RECEIVED
DEC 08 2025
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Daniel Dewitt Hall, Circuit Court Judge

Case No. 2020-CP-04-1112

Raeford D. Wideman # 374579 .... Petitioner,

v.

State of South Carolina... Respondent.

NOTICE OF APPEAL

Peitioner appeals the Hon. Daniel Dewitt Hall's Order of Dismissal dismissing petitioner's application for post-conviction relief. On October 29, 2025, the court signed an order dismissing Petitioner's application for post-conviction relief with prejudice. Appellant received written notice of entry of this order on November 4, 2025. A copy of the Order of Dismissal is attached.

December 2, 2025

Sarah M. Henry
406 Pettigru Street
Greenville, South Carolina 29601
(864) 478-8324
Attorney for Petitioner

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Raeford D. Wideman, SCDC #374579,

Applicant,

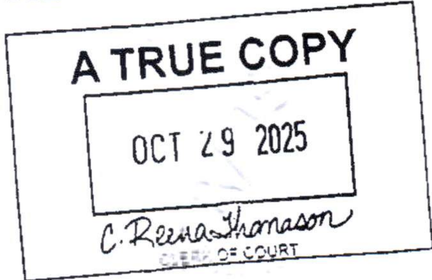
v.

State of South Carolina,

Respondent.

Case No. 2020-CP-04-1112

ORDER OF DISMISSAL WITH PREJUDICE



Presiding Judge:	Hon. Daniel D. Hall
Applicant's Attorney:	Sarah M. Henry, Esq.
Respondent's Attorney:	Donald J. Zelenka, Esq.
Date of Hearing:	August 21, 2023

This matter comes before the Court by way of Applicant Raeford D. Wideman's application for post-conviction relief (PCR) filed on May 18, 2020. On October 28, 2020, Respondent, the State of South Carolina, filed its original Return. On August 15, 2023, Applicant filed an Amended Application. On August 20, 2023, Respondent, the State of South Carolina, filed an Amended Return.

On August 21, 2023, an evidentiary hearing was held at the Anderson County Courthouse before the Honorable Daniel D. Hall. Applicant was present and represented by Sarah M. Henry, Esquire. Deputy Attorney General Donald J. Zelenka represented Respondent. At the hearing, Applicant withdrew the certain allegations within his initial PCR application and proceeded forward solely on the allegations within his Amended Application. In support of these claims, Applicant testified on his own behalf and presented the testimony of Rose Wideman (Rose), Taquna Blassingame (Blassingame), and Raeford Wideman, Sr. (Wideman Sr.). This Court took

judicial notice that Applicant's Trial Counsel, Scott David Robinson, is presently under disability status with the South Carolina Bar and did not testify.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief, and accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was arrested on March 15, 2015 for the murder of Ryan Tatem. Applicant was indicted at the July 2015 term of the Anderson County Grand Jury for Murder (2015-GS-04-01191). On November 13-16, 2017, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. Applicant was represented by Scott David Robinson, Esquire (Trial Counsel). Assistant Solicitors Stanford Lee Overby, Jr., and Morgan Dawn Page prosecuted the case. On November 16, 2017, the jury convicted Applicant as indicted. Judge McIntosh sentenced Applicant to thirty years' imprisonment.

Applicant filed a timely Notice of Appeal. Applicant's appeal was perfected by Appellate Defender Kathrine J. Hudgins, by filing an Anders[1] brief raising the following issue:

> Did the trial court err in denying Appellant's motion for immunity from prosecution pursuant to the Protection of Person's and Property Act?

On March 11, 2020, the South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders. State v. Wideman, Op. No. 2020-UP-063 (S.C. Ct. App. filed

[1] Anders v. California, 386 U.S. 738 (1967).

March 11, 2020). The Remittitur was returned to the lower court on May 4, 2020.

THE STATE'S VERSION OF THE FACTS GIVING RISE TO THE CONVICTION

In the early morning of March 15, 2015, Applicant, while standing on the passenger side of the vehicle, fired three gunshots into the vehicle striking and killing Ryan Tatum (Tatum). (Trial Tr. p. 179).

Brianna Ware (Ware) testified that she, Taquna Blassingame (Blassingame), and Tatum went out drinking together in Greenville until 2:00 in the morning. (Trial Tr. p. 264). Ware testified Tatum drove the two girls back to Applicant's home in Anderson to retrieve Ware's car. (Trial Tr. p. 265). Ware testified she could not get her car unstuck from the mud, and that Tatum and Willie McDonald attempted to get the car out of the mud but were unsuccessful. (Trial Tr. pp. 266 – 277). Ware testified she asked Tatum to drive her home. Blassingame was intoxicated and laying down asleep in the back seat of the car. (Trial Tr. p. 268). Ware testified that at this time, Applicant came outside from the home and approached the passenger side of the car asking who Tatum was and why his sister was passed out in the backseat. (Trial Tr. p. 269). Ware testified that she then heard multiple gunshots, ran out of the car, and took off running towards the house and stayed in the house until the police arrived. (Trial Tr. p. 271). Ware testified that there was no other person outside at the time. (Trial Tr. p. 271).

Willie McDonald (McDonald) testified that while on his way home from getting cigarettes from the store, he stopped by Applicant's house to help Ware get her vehicle unstuck from the mud. (Trial Tr. p. 294). McDonald testified that they were unsuccessful in pulling the vehicle out of the mud, and that he began walking back up the street heading home. (Trial Tr. p. 294). McDonald testified that he then heard the front door bust open, saw Applicant run out to the car, and then he heard shots. McDonald testified that Tatum then reversed the car and hit a trailer. As

Tatum reversed the vehicle, Ware screamed and jumped out of the vehicle. (Trial Tr. p. 295).

Deputy Coroner Donald McCown (McCown) testified that he is a Deputy Coroner with the Anderson County Coroner's Office. (Trial Tr. p. 152). McCown testified Tatum had sustained a gunshot wound to the back that exited the chest, to the right forearm, and to the left leg. (Trial Tr. p. 179). McCown testified that in his opinion, Applicant was standing near the rear passenger door. (Trial Tr. p. 179) McCown testified that there was no evidence of physical confrontation or defensive wounds. (Trial Tr. p. 180).

Nathan Mitchell (Detective Mitchell) testified that he is a detective with the Anderson County Sheriff's Office.(Trial Tr.p. 182). Detective Mitchell testified that Applicant gave a voluntary oral statement admitting to shooting Tatum and claimed it was an accident. (Trial Tr. p. 192). (State Exhibit 7 at trial).

The trial court ultimately charged the jury with murder, voluntary manslaughter, and involuntary manslaughter. (Trial Tr. pp. 374 – 319). The trial court also charged accident, self-defense, and defense of others. (Trial Tr. pp 381 – 387). At the close of the trial, the jury found Applicant guilty of Murder. (Trial Tr. p. 405).

<u>CURRENT ACTION</u>

In his original *pro se* application for post-conviction relief, Applicant alleged he is being held in custody unlawfully based on the following (verbatim):

1. Malice violation
2. Ineffective assistance of counsel
3. Due process
4. Immunity violation
5. Castle Doctrine
6. Directed verdict violation
7. Prosecutorial misconduct
8. Miranda right violation
9. Confession while in custodial interrogation

Applicant requested relief as follows: "sentence to be remanded or vacated"

In the Amended Application filed August 15, 2023, by appointed counsel Sarah Henry, the Applicant made the following allegations:

1. Ineffective Assistance of Counsel
   a. Trial counsel pursued the defense of "accident" which was ineffective and not supported by the facts or the law, confusing the jury, decreasing the defense's credibility with the jury, and weakening the primary defense in the case which was 'defense of others'.
   b. Trial counsel failed to call Taquna[2] Blassingame and Rose Wideman in support of the Applicant's 'defense of others' defense.

