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] it is all too tempting for a defendant to second-guess counsel's assistance after conviction or [an] adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, reconstruct the circumstances of counsel's challenged conduct, and evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed [at] the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing 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.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under de novo review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 696 (emphasis added).

The performance and prejudice standards, however, "do not establish mechanical rules . . . [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of trial counsel. The specific claims are addressed below:

**Allegation 1: Failure to Discuss a Defense Strategy**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to discuss a defense strategy with him. This Court finds this allegation is without merit.

On direct examination, Applicant testified that Trial Counsel never discussed a defense strategy with him.

On direct examination, Garfield **credibly** testified that Trial Counsel was a prepared, zealous, and tenacious lawyer who understood the law. Garfield testified that Trial Counsel did not neglect this case, and he did his job. Garfield testified that Trial Counsel filed extensive pretrial motions, including a motion to sever. However, that motion was denied. Garfield testified that Trial Counsel fully litigated this case. Garfield testified that she never introduced Applicant's gang activity because of Trial Counsel's motion. Garfield testified that Trial Counsel filed a Belcher[8]

[8] State v. Belcher, 385 S.C. 597 (2009)

motion and motion to exclude photos, and some of the photos were excluded.

From the record, it is clear that Trial Counsel had a defense strategy that included witness credibility, motive, lack of direct evidence, and Applicant was protecting his older brother. During the opening statement, Trial Counsel stated, "Witness credibility is going to be one of the most important issues that you're going to have to decide in this trial." (Trial Tr. p. 285, ll. 19 – 21). Trial Counsel provided that there were witnesses with pending charges, witnesses that have changed their stories, and motives to protect and lie. (Trial Tr. pp. 285, l. 22 – 286, l. 24). Trial Counsel pointed out that Applicant was a "child" of just sixteen years old when this crime was committed, which goes to the "pressures" he was facing from family and the need to protect his brother. (Trial Tr. p. 287, ll. 5 – 21). Trial Counsel describes how and why Applicant would have reason to write the letter he did to his mother incriminating himself. (Trial Tr. pp. 287, l. 22 – 288, l. 24). Trial Counsel ended with the following:

> The only thing I am going to can ask you to do is keep an open mind, pay attention to the witnesses, but concentrate on motivations for liars. There are going to be quite a few getting up there. They all have reasons to lie or to withhold information. Keep that in your mind at the forefront.

(Trial Tr. p. 290, ll. 3 – 8).

In Trial Counsel's closing statement, he attacked the veracity of two people's DNA being on a spoon that touched one person. (Trial Tr. p. 1585, ll. 12 – 25). Trial Counsel raised questions about the DNA profile, unable to exclude Applicant, but they could also not exclude "100 million people in the United States." (Trial Tr. p. 1586, ll. 1 – 8). Trial Counsel raised the credibility of multiple witnesses who testified. (Trial Tr. pp. 1586, l. 22 – 1590, l. 10). Trial Counsel raised that the State tested several pairs of gloves for gunshot residue which provided positive results, but the State did not test any of the gloves for DNA. (Trial Tr. p. 1591, ll. 6 – 21).

Initially, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant presented a single self-serving answer regarding whether Trial Counsel discussed defense strategy with him, but no evidence at the PCR evidentiary hearing regarding this allegation. In addition to providing no evidence at the evidentiary hearing, Applicant failed to provide what defense strategy Trial Counsel should have used. Therefore, whether the discussion of a defense strategy would have changed the outcome of Applicant's trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation 2: Failure to Review and Provide a Copy of Discovery**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to review and provide a copy of discovery. This Court finds these allegations are without merit.

On direct examination, Applicant testified that Trial Counsel did not review any discovery with him and did not provide a copy of discovery to him.

Without presenting further proof of Trial Counsel's alleged failure to review all the discovery with him or provide him a copy, Applicant has failed to overcome the strong presumption that Trial Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. In addition, Applicant has not presented any new evidence or defenses that could have been discovered by Trial Counsel's further review of the discovery, nor has he explained how further review would have changed the outcome of his trial. Hill, 474 U.S. at 59; see Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (holding an applicant must show what

new evidence or other defenses he would have asked counsel to pursue had counsel more thoroughly gone over the discovery materials with him) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Accordingly, Applicant has failed to meet his burden of proof, and this allegation is **DENIED** and **DISMISSED WITH PREJUDICE.**

**Allegation 3: Failure to Properly Investigate the Case**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to investigate his case. This Court finds this allegation is without merit.

On direct examination, Applicant testified that Trial Counsel did not investigate his case.

As an initial matter, this Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. at 331, 642 S.E.2d at 596. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. at 46, 661 S.E.2d at 360. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331-32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). Essentially, trial "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes

particular investigations unnecessary." Strickland, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. See Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[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." Strickland, 466 U.S. at 690–91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

This Court finds Applicant's brusque testimony that Trial Counsel did not investigate his case is not credible. The record, in this case, is replete with examples that Trial Counsel was well prepared for this multi-staged and multi-day trial. This Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant presented a single self-serving answer regarding whether Trial Counsel investigated his case. Applicant did not provide who or what further investigation by Trial Counsel was needed. Therefore, whether Trial Counsel further investigated would have changed the outcome of Applicant's trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice. Thus, these allegations must be **DENIED** and **DISMISSED WITH PREJUDICE.**

**Allegation 4: Failure to Object to Leading Page 306, Line 18**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the leading question of Ms. Baskin regarding whether the screams seemed scary. (Trial Tr. p. 306, l. 18). This Court finds this allegation is without merit.

Under Rule 611(c), SCRE, leading questions "should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony." When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. Id. The true test of whether a question is leading is whether it suggests the answer. State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979). A question that does not suggest an answer in the affirmative or negative is not a leading question. Smith v. Union-Buffalo Mills Co., 100 S.C. 115, 84 S.E. 422 (1915).

Here, Applicant avers that the following leading question was the determinate factor in the outcome of his trial:

Q: And were the screams...did they seem scary?

(Trial Tr. p. 306, l. 18). In support of Applicant's contention that this leading question was the deciding factor in his trial, he offered the following evidence at the evidentiary hearing when asked whether Trial Counsel objected to the leading question, "No." In fact, this was the only evidence introduced, a single word indicating Trial Counsel did not object to the leading question.

This Court finds that Trial Counsel was not deficient in failing to object to the question. The question was leading, but objecting to this line of testimony, even if it successfully prevented the question from being answered, would not have affected the prior statement. The witness

testified previously that she heard a woman screaming. (Trial Tr. p. 306, ll. 15 – 17). Furthermore, this testimony was hardly crucial to a finding of guilt in this case in comparison to the mountainous evidence against Applicant. There is no possibility that the trial's outcome would have been different but for this one leading question. Even if this Court were to find Trial Counsel's failure to object was deficient, Applicant has failed to meet his burden of proving prejudice from Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation 5: Failure to Object to Hearsay Page 312, Lines 9 - 10**
**Allegation 9: Failure to Object to Hearsay Page 524, Lines 6 – 10**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to two instances of hearsay at p. 312, ll. 9 – 10, and p. 524, ll. 6 – 10. This Court finds these allegations are without merit.

In Applicant's allegation number five, he references the following testimony given by a responding paramedic, Mary Ellen Swain, who had just arrived on the scene of the murder:

> Q: And once you arrived did they give you some additional information about where the victim may be?
> A: All we were told when we arrived on the scene there were several officers on the scene. They had actually already roped off the outside of the building, **and the law enforcement officer that I came in contact with said that there was a victim inside the building, just one.**

(Trial Tr. p. 312, ll. 3 – 10).

In Applicant's allegation number nine, he references the following testimony given by Rolanda Coleman, codefendant Lorenzo Young's girlfriend:

> Q: And where was Lorenzo that night while you were home sleeping?
> MS. PINNOCK: Objection, calls for speculation.

THE COURT: She can answer if she knows, if she has personal knowledge.

BY MS. CAMPBELL:

Q: She does.
A: From my knowledge, at Troy's house.
Q: Troy's house?
A: Yep.
Q: Was Troy's house located near the Bronx Avenue house where you were staying?
A: Yeah.
Q: How did you know he was staying at Troy's house?
A: That's what I was told.
Q: By whom?
A: Him.
Q: By Lorenzo?
A: Uh-huh.

(Trial Tr. pp. 523, l. 18 – 524, l. 11).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. See State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (S.C. App. 2001).

This Court finds allegation number five, where Ms. Swain testified to an out-of-court statement made by a police officer, was not hearsay and was admissible. This Court further finds that the testimony was not offered for the truth of the matter asserted. It is indisputable that the victim was a victim; she was lying dead on the floor, covered in blood. Clearly, the decedent was murdered and was rightfully called a victim, and the only dispute was whether Applicant was the perpetrator. This Court cannot conceive any possible way, but for this testimony, Applicant's trial would have been different. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

As to allegation number nine, this Court finds that this statement was not hearsay. While an objection was placed on the record by co-defense counsel calling for speculation, the trial court

permitted Ms. Coleman to answer because she had personal knowledge. "The admission of evidence is within the sound discretion of the trial court." State v. Hamilton, 344 S.C. 344, 353 (S.C. Ct. App. 2001).

Accordingly, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice. Thus, these allegations must be **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation 6: Failure to Object to Leading Page 370, Lines 19 – 20**

Again, Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the leading question regarding the make and model of a firearm, and type of ammunition. (Trial Tr. p. 370, ll. 19 – 20). This Court finds this allegation is without merit.

Under Rule 611(c), SCRE, leading questions "should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony." When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. Id. The true test of whether a question is leading is whether it suggests the answer. State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979). A question that does not suggest an answer in the affirmative or negative is not a leading question. Smith v. Union-Buffalo Mills Co., 100 S.C. 115, 84 S.E. 422 (1915).

Here, Applicant avers that the following leading question was the determinate factor in the outcome of his trial:

> Q: And it actually has the make and model, I believe, of the type of ammunition listed?

(Trial Tr. p. 370, ll. 19 – 20). In support of Applicant's contention that this leading question was the deciding factor in his trial, he offered the following evidence at the evidentiary hearing when asked whether Trial Counsel objected to the leading question, "No." In fact, this was the only evidence introduced, a single word indicating Trial Counsel did not object to the leading question.