At the outset of the evidentiary hearing, Applicant specifically withdrew the allegations from his initial application relating to the trial court rulings on malice, immunity and the Castle Doctrine, objection to Miranda rights issue, the confession while in custody, prosecutorial misconduct and the directed verdict issue. He went forward on the ineffective assistance of counsel claims.

Before this Court are the records of the Anderson County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript and briefs; and the records of the current PCR action, including a transcript of the PCR hearing.

[2] This spelling Taquna is consistent with the way she spelled her name during the PCR hearing. PCR Tr.p. 98. Throughout the proceedings her name was spelled in various ways, including Taquanna and Taquana.

Summary of Relevant Testimony From the Evidentiary Hearing

Applicant's Testimony

On direct examination, Applicant testified that he was awoken by a loud noise outside his parent's home at 3:00 AM where he stayed with his parents and his girlfriend. He stated that that looked out and grabbed his handgun. Applicant testified that he saw Brianna, his distant relative, and two guys he had never seen before were in the yard when he looked though the front door and then went outside. Applicant testified that he asked Brianna where his sister was. He said Brianna may have been intoxicated and was babbling and told him the car was stuck in the mud. Applicant testified that when he saw Blassingame's SUV vehicle in the driveway, he became concerned. Applicant testified he walked towards Blassingame's vehicle in the driveway and was not sure what was taking place. He said he saw Blassingame laying down, unconscious and unresponsive, in the backseat of the vehicle.

Applicant stated that he asked Brianna what happened. Applicant testified that at that point Tatum got into the driver's side of the vehicle, and Applicant asked Tatum about Blassingame and told Tatum that he could not leave with his sister. Applicant testified that Tatum was nonchalant and did not respond to any of his questions about Blassingame. Applicant testified Brianna was telling Tatum that Applicant was Blassingame's brother.

Applicant testified that he told Tatum to turn the vehicle off. At this point, Applicant's father was on the porch, and Applicant was at the vehicle door trying to check on Blassingame and get her out of the vehicle. Applicant testified his father approached to the vehicle and told Tatum that it was his vehicle and that Tatum could not leave with his daughter. Applicant testified that his father was trying to get the keys, and Tatum did not turn the vehicle off and did not stop or get out of the vehicle. Applicant testified that Tatum then stepped on the gas while he was in the door

of the vehicle.[3] Applicant testified that there was a ditch in the driveway, and as he was trying to get out of the vehicle door, he shot at Tatum. Applicant testified that he was defending himself and his sister.[4]

Applicant testified that the vehicle hit the right side of his body as he was trying to get out and his neck was sore. Applicant testified that his mom called the police. Applicant testified that, initially, he was not completely honest with the police, but that he did tell the truth later and cooperated. Applicant testified he told the police where the gun was, that the gun was his and he was the shooter. Applicant testified he had never met Tatum before that night and did not know he was dating Blassingame. Applicant testified he was emotionally distraught and had a close relationship with Blassingame. Applicant testified that when he shot at Tatum, he was trying to stop him from leaving with Blassingame. He claimed he was in the doorway when the victim started to back up and the door hit his right side. when he was trying to get out of the way. He also stated (unlike his statement in Exhibit 7) that he was trying to stop him hurting him or his sister. Applicant testified he was unsure how many times he fired the gun and now thought it was three or four times. Applicant testified he fired so many times because he felt like he had no choice and it was just instincts. Applicant testified that he didn't start firing until Tatum started actively backing the vehicle up. Applicant testified he was worried about Tatum leaving with Blassingame

---

[3] It was somewhat disputed at trial that the victim stepped on the gas. Rather, it was testified at trial that he put the car in reverse and did not floor it. Trial Tr.p. 70.

[4] In his statement to the police he claimed it was an accident and that he did not intend to shoot him. He did not indicate is was to defend himself. Trial Tr.p. 192, l. 3-10. In the Castle hearing when Wideman testified, he claimed for the first time that he was trying to defend himself and his sister, though he also testified he fired at the suspect when the car door hit him. Trial Tr. p. 47-48. Compare Trial Tr.p. 56-57 ("not willingly or wanting to shoot the guy"). State Exhibit 7. In an oral statement he initially claimed he fired only once. Three shell casings were found at the scene. Trial Tr.p. 196. However, the investigating officer did not think it was an accident even though Wideman declared in his interview that it was. Trial Tr.p. 256.

before she received medical attention. Applicant testified he grabbed the gun at the house because he didn't know what was going on outside, and did not know the intentions of the two guys outside. He further stated that his nieces, nephews, his pregnant girlfriend, and parents were all asleep in the house.

Applicant testified he didn't have discussions with Trial Counsel. Applicant testified Trial Counsel was negligent about preparing the case and did not tell him too much about how everything works. Applicant testified that Trial Counsel told Applicant they should pursue the defense of accident. Applicant testified that the testimony he had provided at the evidentiary hearing would be the testimony he would have given at trial had he testified. Applicant testified that Trial Counsel didn't explain how the defense of accident fit with the facts of his case, and merely told him we're going forward with it. Applicant testified they also discussed the defense of others and self-defense but did not discuss how the defense of accident and defense of others and self-defense would work together and how that would have impacted the jury.

Applicant testified that Trial Counsel advised him it would be best if he did not testify because of the recording in the interrogation room was enough to show his claim of accident (State Exhibit 7). Applicant testified Trial Counsel did not talk often with Applicant and he recalled three meetings during the whole process discussing and reviewing facts and discovery. He indicated that the plan was to go forward with accident. In hindsight he now asserted he would not have said it was accident. Applicant testified he provided Trial Counsel witnesses to interview, including his parents and his sister. Applicant testified that Trial Counsel said his sister Taquna was passed out drunk, and counsel did not want her to testify because she was the reason Applicant was charged.

Applicant testified that he believes if the witnesses were called, it would have changed the outcome of his trial and supported his claim of self-defense and defense of others.

On cross-examination, Applicant testified the first statement he gave to police was that he didn't do it. Applicant testified that in recorded statements that were produced at trial, his statements were pretty much the same as his testimony today. Applicant testified he remembers saying that he did not mean to shoot Tatum and that it was accidental. Applicant testified that he was emotionally distraught and mixed up with what took place. Applicant testified Trial Counsel did not correctly explain how accident and self-defense differ to him. Applicant testified that he did say he didn't mean to shoot him, but he meant he didn't intentionally shoot him and that it just happened. Applicant testified that the door caused him to shoot because he felt like his life was in danger because the vehicle was enough to hurt him when Tatum stepped on the gas. Applicant testified that he did not know that not testifying was going to incriminate him. Applicant testified Trial Counsel told him it was best not to testify because of the interrogation tape. Applicant testified that Blassingame could have testified that he did not know Tatum, that she could have been offered as a character witness and testified about the earlier events leading to the shooting. Applicant testified that Rose could have testified that she called the police, to his character, and to the events that took place that she saw that evening. He also claimed his father was at the scene

and was initially on the porch and came up to the car that night and where Applicant was at the time of the shooting.

On re-direct, he claimed that Brianna was belligerent and not aware what was going on and appeared drunk.