This Court finds that Trial Counsel was not deficient in failing to object to the question. The question was leading, but it was necessary to develop the witness' testimony when introducing the court's exhibits 333 and 331. See (Trial Tr. pp. 368, l. 23 – 370, l. 21). This Court further finds that the trial's outcome would not have been different but for this one leading question. Even if this Court were to find Trial Counsel's failure to object was deficient, Applicant has failed to meet his burden of proving prejudice from Trial Counsel's performance. Indeed, this Court cannot entertain that this single leading question could garner the requisite prejudice to warrant a reversal here. Had Trial Counsel objected to this line of questioning, the State simply would have rephrased its questions and still elicited the same testimony.

Accordingly, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation 7: Failure to Object to DNA Swabs Page 376, Line 25**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the admission of DNA swabs on page 370, lines 19 – 20. This Court finds this allegation is without merit.

While Applicant is correct that Trial Counsel did not object to the admission of Exhibit 345, the DNA swabs, the co-defendant's counsel did object on the basis of a lack of foundation. The court asked the Solicitor to lay more foundation on Exhibit 345, and she did. (Trial Tr. pp. 376, l. 16 – 378, l. 14). Any contemporaneous objection by Trial Counsel would have been meritless. Furthermore, even if the failure to contemporaneously object to the admission of the DNA swabs with co-defense counsel satisfied the first prong of the Strickland test, which this Court does not find, Applicant cannot show Strickland's second prong of prejudice is satisfied. See United States v. Gibson, 690 F.2d 697, 703-04 (9th Cir. 1982) (failure to make evidentiary

objections does not render assistance ineffective unless challenged errors can be shown to have prejudiced the defendant).

This Court finds Applicant did not show that the lack of objection to the admission of the DNA swabs allowed the admission of evidence that otherwise would not have been admitted, and, that because of that, there was a reasonable probability the objection would have resulted in a different outcome of his trial. See Clark v. Collins, 19 F.3d 959, 966 (5th Cir.1994) ("Failure to raise meritless objections is not ineffective lawyering; it is the very opposite."). Notably, Applicant failed to present any argument of what objection Trial Counsel could or should have made. Such speculation and conjectural allegations do not demonstrate that Trial Counsel's performance was not reasonable or affirmatively prove that Applicant was prejudiced. "It is not enough for the [Applicant] to show that the errors had some conceivable effect on the outcome of the proceeding." Strickland, 466 U.S. at 693. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

Accordingly, this Court finds Applicant has failed to establish how he was prejudiced by Trial Counsel's alleged deficiency. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE.**

**Allegation 8: Failure to Object to Spoon DNA Page 382, Line 5**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the spoon DNA being offered into evidence on page 382, line 5. This Court finds this allegation is without merit.

Even if Trial Counsel's failure to object to the admission of the spoon DNA satisfied the

first prong of the Strickland test, which this Court does not find, Applicant cannot show Strickland's second prong of prejudice is satisfied. See United States v. Gibson, 690 F.2d 697, 703-04 (9th Cir. 1982) (failure to make evidentiary objections does not render assistance ineffective unless challenged errors can be shown to have prejudiced the defendant). This Court finds Applicant did not show that the lack of objection to the admission of the spoon DNA allowed the admission of evidence that otherwise would not have been admitted, and, that because of that, there was a reasonable probability the objection would have resulted in a different outcome of his trial. See Clark v. Collins, 19 F.3d 959, 966 (5th Cir.1994) ("Failure to raise meritless objections is not ineffective lawyering; it is the very opposite.").

Once again, Applicant failed to present any argument of what objection Trial Counsel could or should have made. Such speculation and conjectural allegations do not demonstrate that Trial Counsel's performance was not reasonable or affirmatively prove that Applicant was prejudiced. "It is not enough for the [Applicant] to show that the errors had some conceivable effect on the outcome of the proceeding." Strickland, 466 U.S. at 693. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

Accordingly, this Court finds Applicant has failed to establish how he was prejudiced by Trial Counsel's alleged deficiency. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation 10: Failure to Object to Letter Entered into Evidence**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the letter he wrote to his mother being entered into evidence and an enlarged version being published

to the jury. This Court finds this allegation is without merit.

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

On direct examination, Applicant testified that Trial Counsel never explained why he did not object to the letter used in evidence that implicated him. Applicant further testified that Trial Counsel never explained why he did not object to the enlarged version of the letter being entered into evidence. Applicant testified that Trial Counsel "implicated" him and that it was evidence of his guilt. Applicant testified that the judge asked him if he wrote the letter, and it "implicated" him. Applicant testified that Trial Counsel implicated him in that he wrote the letter to his mother to free his brother. Applicant testified and asked how Trial Counsel could say Applicant wrote that letter incriminating him.

On cross-examination, Applicant testified that his mother provided the letter and testified at trial that it was Applicant's handwriting. Applicant was asked if he admitted to the murder in the letter to which he replied, "[he] did not write it."

On redirect examination, Applicant was asked what he wanted to testify to the letter, and he replied that he never admitted to writing that letter – there was no benefit to writing that letter

– Trial Counsel said he wrote it to free his brother – he never confessed – he never said he did nothing – Trial Counsel put that on the record.

On direct examination, Garfield testified that she authenticated the letter entered at trial through a handwriting expert at the Schmerber hearing. Garfield testified that it was the mother who gave the letter to law enforcement. Garfield testified that Applicant's mother also testified that it was Applicant's handwriting. Garfield testified that she admitted the evidence as an admission against Applicant's own interest.

On cross-examination, Garfield testified that the letter Applicant wrote to his mother was helpful. Garfield testified that she did not know what legal theory Trial Counsel would have objected to.

This Court finds that Garfield **credibly** testified that she was unaware of any legal theory that would warrant Trial Counsel's objection to the letter. Garfield **credibly** testified that she authenticated the letter entered at trial through a handwriting expert at the Schmerber hearing. Applicant's mother identified the letter as being from Applicant and the handwriting as being Applicant's. Under this set of facts, this Court finds that the letter's authentication satisfied Rule 901(b)(1) and 901(b)(3), SCRE, and there was no arguable basis for an objection to its admission. Furthermore, this Court finds that as a matter of law, Trial Counsel could not be deficient for failing to object when there is no arguable basis for the objection.

Additionally, barring any alleged deficiency, this Court finds Applicant has failed to show prejudice. Specifically, this Court finds that any objection Trial Counsel would have made to the admission of the letter would not have changed the outcome of his trial. Not only was Applicant's letter admissible under the rules stated *supra*, but also under Rule 802(d)(2), SCRE, as an

admission of a party opponent. Applicant has produced no probative evidence towards meeting his burden as to either prong of Strickland.

Accordingly, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE.**

**Allegation 11: Failure to Review Discovery with the State Page 1216, Lines 22 – 24**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to review discovery with the State. This Court finds this allegation is without merit.

Specifically, Applicant points to an exchange with the trial court where the solicitor states that they "begged" Trial Counsel to review discovery at the Solicitor's office. This exchange involved two case notes that Trial Counsel argued he was never provided through discovery and that the notes were "nothing earth shattering." (Trial Tr. p. 1216, ll. 16 – 17). Further in the colloquy with the trial court on this matter, the court found that the two case notes referred to items already turned over to defense. (Trial Tr. pp. 1216 – 1220). Specifically, the trial court found "number one, you've already been provided all of it[] [and] [n]umber two, it's not exculpatory or mitigating toward [Applicant]." (Trial Tr. p. 1221, ll. 12 – 19).

At the evidentiary hearing, Applicant testified on direct examination that Trial Counsel never explained why he did not review discovery with the solicitor.

As an initial matter, this Court cannot ascertain any rule that requires defense counsel to go to the Solicitor's office and review discovery with the Solicitor. The record reflects that Trial Counsel filed Rule 5, SCRE, and Brady[9] motions in this case. Trial Counsel renewed those motions during trial. This Court finds Applicant has failed to meet his burden proving any

[9] Brady v. Maryland, 373 U.S. 83 (1963).

deficiency of Trial Counsel nor any prejudice resulting therefrom. Applicant presented a single self-serving answer regarding Trial Counsel not reviewing the discovery with the Solicitor. Applicant presented no evidence of what Trial Counsel would have accomplished had he reviewed the discovery with the Solicitor. Therefore, whether Trial Counsel reviewing the discovery with the Solicitor would have changed the outcome of Applicant's trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish how Trial Counsel's alleged deficiency prejudiced him. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

**|CONCLUSION PAGE FOLLOWS|**

## CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

**AND IT IS SO ORDERED this** 10 **day of** March **, 2023.**

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

Florence, South Carolina

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| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | IN THE COURT OF COMMON PLEAS<br>FOR THE FIFTH JUDICIAL CIRCUIT |
| Trenton M. Barnes, #362454,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | CASE NO. 2018–CP–40–3077<br><br>**SUPPLEMENTAL ORDER OF DISMISSAL** |



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Trenton M. Barnes (Applicant) on June 12, 2018. A supplemental evidentiary hearing on this matter was convened before the Court on January 26, 2025, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Appellate Defender Gary H. Johnson, II, Esquire. Senior Assistant Deputy Attorney General D. Russell Barlow, II, Esquire, of the South Carolina Attorney General's Office represented Respondent.

## PROCEDURAL HISTORY

This Court denied Applicant PCR in an Order of Dismissal filed on July 26, 2023, with the Richland County Clerk of Court. Applicant filed a timely Notice of Appeal. In his Petition for Writ of Certiorari, Applicant raised the following issue:

> The PCR court erred in not addressing whether counsel was ineffective for failing to object to impermissible testimony from two prison informants that co-defendant Young told them "Trigg" and "Trap" were his accomplices in this attempted armed robbery and murder case, and that the informants found out from someone else that "Trigg" was petitioner since this testimony was inadmissible under Rule 602, SCRE, because the informants did not have personal knowledge regarding the identity of "Trigg" and it was extremely prejudicial to petitioner.

While preparing its return to Applicant's petition, the State discovered the post-conviction relief application received from the Richland County Clerk of Court's Office was not complete

when compared to the version on the public index. Specifically, Applicant had continued with an allegation on the backside of his PCR application, which was not served on the State, nor was it provided to the lower court. On July 1, 2024, the State filed its motion to remand the matter back to the lower court for an evidentiary hearing and supplemental order. On August 13, 2024, by filed Order, the South Carolina Supreme Court granted the State's motion to remand and conduct an evidentiary hearing on whether Trial Counsel was ineffective for failing to object to the introduction of testimony from two jail informants as inadmissible under Rule 602, SCRE, and issue a supplemental order addressing the issue.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the initial post-conviction relief hearing and the supplemental post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at both evidentiary hearings and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the trial transcript and the testimony and evidence presented at the supplemental evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code.