Rose Wideman's Testimony

On direct examination, Rose Wideman, the Applicant's mother, testified she initially met with counsel Scott Robinson, and he explained how he was going to get the charges thrown out as it was an accident. He asserted to her that it would be better to pursue the defense of accident. However, Rose testified she told Trial Counsel that it would be better to use the defense based on defense of Taquna Blassingame, because she was knocked out. Rose testified that she met with Trial Counsel herself, made payment arrangements, and spoke to him about three times. Rose testified Trial Counsel never interviewed her, although she tried to be a witness. Rose testified that Trial Counsel did not give her any strategy for not wanting her to testify. Rose testified Trial Counsel told her that if she was a witness, they would charge her for not saying who did the shooting when she was interviewed by law enforcement. Rose testified that she provided Trial Counsel with her version of the events from the night of the shooting, but Trial Counsel did not want her to testify because he said charges could be brought against her.

Rose testified that the night of the shooting, she was concerned and wanted her daughter to be checked on. Rose now testified that she had to jump back once Tatum started moving the vehicle, because her feet were there. Rose testified that once Tatum started reversing the vehicle, the vehicle pulled Applicant as it reversed. Rose testified that she was concerned for Applicant's and Blassingame's safety, and once the shooting happened, she started yelling and called 911. Rose testified that Applicant was in danger when he shot Tatum. She said that she was concerned about

the Applicant and her daughter's safety when the victim was backing up. Rose testified that after the shooting, her daughter was still in the vehicle passed out and the vehicle hitting the trailer did not wake her up. Rose testified that her daughter was admitted into the hospital, and she did not wake up until twelve hours later. Rose testified that the detective said her daughter had alcohol poisoning. Rose testified that she believes if Applicant did not act, her daughter would be dead.

Rose stated that Brianna's previous testimony at trial was not correct. Rose stated that Brianna's testimony that after the shooting that she went up to the house and got Rose was incorrect because Rose now claimed that she was already in the yard before the shooting occurred. Rose said that she informed the trial counsel of this.

On cross-examination, Rose testified that she gave a different statement to law enforcement. Rose testified that she initially went along with Applicant's story that Applicant was not the shooter, but she later told Applicant that they had to tell the truth. Rose testified that although Applicant was not knocked down when the car backed up, Applicant was pulled back with the vehicle. She claimed Applicant shot Tatum when Tatum started reversing the vehicle. Rose testified that Applicant hid the gun in the house after the shooting because he was afraid and was not thinking. Rose testified that Trial Counsel told her she would be charged with a crime if she testified.[5]

TAQUNA BLASSINGAME'S TESTIMONY

On direct examination, Blassingame testified she never talked to Trial Counsel personally or anyone else in the case. She indicated that she had dropped off her children earlier that night at

[5] The Court recognizes that by these admissions about her allegedly false statements to her son's counsel, Rose could have been investigated for making a false statement to law enforcement related to the possibility of accessory after the fact, potentially obstruction of justice due to the prior interaction with the police at the crime scene about a different version of their action or possible perjury related to the potential testimony at trial, if counsel was aware of its falsity.

her mother's house before she went out around 9 PM. She then went out and met with her sister Brianna and they went to three different clubs. Blassingame testified everyone was drinking, and she was the most drunk out of everyone. Blassingame testified she was friends with Tatum, but they were not physically intimate and they were going slow in their relationship. Blassingame testified she never spoke to Applicant about Tatum and never brought him to her mother's house. Blassingame testified that she was possibly drugged and remembered going to the last club, but that was all she remembered.

Blassingame testified the car Tatum was driving was in her father's name, but she paid for it. Blassingame testified that the first thing she remembered about the incident was waking up in the hospital.

On cross-examination, Blassingame testified she knew the Tatum for about five months. Blassingame testified that she was never in a relationship with him, and they always hung out in a group setting. However, Blassingame testified she got Tatum's name tattooed on her chest after his death.

RAEFORD WIDEMAN SR.'S TESTIMONY

On direct examination, Raeford Wideman Sr. testified that he spoke with Trial Counsel in one meeting where Trial Counsel talked to them as a group. Wideman Sr. testified that Trial

However, due to counsel Robinson's current condition, this distinction is not known with clarity, other than that her new version would have subjected her to strong impeachment based upon the inconsistent of her statements.

Counsel never discussed strategy and did not tell him why he did not want him (Wideman, Sr.) to testify. He stated counsel indicated to him that he would get in trouble if he did so.[6]

Wideman Sr. testified that he recalled waking up that evening and went down to the front of the car. He saw Taquna in the back seat. He claimed he then went up to the house and got his wife, who then came down with him. He said the car was still running and his son was on the other side of the car. He stated that car was backing up and he heard a shooting and thought it was Ryan Tatum shooting.

Wideman Sr. stated that when he came up to the car, he asked Tatum to give him the keys, but Tatum did not say anything to him. Wideman, Sr. claimed when Tatum was backing up the car, he thought Applicant could be killed and he was concerned that Taquna could have died. Wideman Sr. testified that Tatum was out of it and was not planning to stop the car. Wideman Sr. testified that he did not know Tatum's last name, phone number, or where he lived, and had no way to find him if he left with his daughter. Wideman Sr. testified Applicant was in danger, and he did what he believed he had to do. Wideman Sr. testified Applicant lied at first, and that Applicant had never been in trouble before.

On cross-examination, Wideman Sr. testified he saw his daughter in the car when he walked up to it. Wideman Sr. testified he was a couple of feet away from the vehicle during the incident. Wideman Sr. testified he met with Trial Counsel one time in Greenville, when Applicant went to trial. Wideman Sr. testified Applicant told the truth at trial (during the Castle doctrine

[6] Although not stated in his testimony, this appears to be related to the possibility of accessory after the fact and obstruction of justice potential due to the prior interaction with the police at the crime scene about a different version of their action.

hearing). Wideman Sr. testified he was not involved in discussions concerning Applicant's right to testify. Wideman Sr. testified Trial Counsel told him why it was best he did not testify.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[7] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises

[7] S.C. Code Ann. §§ 17-27-10 to -160.

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 v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384

(1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

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

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

must be *substantial*, not just conceivable." Richter, 562 U.S.at 112.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

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

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

Initial Findings

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

417 S.E.2d 529, 531 (1992). This is particularly true in this setting where trial counsel was unavailable due to a mental competency issue due to a medical condition.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: **Trial counsel pursued the defense of "accident" which was ineffective and not supported by the facts or the law, confusing the jury, decreasing the defense's credibility with the jury, and weakening the primary defense in the case which was 'defense of others'.**

Applicant alleged Trial Counsel was constitutionally ineffective for pursuing the defense of "accident", alleging it was ineffective and not supported by facts or the law, confused the jury, decreased the defense's credibility with the jury, and weakened the primary defense in the case— "the defense of others." This Court finds this allegation is without merit.

The Sixth Amendment guarantees criminal defendants effective assistance of counsel. Strickland sets forth the two-part test a petitioner must satisfy to prevail on an ineffective-assistance claim. See 466 U.S. at 687–88.Under the test's first prong, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness," measured "under prevailing professional norms," and considered in light of all of the circumstances. Id. at 688. "Judicial scrutiny of counsel's performance must be highly deferential[,]" making every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id. at 689.

In fact, in reviewing for deficient performance, "we ... start the analysis [with the presumption] that an attorney acted in an objectively reasonable manner and that an attorney's challenged conduct might have been part of a sound trial strategy." Bullock v. Carver, 297 F.3d 1036, 1046 (10th Cir. 2002); see Strickland, 466 U.S. at 689 (noting that courts are to "indulge a

strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy' " (quoting Michel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158, 100 L.Ed. 83 (1955)). We further consider that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable," Strickland, 466 U.S. at 690—"unless they were 'completely unreasonable, not merely wrong.' " Moore v. Marr, 254 F.3d 1235, 1239 (10th Cir. 2001) (quoting Fox v. Ward, 200 F.3d 1286, 1296 (10th Cir. 2000)). Meek v. Martin, 74 F.4th 1223, 1262–63 (10th Cir. 2023).