### *INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL*

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally

S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair

proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] it is all too tempting for a defendant to second-guess counsel's assistance after conviction or [an] adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, reconstruct the circumstances of counsel's challenged conduct, and evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed [at] the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing 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.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under de novo review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 696 (emphasis added).

The performance and prejudice standards, however, "do not establish mechanical rules . . . [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of trial counsel. The specific claims are addressed below:

**Allegation:** **Trial Counsel failed to renew his hearsay objection or object pursuant to Rule 602, SCRE, regarding the identity of "Trigg" and "Trap" from two prison informants whose testimony should have been limited to statements against interest of Applicant's co-defendant.**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to renew his hearsay objection or object pursuant to Rule 602, SCRE, regarding the identity of "Trigg" and "Trap" from two prison informants whose testimony should have been limited to statements against interest of Applicant's co-defendant. Specifically, Applicant contends the two jail informants, Alfred Dominique Wright (Wright) and Michael Schaeffer (Schaefer), impermissibly testified that co-defendant Lorenzo Young (Young) told them "Trigg" and "Trap" were his accomplices, and the informants found out from someone else who "Trigg" and "Trapp" were so the informants did not have personal knowledge of the identity of "Trigg" and "Trap" and therefor the testimony was inadmissible under Rule 602, SCRE.

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

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

When analyzing counsel's performance, the reviewing court will "strong[ly] presum[e]" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what

questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

**Trial**

At trial and prior to testimony from Wright, Trial Counsel renewed his pretrial motion with the trial court in the following colloquy:

> MR. SCHNEE: The only other brief thing I would ask at this point is I'm going to renew my pretrial motion and memorandum that I gave Your Honor on Wednesday. That would be dealing with the 804(b)(3) hearsay evidence. I know there are a number of jailhouse witnesses coming up or in the next few minutes I believe the very first one even gets information from people other than my client. Anything that would be tending to inculpate my client, exonerate the client or shift blame in any way, shape, or form is inadmissible by those rules. My notice has been discussed ad nauseam. Just wanted to point out for the record that I'm renewing that objection to any such hearsay testimony.
>
> THE COURT: Okay. I'll have to hear it. I can't make that decision in the abstract.

(App'x p. 931).

On direct examination, the following colloquy occurred with Wright:

Q. So Mr. Young actually asked you for some help with the legal portion of his case?
A. Yes, ma'am.
Q. In that process, tell us what occurred and what you learned.
A. He told me that he was with two other individuals and that ---

MR. SCHNEE: Objection, Your Honor. My prior hearsay objection.
THE COURT: Overruled.
MR. SCHNEE: Thank you.

Q. You can continue. What did he tell you about his case?
A. That he was with two other individuals that he called Trigg and Trap, and I later got their names from somebody else, but not from him. He just gave me their nicknames. He said they went to rob a club, but the club was closed, so they went next door to a bakery where Trap stayed outside as a look out and he and Trigg went in. A woman resisted when they demanded for money and swung a knife at them, and he shot her two times.
Q. And backing up just a little bit, you said he mentioned that he did this with two other individuals?
A. Right.
Q. Did you learn who Trigg was?
A. I was told by someone else, not him, that Trigg was Troy Stevenson and Trap was Trenton Barnes and they were both brothers.
Q. They were both brothers?
A. Uh-huh.

(App'x pp. 935–936).

On direct examination, the following colloquy occurred with Schaefer:

Q. So Mr. Schaefer, you said you had a conversation with Mr. Young on several occasions?
A. Yes.
Q. And specifically did he ever talk to you about why he was in jail?
A. Yes.
Q. And specifically did he give you any details concerning a murder that occurred at a particular bakery?
A. Yes.
Q. Can you share with the jury what he told you?
A. He told me that ---

MR. SCHNEE: Judge, I'm going to object based on the prior hearsay objections.
THE COURT: All right. Overruled. Go ahead.

Q. Just go ahead and tell the jury what Mr. Young told you.
A. Okay, he said him and two other people by the name of Trap and Trigg went out to rob a nightclub in the area, but it was closed. They saw the bakery was opened. They took that as an opportunity to go in. The woman was in there. He said she went for a knife and she was struggling so she shot her twice. He fled the scene. He said he was wearing a red hoodie and jeans.
Q. Why was he telling you about this?
A. Because we were talking about our different cases.
Q. About your case?
A. Yes. About mine, too.
Q. And did you confide in him about your case, as well?
A. Yeah, I told him that I had robbed a bank.
Q. That you had robbed a bank?
A Uh-huh.
Q. And you just mentioned Trap and Trigg. Did you know who those individuals were?
A. No, it wasn't until later on..I just knew them by their nicknames.
Q. And did you determine later who Trap and Trigg were?
A. Yeah.
Q. Who was Trap?
A. A 16-year-old kid named Troy. Yeah, Troy.
Q. A 16-year-old?
A. Yes.
Q. Did you understand who Trigg was?
A. That's Trenton, Trenton Stevens (sic).