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." Strickland at 688-89. Strickland therefore established the rule that in proving a claim of ineffectiveness. "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id.

The record is clear that defense counsel Robinson presented evidence a defense version based upon the applicant's own statements theories of self-defense, "defense of others" and accident. The record is also clear that all of these theories were based upon inferences from his own statements with law enforcement as well as some forensic evidence he relied upon including location of the injuries, location of the shell casings, and the pathologist's testimony. In addition, the multiple theories were revealed before the Trial Court, but not the jury, in Applicant's *in camera* testimony on the Castle issue. These decisions were also made with the understanding and expectation that the Applicant was choosing to not testify before the jury. The decision was also

made when counsel, over objections, was able to get requested instruction on defense of others, as well as self-defense and accident.

The Applicant asserts that counsel was ineffective in stressing "accident" as a defense theory in addition to "defense of others." It must be noted that the defense argued each. The defense of accident (sometimes called misadventure) protects a defendant who, while acting lawfully and with due care, unintentionally causes harm to another. The defense has three elements: (1) the harm was unintentional, (2) the defendant was acting lawfully, and (3) due care was used in the handling of the weapon. See State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011); see also State v. Brown, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1945) ("If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident."). If the harm was caused by accident, the defendant is not criminally responsible because of the absence of criminal intent. It is precisely this lack of intent that separates accident from self-defense, for self-defense "admits an intentional killing, and sets up as justification a necessity to kill in order to save the accused from death or serious bodily harm, whereas a defense of homicide by accident denies that the killing was intentional." State v. McDaniel, 68 S.C. 304, 317, 47 S.E. 384, 389 (1904). The defense of accident sometimes surfaces in homicide cases, often alongside self-defense. Despite their varying levels of intent, accident and self-defense are not always mutually exclusive defenses. See State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018); State v. Williams, 400 S.C. 308, 317, 733 S.E.2d 605, 610 (Ct. App. 2012). Of course, accident may appear in contexts far removed from self-defense. Blackstone gives the example of a man lawfully working with a hatchet when the head flies off and kills a bystander. 4 W. BLACKSTONE, COMMENTARIES #182. State v. Owens, 427 S.C. 325, 330–31, 831 S.E.2d

126, 128–29 (Ct. App. 2019), aff'd, 433 S.C. 482, 860 S.E.2d 357 (2021).

Under the theory of "defense of others", one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense. State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997). "[I]n order for the trial court to give a defense of others charge, there must be some evidence adduced at trial that the defendant was indeed lawfully defending others." Douglas v. State, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998); see also William S. McAninch & W. Gaston Fairey, The Criminal Law of South Carolina (3rd ed. 1996) ("There must, of course, be some evidence that the defendant was defending others at the time of his act in order for him to be entitled to the instruction"); State v. Starnes, 340 S.C. 312, 322–23, 531 S.E.2d 907, 913 (2000) (holding the appellant was not entitled to a charge on defense of others because he specifically maintained that he shot the victims because he thought they were going to shoot him, not to protect a third party); Bozeman v. State, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992) (finding evidence in the record supported a self-defense charge rather than a defense of others charge); State v. Alford, 264 S.C. 26, 35, 212 S.E.2d 252, 255 (1975) (holding that where defendant did not testify he was shooting for a purpose other than to protect himself, he was not entitled to charge on defense of others).

At the outset, it must be noted that the State objected at trial to an instruction on "defense of others. The State contended that there was no evidence that had been presented that Tatum actually asserted any physical force or threat or made any overt threat to Ms. Blassingame. Evidence had been presented at trial that no threat had been made by Tatum. The State opposed the instruction when the Applicant claimed he raised this defense in his statement to the police that she was placed in physical danger due to Tatum's blood alcohol level and Tatum's intent on

driving. The trial court initially rejected "defense of others" in a setting where the driver is drunk and a passenger is drunk, that another person has the right to take the driver's life. Trial Tr. p. 314-316. However, the trial court out of an abundance of caution overruled the State's objection and agreed to instruct on defense of others which it did. The trial court instructed on the defense of self-defense (Trial Tr.p. 381, l. 23-385, l. 22), the defense of others (Trial Tr.p. 385, l. 23 – 387, l. 9) and the defense of accident (Tr.p. 387, l. 10- 24).

In defense counsel's closing statement, he urged the jurors to look at the tapes of his statements and told them that "he never meant to do this to this man" and was full of remorse. Trial Tr.p. 349. Trial Counsel also urged in his jury argument support for defense of others by stating that Applicant was trying to protect his sister, as well as himself. As to self-defense, he claimed that Tatum was seriously drunk and without provocation hit the accelerator while the Applicant and his sister were in the car. With a claimed right to act on appearances, counsel claimed with his sister being unconscious that something was wrong and that he had a right to defend himself and his sister. He urged that Applicant was without fault in bringing on the difficulty at 3:00 am and seeing his sister unconscious with a drunk driver driving her car. Second, he asserted that they had shown that Applicant actually believed he was in imminent danger of death or serious injury from the audio and video tapes introduced at trial as supported in Tatum driving the car drunk and stomping on the accelerator. Trial Tr. p. 351-352. Third, he urged that they had shown that Applicant had no other way to avoid the danger because he was stuck in the door on the rear passenger side as Tatum hit the accelerator. The defense claimed that if he had not acted as he did he could have been run over by the car or Tatum could have driven off with his sister who may have been killed or injured in an accident or otherwise. Trial Tr.p. 352-353.

In his closing argument, counsel urged the jury accept the defense of self-defense. Trial

Tr.p. 353-356. He asserted that Applicant went outside and saw his sister in the back of her car. Counsel argued that Applicant asked Tatum for the keys, without success. He stated Applicant then went around to the passenger side and tended to his sister. Counsel described his theory on the sequence of the bullets: the first shot missed and hit the door, the second shot hit the door, and did not stop the vehicle, the third shot hit Tatum in the forearm, but the vehicle still did not stop and the fourth shot hit Tatum in the right upper shoulder and went into his chest. Counsel argued that the car was then across the street from where it started. Trial Tr.p. 354-355. Counsel asserted his self-defense theory was supported by the location of the shell casings found either under the passenger seat, between the passenger seat and console and the floorboard in the rear suggesting he was in the back seat area when the gun jammed. Trial Tr.p. 355. Counsel urged the location of the injuries were supportive of self-defense which would be a shot to the knee or forearm, as opposed to an intent to kill, which would be a shot to the head or back.

Counsel argued the jury to consider the two main defenses - self-defense and accident. Trial Tr. p. 357.

The record shows that Trial Counsel was making reasonable strategic decisions. See Strickland. The Applicant has provided no persuasive evidence to overcome the presumption that under the circumstances trial counsel's actions would be considered sound trial strategy. Id. It is apparent to this Court that the Applicant's initial statement to the law enforcement that he was not the shooter and contradicts it in a subsequent statement in which he contended that the shooting was accidental. The concept of accident appears again at the in camera Castle doctrine hearing when Applicant testified that in addition to his claim that the shooting was accidental which he had claimed before counsel was involved, but that it also was done at a time Applicant feared for his sister's safety as well as his own safety as the vehicle being driven by Tatum was backing up.

Applicant claimed he was within the doorway on the passenger side, with the gun pointed downward and although right handed, he was holding the gun in his left hand, when the car door strikes him on his right side and the gun goes off multiple times.