(App'x pp. 1109–1111).

**Initial PCR Evidentiary Hearing**

On direct examination, the following colloquy occurred with Applicant:

Q. Okay. And on your original application when you're talking about that -- hearsay within hearsay in the statement, are you referring to that letter?
A. The letter, as well as jailhouse informants.
Q. Tell me what your grounds are there. What are you referencing?
A. On the jailhouse informants?
Q. Yes.
A. Mark Schnee, he basically failed to test the credibility of the witness testimony when the witness was allowed to testify stating that co-defendant Young confessed -- confessed the crime to him, stating that he was alongside two defendants -- two individuals in a crime by the name of Trigg and Trap, but the trial judge allowed him to testify that he got the name -- the actual identities of the two individuals from an unknown source that was never mentioned, and Mark Schnee never objected to that.

Q. Okay. Is there anything else that you'd like to mention from your application regarding ineffective assistance of counsel? Would you like to see a copy of your application?
A. I know. I know how it go.
Q. Okay. Is there anything else you'd like to testify to?
A. The main thing I was pushing the issue is that Mark Schnee told me to invoke my Fifth Amendment by remaining silent when the judge ask me did I wrote the letter and then he turned around and implicated me on that letter saying that I wrote the letter in order to free my older brother, but I never admitted to writing that letter. I mean, if anything, my brother had something -- like he could have benefitted from that letter, so how can he just automatically be saying that I wrote that letter. He just should have kept fighting for my innocence instead of incriminating me.

(App'x pp. 1959, l. 9 – 1960, l. 19).

On cross-examination, Applicant testified that he never admitted to writing the letter. (App'x p. 1961). Applicant was asked explicitly if he wrote the letter, and Applicant denied writing the letter. (App'x p. 1961).

**Supplemental PCR Evidentiary Hearing**

At the supplemental evidentiary hearing on direct examination of Applicant, the following colloquy occurred:

Q. Let's jump right to the letter. Okay. The letter that was introduced in your trial. Do you remember the letter?
A. Yes, sir.
Q. Okay. And what prompted you to write the letter?
A. It was multiple reasons. One of the reasons of course being influenced by my brother because I was younger in that situation.
Q. At the time, how old were you?
A. I was 16.
Q. 16 years old when this happened?
A. Yes sir.
Q. Okay. And your brother, how did he influence you to write the letter?
A. Basically, if he was found guilty in this situation, he possibly -- probably could have got life in prison or the death penalty where he told me that I wouldn't be in that type of situation because I was a child.
Q. Okay. And did you feel pressure to write the letter to help your brother, Troy?
A. Of course, that's my older brother.
Q. Okay. And is that what prompted you to write the letter?

A. Yes, sir.
Q. And where did you get some of the details for the letter?
A. I talked to my brother about it, I spoke with my mama about it but mainly me and my brother spoke about it.
Q. And in your mind as a 16-year-old, was that letter an admission of your guilt?
A. No, I am not really knew what was going on in that process. I was just trying to assist my brother at that time.

. . . .

Q. In terms of the actual trial testimony that was used against you, do you feel that the additional information regarding the identity of Trig and Trapp played a role in the trial's outcome?
A. Yes, sir.
Q. Okay. And do you feel like if you had explained the motivations on the letter and the Trig and Trapp stuff had been kept out.

. . . .

Q. Okay. How do you think not explaining the letter affected the outcome of your trial?
A. I mean, by not explaining that letter automatically pointed me out to be the alleged gunman in that situation.
Q. And when the prison informants because there were multiple prison informants that testified about Trig and Trapp, do you think that also had an impact?
A. Yes, sir.

(Supp. PCR Tr. pp. 12–15).

On cross-examination, Applicant testified that the letter he sent to his mom was written and sent by him. (Supp. PCR Tr. p. 18).

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**Findings**[1]

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. As an initial matter, the record before this Court counters the Applicant's assertion that Trial Counsel was obligated to renew his objection to hearsay. In fact, Trial Counsel did raise a hearsay objection, effectively preserving the issue for appellate review, as addressed in Applicant's direct appeal and published opinion. See State v. Barnes, 421 S.C. 47, 804 S.E.2d 301 (Ct. App. 2017).

In Barnes, Applicant argued that "the trial court erred in admitting the testimony of Wright and Schaefer under the hearsay exception for statements against penal interest, Rule 804(b)(3), SCRE." Barnes, 421 S.C. at 53, 804 S.E.2d at 305. The South Carolina Court of Appeals agreed with Applicant and addressed the issue on the merits and opened with "Over Barnes' objections . . . ." Id. at 54, 804 S.E.2d at 305. The Barnes court went on to find "[t]he portions of Wright and Schaefer's testimony that relate Young's mention of 'Trigg' and 'Trap' as his accomplices were not admissible as statements against Young's interest." Id. at 55, 804 S.E.2d at 306. The Barnes court further found that the trial court erred in admitting the "rank hearsay," however, the "improper

[1] Applicant testified at the supplemental evidentiary hearing about the letter he wrote to his mother. While this testimony was outside the scope of the remand, this Court finds the testimony relevant to Applicant's credibility and finds Applicant's testimony wholly incredible. At the initial evidentiary hearing, Applicant testified that Trial Counsel should have never argued that he wrote the letter to protect his brother, because he never admitted to writing it. Notably, Applicant testified that he did **not** write the letter. However, at the supplemental evidentiary hearing, Applicant testified that he **did** write the letter to help his brother, which contradicts his testimony at the initial evidentiary hearing.

admission was harmless." Id. at 56, 804 S.E.2d at 306.

From the record, this Court finds the matter Applicant contends should have been objected to – was objected to – preserved – and was raised on appeal. On appeal, the South Carolina Court of Appeals addressed the matter on the merits. Thus, under Rule 18(a), SCRCrimP, once Trial Counsel has presented an argument and the trial court has rendered a decision, he is precluded from further contesting that matter. Therefore, a subsequent contemporaneous objection on hearsay was not necessary, and Trial Counsel cannot be deemed ineffective for adhering to procedural rules.

Turning to Applicant's next allegation that Trial Counsel should have also objected to Wright and Schaefer's testimony based on Rule 602, SCRE, this Court declines to find Trial Counsel's representation deficient where Trial Counsel's objection was objectively reasonable under the circumstances. While Trial Counsel could have also objected based on Rule 602, SCRE, this Court does not find Trial Counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms," and therefore his representation was not deficient. See Cherry, *supra*. Furthermore, Trial Counsel's hearsay objection was a correct argument, as found by the South Carolina Court of Appeals, and Applicant is guaranteed competent representation, not perfect representation. See Harrington, *supra*. Under these circumstances, this Court finds Trial Counsel's representation was competent.

However, even if this Court were to find Trial Counsel's representation here deficient, Applicant has failed to prove any prejudice flowing from the alleged deficiency. This Court finds that the result of the trial would not have been different had Trial Counsel made the objection under Rule 602, SCRE. Notably, in Applicant's direct appeal, the South Carolina Court of Appeals found that even if the testimony of Wright and Schaefer had been limited, "the State

overwhelmingly proved [Applicant] was one of the people who entered the kitchen and shot at the Victim." Barnes, 421 S.C. at 56, 804 S.E.2d at 306. The South Carolina Court of Appeals concluded that "[t]his evidence includes, most compellingly, [Applicant's] letter to his mother confessing to the crime; his mother's identification of him as the person wearing the gray sweatshirt in the surveillance video; and the timeline of [Applicant's] whereabouts on the night of the shooting." Id. Thus, even if Trial Counsel had objected, the result of the trial would not have been different, and Applicant has failed in his burden of proving any prejudice.

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

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

|CONCLUSION PAGE FOLLOWS|

## CONCLUSION

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

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

**AND IT IS SO ORDERED this** 15th **day of** August, **2025.**

GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

Sumter, South Carolina

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| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE FIFTH JUDICIAL CIRCUIT |
| Trenton M. Barnes, #362454,<br><br>Applicant | ) | CASE NO. 2018–CP–40–03077 |
| v. | ) | **ORDER DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP** |
| State of South Carolina,<br><br>Respondent. | ) | |



This matter comes before the Court by way of Trenton M. Barnes's (Applicant) Motion to Reconsider Under Rule 59(e), SCRCP, filed on August 22, 2025, asking this Court to reconsider its Supplemental Order of Dismissal denying Applicant's application for post-conviction relief.

## PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Duiring its February 2014 term, the Richland County Grand Jury indicted Applicant for second-degree burglary (2014-GS-40-0755), attempted armed robbery (2014-GS-40-0756), criminal conspiracy (2014-GS-40-0757), kidnapping (2014-GS-40-0754), and murder (2014-GS-40-0752). Mark Schnee (Trial Counsel) represented Applicant. Assistant Solicitors Dolly J. Garfield, Kathryn Campbell Hubbird, and Nicole Simpson of the Fifth Circuit Solicitor's Office prosecuted the case.

On November 10–19, 2014, Applicant and codefendant, Lorenzo Young, proceeded to trial before the Honorable Robert E. Hood. The jury found Applicant guilty as indicted. Without objection, Judge Hood granted deferred sentencing on Applicant due to the recent Aiken v. Byars[1]

[1] 410 S.C. 534, 765 S.E.2d 572 (2014).

decision. On December 12, 2014, Judge Hood sentenced Applicant to imprisonment for concurrent terms of fifteen (15) years for second-degree burglary, twenty (20) years for attempted armed robbery, and fifty (50) years for murder.[2] Applicant's kidnapping conviction remained in place, however, pursuant to S.C. Code Ann. § 16-3-910, the sentence for kidnapping was vacated.[3]

Applicant filed a timely notice of appeal. W. Joseph Maye, Esquire, of the South Carolina Commission on Indigent Defense–Appellate Defense Division perfected the appeal. Assistant Attorney General Susannah R. Cole of the South Carolina Office of the Attorney General represented the State. On June 7, 2016, Applicant filed a Final Brief of Appellant in the South Carolina Court of Appeals and raised the following issues:

I. The Trial Court abused its discretion in denying Defendant Barnes' motion for severance.
II. Codefendant Young's jailhouse confessions to Wright and Schaefer, which inculpated Appellant Barnes, were improperly admitted under Rule 804(b)(3).
III. The Bruton rule was triggered by limiting the cross-examination of Rolanda Coleman, and by inculpating Appellant through nontestimonial confessions of an unavailable codefendant absent proper grounds for hearsay exceptions.
IV. The Trial Court allowed the solicitor to improperly impeach Latoya Barnes by admitting extrinsic evidence of a prior inconsistent statement two days after the witness was excused and could not provide an explanation or context to the newly admitted evidence.