During the Castle doctrine hearing, the Applicant testified, unlike during the jury trial when he waived his right to testify. During his *in camera* testimony, he claimed he woke up at 3 AM when he heard a loud noise. He stated that he opened the door and saw an SUV in his yard. He said he had learned from Brianna that his sister Taquna was in the car. He saw Ryan Tatum go to the car and get in the driver's seat. Applicant claimed that he told Tatum to turn the car off and Tatum then asked Brianna who this person was and learned it was Taquna's brother. Applicant saw that his sister Taquna was passed out in the back seat.[8] Applicant asked what was wrong with Taquna because she was unresponsive. Applicant said that his father came down from the porch and Applicant told his father that his daughter Taquna was passed out in the back seat and that this guy was trying to drive off with her. Applicant said that the vehicle was his father's and Tatum was asked to turn off the car again, but did not. Applicant claimed that Tatum looked at him and said "f--- you." Applicant claimed he reached down to take his sister out of the car with his firearm in his left hand. Applicant also stated that he was right handed. Applicant said at that point that Tatum "stepped on the gas," the door of the car then hit Applicant's right side and that the gun fired at Tatum more times than Applicant wanted. Applicant claimed he chased the car as it rolled. He claimed he did not want to shoot his sister and initially claimed in the hearing that he shot the gun because he thought that both his and Taquna's lives were in danger. Trial Tr.p. 45-47. Applicant claimed that after it backed into a trailer, he went to the car and put it into park from reverse. Trial Tr.p. 49. He claimed he had been in fear because the car backed up into him on the

[8] Taquna did not live at this house, but elsewhere.

passenger side and he thought he could end up crushed underneath the car. Trial Tr.p. 51.

On cross-examination, inconsistencies in his statements to police and the testimony were pointed out. Initially Applicant told the police that he had not shot Tatum, but that it was some random person who came up and shot Tatum. Trial Tr.p. 54, ll. 4-7. Applicant admitted that he had left the area after the shooting, went into his house and hid the weapon. Tr.p. 54. Applicant confirmed that he had never told law enforcement that the guy tried to kidnap his sister and that was why he fired the shots. Trial Tr.p. 55. The State pointed out that in the statement he gave police on the night of the murder that he claimed it was an accident. The Applicant confirmed stating that he was "not willingly or wanting to shoot the guy, but it happened in the spur of the moment with this guy backing up into me with the car and the door of the car hitting me." Trial Tr.p. 56.

> I was bent down and the door, at the angle that hit me ....I was trying to get out of the way of the car at the same time to catch my balance at that same time, and I had all of these fears and being scared ... of the car backing up into me. So when the door hit me ...with me trying to back up out of the door of the car, it is just natural reflexes and just reflexes caused me to ... pull the gun, just clutch the gun.

Trial Tr.p. 57-58. When asked if he was concerned about having the gun point at his sister, Applicant stated that "the gun was actually pointing downward and I was not trying to shoot this guy or my gun at all, you know for that matter. It just happened when he backed the car up and ... it just happened." Tr.p. 59, ll. 12-17.

During the trial, the car's movement was described differently by Brianna as only rolling slowly backward when the shooting happened. Tr.p. 271. (Brianna also claimed that no one was outside at the time and she ran up to the house to get Applicant's mother. Tr .p. 272. Brianna also testified that prior to the shooting she heard the Applicant say to the victim to park the car. Tr.p. 275.

Willie McDonald testified that when he came upon the scene prior to the shooting, Brianna had come up to him and asked him to help get the Jeep out because it was stuck in the mud. While McDonald was having a discussion and moving stuff Applicant came out of the house and McDonald left the area and went across the street:

> That's when I heard the front door bust open and the defense, he run out to the car, and I heard shots. You know, what I'm saying. I ducked down like whoa, what's going on. And then I just stood there on the side of the road you know, I got down like that. And that's when the dude got in the car well, he was in the car. And he reversed it backwards, all the way across the road, and hit that tongue of that trailer. And I didn't know if everybody was shot or what. I didn't know. And then Bri jumps out screaming and hollering. ...

Trial Tr.p. 295. McDonald also heard the Applicant state as he was leaving the house prior to the shooting: "you are going to die, mother f----- like that that's when I...heard the shots at the same time" before Applicant went to the driver's side, but McDonald claimed he did not see the actual shooting. Trial Tr. p. 296.

The record reflects Trial Counsel did pursue a Castle Doctrine hearing where Applicant testified and ultimately the Trial Court found Applicant did not meet his burden of proof by a preponderance of evidence that the Castle Doctrine applies. (Trial Tr. p. 119). Further, Applicant himself testified on direct-examination at the pre-trial hearing that "I did fire at the suspect, but in the business of me firing, the door of the car hit me also, so I fired more than I wanted to." (Trial Tr. p. 51). Additionally, at the pre-trial hearing, on cross-examination, Applicant testified that with him trying to back up out of the door of the car, his natural reflexes caused him to pull the gun and clutch the trigger. (Trial Tr. pp. 57-58).

Applicant now alleges trial counsel was ineffective because the defense of accident is not supported by facts or the law. This Court must reject that assertion because there is evidence in the record to support it although it was not persuasive to the jury. Applicant himself stated in his

interrogation with law enforcement and testified on the stand at the in camera pre-trial hearing that the shooting was an accident. Therefore, the record reflects Applicant's statements during his interrogation with law enforcement and his testimony at the pre-trial hearing aligned with the possible defense of accident. This Court finds Applicant provided insufficient credible evidence to prove a deficiency in Trial Counsel's decision to go forward on the defense of accident, self-defense and defense of others following Applicant's inconsistent testimony at the pre-trial hearing and the information revealed in the admitted statements.

Further, Applicant provided no additional evidence that a "defense of others" defense would have been more successful than a defense of "accident" or that was provided at trial. At the pre-trial hearing, the trial court judge found Applicant's testimony to be inconsistent throughout and therefore denied the motion further stating that depending on the testimony to be heard at trial, that a "self-defense or accident very well may be appropriate." (Trial Tr. p. 124). At trial, counsel at trial pursued the defense of accident, self-defense and defense of others at trial, and the jury was instructed on accident, self-defense, and defense of others. (Trial Tr. pp 381-387). The Trial Court therefore found the facts presented by Trial Counsel were sufficient to support charging the jury with both self-defense and accident, in addition to defense of others. Applicant provided no persuasive evidence to support his allegation that pursuing multiple defenses confused the jury, or that pursuing multiple defenses decreased his credibility with the jury. And therefore, Applicant provided insufficient credible evidence that he was prejudiced by Trial Counsel's alleged deficiencies.

This Court finds that Applicant has failed to prove either deficient performance or prejudice under Strickland. As a general rule, a lawyer is not required by the Sixth Amendment to present a single, coherent defense theory. Hendricks v. Calderon, 70 F.3d 1032, 1041 (9th Cir.1995), cert.

denied, 517 U.S. 1111 (1996). Trial counsel's decision as to which theory or theories to advance at trial is a strategic choice that is accorded a high level of deference. Counsel for a criminal defendant may, in the exercise of her professional judgment, present inconsistent defense theories without running the risk that such tactics will later be deemed ineffective assistance of counsel. Brown v. Dixon, 891 F.2d 490, 495 (4th Cir.1989); see also Singleton v. Lockhart, 871 F.2d 1395, 1400 (8th Cir.1989) ("There is nothing unusual about arguing inconsistent or alternative theories of defense."). See Brown v. Dixon, 891 F.2d 490, 494–495 (4th Cir.1989) (Inconsistent defenses "that Brown either did not commit the murders or did so while drunk" was not ineffective assistance of counsel.). See Shah v. State, 300 Ga. 14, 22 (2) (b), 793 S.E.2d 81 (2016) (A criminal defendant may "offer dissonant defense theories."); Gregoroff v. State, 248 Ga. 667, 670, 285 S.E.2d 537 (1982) ("[T]he general rule [is] that an accused is permitted to interpose inconsistent defenses in a criminal case."). The simple fact that these theories might have been seen as somewhat contradictory in nature would not have precluded the Applicant from pursuing both in the hope of obtaining a not guilty verdict. Trial counsel "may reasonably decide as a matter of strategy to present alternative, even inconsistent defense theories to the jury[.]" Felts v. State, 354 S.W.3d 266, 280 (Tenn. 2011) (citation and footnote omitted).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test–that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland–that he was prejudiced by Trial Counsel's performance. This Court must conclude that trial counsel's election to introduce inconsistent defenses was reasonable. Filtering from this analysis the "distorting effects of hindsight" and

recognizing the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," this Court concludes that the use of inconsistent defenses and theories was objectively reasonable "under prevailing professional norms." Strickland, 466 U.S. at 688-89, 104 S.Ct. at 2064-65; see also Elledge v. Dugger, 823 F.2d 1439, 1442-43 (11th Cir.1987). A criminal defendant is certainly entitled to raise two such possibly factually inconsistent defenses and to have the jury consider both of them. Mathews v. United States, 485 U.S. 58, 64-66, 108 S. Ct. 883, 99 L. Ed. 2d 54 (1988).

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

Allegation 1b:	**Trial counsel failed to call Taquna Blassingame and Rose Wideman in support of the Applicant's 'defense of others' defense.**
Allegation:	**Trial Counsel failed to call Raeford Wideman Sr. to testify on Applicant's behalf**[9]

Applicant alleged that Trial Counsel was constitutionally ineffective for failing to call Taquna (Taquna[10]) Blassingame and Rose Wideman in support of the Applicant's "defense of

---

[9] The Applicant did not specifically plead this allegation about Applicant's father in the amended application. However, it was raised during the PCR evidentiary hearing and the Court will address it here to avoid any potential remand issue in light of Fishburne v. State, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019) ("The PCR court's general denial of all claims not specifically addressed in the PCR court's order 'does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.' " See S.C. Code Ann. § 17-27-80 (2014) (stating a PCR court must "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented").

[10] In the trial transcript Blassingame's first name is spelled Taquana rather than Taquna as set out in the allegation. She will be referred to as Blassingame in this section.

others" defense. This Court finds this allegation is without merit. Additionally, Applicant alleged at the hearing that Trial Counsel failed to call Raeford Wideman Sr. to testify on his behalf.

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See e.g. Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi). A witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions, even if that witness is a co-defendant. Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011). See Jackson v. State, 329 S.C. 345, 351–52, 495 S.E.2d 768, 771 (1998) (holding counsel had a valid strategic reason for not calling a co-defendant as a witness where the co-defendant's credibility was a concern and the same evidence would be presented through another witness); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (finding counsel's decision to not call witnesses reasonable where their testimony would have been of no value to the case and they made inconsistent statements in the past).

Further, prejudice will generally be found if the testimony was significant and favorable

enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See e.g., Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

A strategic or tactical decision does not have to be articulated by counsel on the record before the Court may acknowledge it, nor does counsel have to personally identify his or her thinking. It is enough that the record reflects strategic design, such that the Court may fairly infer from the record what the strategy was, even if trial counsel cannot or will not subsequently articulate it. See Wood v. Allen, 558 U.S. 290 (2010) (finding the PCR court was reasonable in inferring from evidence in the record that trial counsel's failure to pursue or present evidence of defendant's mental deficiencies was a strategic decision); Koon v. Rushton, 364 Fed.Appx. 22, 29 (4th Cir. 2010) (upholding PCR court finding that applicant failed to carry his burden where trial counsel had an articulable strategy behind his method of impeaching a witness); Geralds v. State, 111 So.3d 778, 794 (Fl. 2010) (finding trial strategy from the record where trial counsel was deceased, and therefore not able to testify).

This Court finds Applicant failed to establish Trial Counsel was deficient or any resulting prejudice from Trial Counsel's performance. At the evidentiary hearing, Applicant testified on direct examination that he believes if Blassingame and Rose were called at trial that it would have changed the outcome of trial and supported the claim of self-defense and defense of others. Applicant alleged on cross-examination that Blassingame could have testified that Applicant did

not know Tatum, that Tatum was not with her when she dropped the kids off, what clubs she attended in Greenville, and to Applicant's character and that Rose could have testified that she called the police, testified to his character and testified to the facts that took place. On direct examination, Raeford Wideman Sr. testified that Trial Counsel did not tell him why he did not want him to testify, just that he would get in trouble.

Taquna Blassingame

The Applicant contends that counsel should have called Blassingame. He asserts that the purpose of her testimony at trial would have been 1) to demonstrate how close to death and serious injury Blassingame was when Applicant intervened (in support of his defense of others claim), 2) to impeach the testimony of the state's primary witness, Brianna Ware, regarding Blassingame's relationship with the victim, and 3) demonstrate that she was never interviewed by trial counsel and thus the exclusion of her testimony could not have been strategic.

First, as to the failure to call Blassingame, the trial record reflects that Blassingame was extremely intoxicated, asleep or unconscious in the back of the car for the entirety of the incident. At the evidentiary hearing on direct examination Blassingame testified that it was possible she was drugged, and she only remembers going to the third club that night and nothing after that. The only added information was that she woke up in the hospital eight hours later. PCR Tr.p. 105-106. Blassingame testified that she had no idea what happened. Photographs were presented of Blassingame appearing to be asleep (purportedly unconscious) at the hospital and showing her hospital band. PCR Tr.p. 108-109. Applicant's Exhibit 1.

During the trial, evidence had been presented that Blassingame was intoxicated, passed out or unconscious in the back seat of the vehicle. On cross-examination of Donald McComb, the defense evidence that of Blassingame being passed out at the scene. Trial Tr. p. 180-181

(investigative findings in report that it appeared female owner of the vehicle appeared intoxicated and passed out in the back of the vehicle). Evidence was presented that the female in the back seat of the vehicle was taken to the hospital. Trial Tr.p. 148. The defense on cross-examination of Deputy Stipe developed that in his supplemental report he indicated "I noticed that she was breathing, but was unresponsive. I made several attempts to get her to wake up by giving loud verbal commands for her to exit the vehicle, but was unsuccessful." Trial Tr.p. 150, l. 9. Upon defense questioning, Deputy Stipe confirmed that that he was concerned for her safety and called EMS and that he followed the ambulance to the hospital. Trial Tr.p. 150-151.

Evidence had also been presented through Brianna Ware that Ryan Tatum notice that Taquna was too intoxicated to drive from Greenville to Anderson so he drove. Trial Tr.p. 264-265. She testified that she had asked Ryan to drive them home and that Taquna was in the back seat asleep and intoxicated although she indicated that she was not concerned about her condition. Trial Tr. p. 268. Ware testified that when they got to the house, the Applicant had come up to her when she got out of the car and asked her who was driving and why his sister was in the back seat passed out. Ware indicated that she told him the driver was Taquna's boyfriend and that she was fine. Trial Tr.p. 269. On cross-examination of Ware, counsel developed that Ware indicated that Taquna was intoxicated in the back seat sleeping. Trial Tr.p. 273, l. 6-11. Ware denied that she was unresponsive in the back seat and stated that if she called her name or something else that she would hear it. Trial Tr.p. 274-275.