The State filed its Final Brief of Respondent on May 24, 2016. Following oral arguments, the South Carolina Court of Appeals issued a published opinion on July 12, 2017, affirming the convictions and sentences. State v. Barnes, 421 S.C. 47, 804 S.E.2d 301 (S.C. Ct. App. filed August 16, 2017). The Remittitur was returned to the circuit court on September 5, 2017.

On September 10, 2018, Applicant filed his PCR application. An evidentiary hearing was

[2] The State did not proceed on the criminal conspiracy charge at trial.
[3] As Judge Hood explained, "a case that involves kidnapping and murder in the same incident, then the sentences are not allowed to run together, and the sentence must be vacated, so I'm beginning by vacating the kidnapping [sentence]." (Trial Tr. p. 1658, ll. 4 – 8).

convened on May 26, 2022, at the Richland County Courthouse. Applicant was present and represented by Ola A. Johnson, Esquire. Joshua A. Edwards, Esquire, and D. Russell Barlow, II, Esquire, of the Office of the Attorney General represented the State. This Court denied Applicant's PCR in an Order of Dismissal filed on July 26, 2023, with the Richland County Clerk of Court. Applicant filed a timely Notice of Appeal. In his Petition for Writ of Certiorari, Applicant raised the following issue:

> The PCR court erred in not addressing whether counsel was ineffective for failing to object to impermissible testimony from two prison informants that co-defendant Young told them "Trigg" and "Trap" were his accomplices in this attempted armed robbery and murder case, and that the informants found out from someone else that "Trigg" was petitioner since this testimony was inadmissible under Rule 602, SCRE, because the informants did not have personal knowledge regarding the identity of "Trigg" and it was extremely prejudicial to petitioner.

While preparing its return to Applicant's petition, the State discovered the post-conviction relief application received from the Richland County Clerk of Court's Office was not complete when compared to the version on the public index. Specifically, Applicant had continued with an allegation on the backside of his PCR application, which was not served on the State, nor was it provided to the lower court. On July 1, 2024, the State filed its motion to remand the matter back to the lower court for an evidentiary hearing and supplemental order. On August 13, 2024, by filed Order, the South Carolina Supreme Court granted the State's motion to remand and conduct an evidentiary hearing on whether Trial Counsel was ineffective for failing to object to the introduction of testimony from two jail informants as inadmissible under Rule 602, SCRE, and issue a supplemental order addressing the issue.

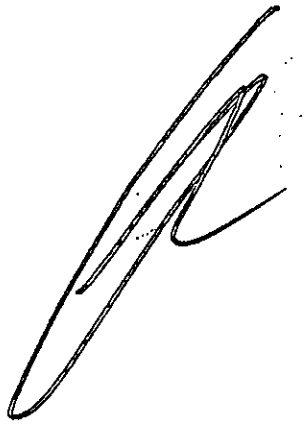
A hearing was convened at the Sumter County Courthouse on January 26, 2025. Applicant was present at the hearing and was represented by Appellate Defender Gary H. Johnson, II, Esquire. Senior Assistant Deputy Attorney General D. Russell Barlow, II, Esquire, of the South

Carolina Attorney General's Office, represented Respondent. On August 20, 2025, this Court filed its Supplemental Order of Dismissal denying Applicant's PCR application with prejudice. On August 22, 2025, Applicant filed his Motion to Reconsider Under Rule 59(e), SCRCP.

## APPLICANT'S MOTION TO ALTER OR AMEND

On August 22, 2025, Applicant filed a Motion to Reconsider Under Rule 59(e), SCRCP. In his motion, Applicant contends this Court erred in not finding Trial Counsel's representation constitutionally ineffective where he failed to object under Rule 602, SCRE. Applicant further contends that this Court erred in not finding Applicant had met the requisite prejudice to order a new trial from Trial Counsel's deficient performance in failing to object under Rule 602, SCRE. Additionally, Applicant contends that the evidence in his case was not overwhelming.

This Court has carefully reviewed the submission of Applicant and has reviewed the record again in this matter. After careful consideration, this Court declines to alter or amend the prior ruling of the Court in the Supplemental Order of Dismissal.



**|CONCLUSION & SIGNATURE PAGE FOLLOWS|**

## CONCLUSION

After careful consideration of the arguments of Applicant and review of the record, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. The Supplemental Order of Dismissal issued by this Court contains the appropriate findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code of Laws and Rule 52(a) of the South Carolina Rules of Civil Procedure. Accordingly, Applicant's motion for reconsideration is **DENIED.**

**IT IS THEREFORE ORDERED** that Applicant's motion is hereby **DENIED AND DISMISSED.**

**AND IT IS SO ORDERED** this 27th day of October, 2025.

GEORGE M. McFADDIN, JR.
Presiding Judge
Fifth Judicial Circuit

Sumter, South Carolina