An initial contention is that the evidence from Taquna Blassingame would have demonstrated how close to death and serious injury Blassingame was when Applicant intervened (in support of his defense of others claim). However, as noted above the trial record had evidence presented to the jury and specifically through the defense that Blassingame was unresponsive to

inquiry by law enforcement at the scene and described as being intoxicated and passed out.

As a second contention, the Applicant now contends that Taquna Blassingame could have testified about her relationship with victim Ryan Tatum which would have impeached Brianna Ware's assertion at trial was that Tatum was her boyfriend and excited about meeting up with him the night of the incident. Trial Tr.p. 262-263. As noted earlier, Taquana Blassingame's credibility is at issue in this case. She had the victim's name visibly tattooed across her chest when she appeared in court at this PCR hearing. PCR Tr.p. 114-115. Her testimony about her relationship claimed, contrary to Ware's trial testimony was that he was not her boyfriend, but just a friend for five months. PCR Tr.p. 102. However, she did indicate that she had mentioned the victim to her mother, the victim had brought her earrings for Valentine's Day and "I was telling everybody." PCR Tr.p. 103. (The murder occurred one month later on March 15, 2015). The impact of having the victim's name tattooed on her chest who had died at the hands of her own brother speaks volumes about the existence of a relationship and her credibility before this Court related to her personal relationship with the victim.

In the third assertion, the Applicant asserts that Blassingame's PCR testimony demonstrates that she was never interviewed by trial counsel and thus the exclusion of her testimony could not have been strategic. Blassingame testified at the PCR hearing that she never spoke with Robinson about the case. She stated that she was never asked to testify as a defense witness. PCR Tr.p. 98-99. As state above, Blassingame did not remember the shooting, car accident, or any gunshots because she claimed to be unconscious at that time. PCR Tr.p. 110-111.

This Court finds that the counsel was not be deficient in failing to present her at trial because reasonable counsel would not have done so under similar circumstance. First, counsel, based upon the information had no duty to investigate or interview her because the information

he had from the law enforcement records and his own client revealed that she was passed out or unconscious at the time of the incident and therefore would not have relevant evidence concerning the incident. Further, even if counsel had interviewed her, there was no basis to call her that would have aided in their defense, other than to confirm that she never told her brother about the victim who had given her a Valentine's Day gift, even though she testified she told "everybody." The evidence presented at the hearing conclusively showed she had no relevant evidence to present as to whether it was accident, self-defense or defense of others by the Applicant because she lacked knowledge of any relevant evidence due to her incapacity at the time of the incident. The Applicant claims that counsel's alleged decision to not interview or call the sister as a defense witness could not be strategic. This Court finds that whether or not it was "strategic" is not a relevant issue or question because in fact the decision to not do that was knowing because of what he already knew about the sister's incapacity at the time of the event based upon the entire record and was not deficient.

As stated in Strickland,

> The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. For example, when the facts that support a certain potential line of defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions. See United States v. Decoster, supra, at 372–373, 624 F.2d, at 209–210.

Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984)

This Court finds that counsel had information as cited above from the Supplemental Report that counsel used at trial that Blassingame was unresponsive when law enforcement arrived and it was apparent that she was intoxicated to build his defense case during the State's case in chief. [11] Counsel was also aware, as reflected in the Applicant's testimony during the Castle Doctrine hearing, that Applicant's sister was passed out in the back seat prior to the shooting that he developed in the pretrial proceeding.

The Applicant has also failed to prove Sixth Amendment prejudice. The Applicant has failed to show on the basis of this record a reasonable probability that the result would have been different had counsel presented Blassingame to testify at the trial. The jury was aware through the examination of the witnesses by the defense that Blassingame was incapacitated when the incident occurred or asleep in the back seat of the vehicle. Her additional testimony would not have presented any relevant fact about the incident except to show the Applicant did not know Ryan Tatum. However, even in Brianna Ware's testimony evidence that was not contradicted show that Applicant inquired who the person driving the car was. Trial Tr.p. 269-270. Although there was a dispute about whether Tatum was her secret boyfriend, this fact was not a relevant fact concerning the incident because it was not questioned that the victim was driving Blassingame car and that she was in the back seat. Whether they were just friends for 5 months or a boyfriend/girlfriend was not a critical fact where is was undisputed that the Applicant did not know who Tatum was prior to the shooting. There is no reasonable probability that this information would resulted on a favorable not guilty verdict based upon a defense of others theory. This assertion is without merit and must be **dismissed.**

---

[11] This also preserved in 2017 the defense counsel's right to make the final closing argument. See State v. Beaty, 423 S.C. 26, 37, 813 S.E.2d 502, 507 (2018).

Rose Wideman

Second, as to the failure to call Rose Wideman, the record reflects that Rose initially lied to the police about who committed the shooting. At the evidentiary hearing, Rose claimed on direct examination that Trial Counsel did not give any strategic reason for not wanting her to testify. Rose testified that she told Robinson However, Rose also testified Trial Counsel specifically told her that he explained how he was going to present the defense of accident and get the matter dismissed as it was accident, but Rose claimed that she thought it would be a better defense based upon a defense of his sister because she was knocked out. this was not consistent with the statements that Applicant had previously made to law enforcement that counsel had and was introduced at trial. She claimed counsel Robinson told her that if she was a witness she would be charged for lying to the police about who the actual shooter was. This Court must find, implicit in this evidence is that Rose's credibility would be challenged by the State based upon the dramatically inconsistent statements. As important, her testimony conflicted with both Brianna's and McDonald's testimony about who was present when the gun was fired.[12] [It should be noted that Brianna testified that after the incident she ran up to the house after the incident to get Applicant's mother who was asking what was going on. Trial Tr.p. 71, 272.] Counsel's advice reflected questionable gain by their own speculation on why Applicant fired the weapon. There was no question that Blassingame was passed out intoxicated in the backseat of the vehicle or that Applicant fired the weapon. There is also no question that neither the mother or father knew why Wideman shot and whether it was accident or self-defense. This was a reasonable strategic decision where the Applicant's self-serving statements had already been introduced by the State. The evidence from those statements

---

[12] There was no mention of his mother being present by the car in the introduced statement. State Exhibit 7. In the in camera testimony, Applicant testified about his father being outside and coming to the car, but not his mother. Trial Tr.p. 47, 50 – 52.

clearly presented possible defense of accident and possibly self-defense without putting the Applicant through impeachment with the various and evolving positions which would only be added to by questionable and inconsistent testimony from his mother and father.

Raeford Wideman Sr.

Third, as to a failure to call his father, on cross-examination, Raeford Wideman Sr. testified that the night of the incident, he didn't know who was shooting, that it was not a clear night, and that he never saw a gun. The Applicant's father testified that he never got close enough to the vehicle to even touch a window but was a couple feet away. The Applicant's father testified Trial Counsel told him that he would get in trouble for testifying. Again, counsel's decision not to call Applicant's father is similar to the decision not to call Rose. The benefits of the testimony were slight since the issues were presented without impeachment by the family of their own inconsistent statements to law enforcement.

Summary

The record reflects strategic design by counsel in his decision not to call these three witnesses because of the credibility issues amongst the witnesses and limited probative value in contrast to the statements that had been presented in court. See Jackson, *supra*. The record reflects Trial Counsel explained to Rose and Raeford Wideman Sr. they would get in trouble for testifying as they were initially not truthful to law enforcement about Applicant being the shooter. Further, Blassingame was unconscious for the entirety of the altercation and therefore Applicant cannot show any deficiency by Trial Counsel's decision not to call her as a witness. This Court may fairly infer from the record what the strategy was, even if trial counsel cannot articulate it due to his medical issues. See Wood, *supra*. This Court finds Applicant presented no persuasive evidence that had Trial Counsel calling any of these three identified witnesses, there is a reasonable

probability that the outcome of the Applicant's trial would have been different. It is not disputed that Applicant shot the victim. It is not disputed that the victim was driving the Applicant's sister's car which was owned by his father. It is not disputed that Blassingame was incoherent in the back seat of the vehicle. What was disputed was the intent on the part of the Applicant when he fired multiple shots into the vehicle. However, nether father, mother nor Taquna has any evidence about that other than their own speculation or from Applicant's evolving self-serving statements which would not be admissible. This Court finds Applicant failed to present any evidence that he was prejudiced by the decision of Trial Counsel to not call these witnesses.

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

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

ADDITIONAL ALLEGATIONS RAISED AT EVIDENTIARY HEARING

Allegation 1: Trial Counsel did not have discussions often with Applicant and was negligent about preparing the case.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times. This Court finds this allegation to be without merit. Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their

clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective," Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding that it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329, S.C. 345, 353-54, 495 S.Ed.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of

counsel when he did not present evidence showing how additional preparation would have impacted the trial).

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgments in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Also, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from the alleged deficiency. See Butler, *supra*. At the evidentiary hearing on direct-examination, Applicant testified that he recalled meeting three times and discussing the case with counsel and further that he reviewed facts and discovery with counsel. See Campbell, Olson, and Easter, *supra*. This Court has reviewed the records and finds Trial Counsel was fully prepared and additional meetings with Applicant would not have resulted in a different outcome at trial. The record reflects that Trial Counsel prepared numerous defenses for trial and additionally pursued a Castle Doctrine pre-trial hearing. Trial Counsel pursued a variety of defenses giving the jury multiple options, and based off the indisputable facts of the case, the jury still found Applicant guilty of murder. Applicant has provided no evidence that any additional preparation would have impacted the trial.

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

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial

Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2: Trial Counsel Improperly Advised Applicant to Not Testify

At the evidentiary hearing, Applicant alleged Trial Counsel told him it was best not to testify, and the testimony Applicant gave at the evidentiary hearing would be the testimony he would have given at trial had he testified. Applicant alleged he did not know that not testifying was going to incriminate him. This Court finds this allegation to be without merit.

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

At trial, the following colloquy occurred:

COURT: Ok. Now, Mr. Wideman, now do you understand your rights – or have they been explained to you under the 5th amendment to the United States Constitution – I'm going to go over them with you – I just want to make sure that it has been explained to you. Have they been explained to you?

DEFENDANT: Yes, sir, Your Honor.

COURT: Okay. Sir Now, let me tell you or read to you in part what the 5th Amendment to the United States Constitution says. It says this, "that no person shall be compelled in any criminal case to be a witness against himself" – do you understand what that means?

DEFENDANT:	I don't have to –
COURT:	Sir?
DEFENDANT:	I don't have to go take the stand.
COURT:	That's right. You have a right to remain silent. You don't have a right – they can't force you to get on the stand. The State cannot make you get on the stand, your lawyer cannot make you get on the stand. I can't make you get on the stand. Do you understand that?
DEFENDANT:	Yes, sir, Your Honor.
COURT:	Now, you have the right to testify. You have a right to present a defense in this case. If you do testify, you'll be subject to the same rules as other witnesses, which means your attorney will examine you or give you what we call direct examination. And when he's done, the State will be able to cross examine you; do you understand that?
DEFENDANT:	Yes, sir, Your Honor.
COURT:	And the State will try to impeach your story and try to make your story – or whatever you said on direct examination – or some other time, make it in a bad light to the jury for the purposes of showing that you're guilty; do you understand that?
DEFENDANT:	Yes, sir, Your Honor.
COURT:	Now, if I understand do – am I correct in saying that there is no criminal record that this gentleman has?
SOLICITOR:	That's correct, Your Honor.
COURT:	So the State would not seek to impeach you on any prior convictions?
SOLICITOR:	No, Your Honor.
COURT:	With all the same, the State will seek to cross examine you on what you say in the courtroom, what you said before, particularly in the – in the audio and audio visual recordings of your interrogation with

	law enforcement; do you understand that?
DEFENDANT:	Yes, sir, Your Honor.
COURT:	Now, the only person who can make the decision as to whether or not you wish to testify in this case is you. Now you certainly have a right and it's advisable that you consult with your attorney. You have a right to consult with family and friends and people who are reasonably close by to advise you and help you make that call. But, ultimately – ultimately this decision of whether or not you wish to testify has to be made by you. And you can only make that decision if you do so in a knowing and intelligent and voluntary manner, understanding your rights under the 5th Amendment, and also the consequences to you if you decide to testify. Okay. So first, do you understand your rights under the 5th Amendment as I have given them to you thus far?
DEFENDANT:	Yes, sir, Your Honor.
COURT:	Have you understood everything I've told you thus far?
DEFENDANT:	Yes, sir, Your Honor.

(Trial Tr. pp. 282 – 285).

At the evidentiary hearing, Applicant testified that his first statement to law enforcement was that someone else did the shooting and another statement reflected that it was accidental without the intent to shoot the victim. In his PCR testimony and his Castle hearing testimony, he attempted to present accident, self-defense and defense of others - consistent with the theories he had ultimately presented, albeit without the prosecutor personally questioning the Applicant's explanations of the changing versions in front of the jury. Applicant testified that Trial Counsel told him it was best interest not to testify because of the interrogation tape recording of him lying to law enforcement compared with the version he would now be giving as reflected in the Castle hearing – a third version of the events on that date.

This Court finds Trial Counsel adequately explained the pros and cons of testifying, but ultimately it was Applicant's decision whether to testify. Trial Counsel's advice was reasonable under prevailing professional norms; thus, Applicant has not shown Trial Counsel was deficient in any manner. Applicant acknowledged during the PCR hearing Trial Counsel explained to him that because of the interrogation tape where Applicant lied to law enforcement that he was not involved and a random person did the shooting, it would be best for him to not be cross-examined by the Solicitor and that was enough to convince Applicant not to testify.

Importantly, viewing the circumstances at the time the actual decision to not testify was made, the series of statements that Applicant gave to law enforcement was given which addressed the potential for accident, self-defense and defense of others sufficient to get jury instructions on the issues. The Applicant was similarly aware that that this information was already before the jury.

Further, Applicant cannot show any prejudice, because had he taken the stand and testified, he would be impeached by the inconsistent statements and his reason to claim someone else committed the crime, his reason for taking the weapon back to the house, his knowledge about the false statements made on his behalf by his family and the reasons for the evolving versions he gave. Applicant's statements during his interrogation and his testimony during the pre-trial hearing were *consistently inconsistent*. Therefore, Applicant cannot show if he had taken the stand and testified, the outcome of trial would have been any different. This Court finds it was Applicant - not Trial Counsel - who decided not to testify, and his decision was made freely, voluntarily, and intelligently, as evidenced by the colloquy with the trial court.

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

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. He was aware of his right to testify before the inquiry was made and made a decision based upon the advice of counsel. He failed to prove any deficiency on counsel's advice.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom as required by Strickland v. Washington. This allegation must be **DENIED** and **DISMISSED.**

CONCLUSION

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

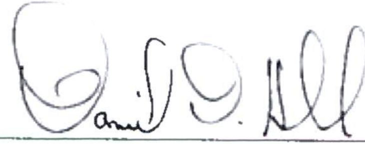
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),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

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 9th **day of** October**, 2025.**



THE HONORABLE DANIEL D. HALL
Tenth Judicial Circuit
Presiding Judge

York, South Carolina