

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

CERTIORARI TO LEXINGTON COUNTY
COURT OF COMMON PLEAS

NOV 15 2013

S.C. Supreme Court

The Honorable R. Lawton McIntosh, Circuit Court Judge
Case No. 2011-CP-32-0402

TIMOTHY J. WILSON,

Respondent,

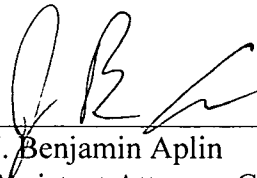
v.

STATE OF SOUTH CAROLINA,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order Granting Application for Post-Conviction Relief of the Honorable R. Lawton McIntosh, presiding Judge for the Eleventh Judicial Circuit, dated September 24, 2013. The Order was received by the State on October 18, 2013.



J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No: 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3741

November 15, 2013

Tricia A. Blanchette, Esquire
P.O. Box 12725
Columbia, South Carolina 29211

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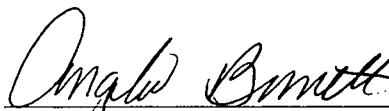
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PROOF OF SERVICE

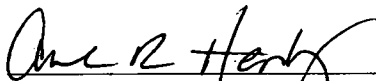
I, Angela Bennett certify that I have served the Notice of Appeal on Timothy J. Wilson by depositing a copy of it in the United States Mail, postage prepaid, on November 15, 2013, to Tricia A. Blanchette, Esquire, his attorney of record, to the address below.

Tricia A. Blanchette, Esquire
P.O. Box 12725
Columbia, South Carolina 29211



Angela Bennett
Administrative Assistant

SWORN to before me this
15th day of November, 2013.



Notary Public for South Carolina

My Commission Expires: 7/18/2017



RECEIVED
NOV 15 2013
S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

November 15, 2013

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Timothy J. Wilson v. State of South Carolina
2011-CP-32-0402

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.

With highest regards,

J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No: 8729

JBA/ab
Enclosures

cc: Tricia A. Blanchette, Esquire
The Honorable Beth A. Carrigg, Clerk of Court of Lexington County
The Honorable Donald V. Myers, Eleventh Circuit Solicitor
Chief Appellate Defender Robert M. Dudek
David Tatarsky, SCDC
Trisha Allen, Victims Services

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
)
 Timothy J. Wilson, #329926) 2011-CP-32-0402
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

I. PROCEDURAL HISTORY

A. Post Conviction Relief Procedural History

This matter comes before the Court by way of an Application for Post Conviction Relief (PCR) filed in Lexington County on February 1, 2011. On September 7, 2011, Respondent (the State) submitted a Return. On March 23, 2012, Tricia A. Blanchette, Esquire, was substituted as Applicant's counsel. On October 10, 2012, a Motion for Discovery was filed, and the State submitted a Return on October 19, 2012.

On November 13, 2012, a motion hearing was held at the Lexington County Courthouse in front of the Honorable Edgar W. Dickson. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Salley W. Elliott, Senior Assistant Deputy Attorney General. On December 7, 2012, an Order Authorizing Discovery was issued and subsequently filed on December 14, 2012.

On December 21, 2012, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which added the following specific allegations to his original allegations of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial. Specifically, but not limited to, failure to review the discovery with Applicant, failure to prepare defense witnesses for trial, failure to investigate the allegations and potential defenses.

2. Ineffective assistance of trial counsel regarding the failure to obtain and/or utilize expert witnesses and failure to make a timely request for a continuance to procure necessary experts.
3. Ineffective assistance of trial counsel for failure to raise an objection to the juror shortage. Transcript pp. 7, 50.
4. Ineffective assistance of trial counsel for agreeing to admit the video of the forensic interview of the victim.
5. Ineffective assistance of trial counsel for failure to protect Applicant's confrontation rights during the testimony of the victim.
6. Ineffective assistance of trial counsel for putting forth an unreasonable defense strategy.
7. Ineffective assistance of trial counsel for failing to fully cross-examine the State's witnesses, including but not limited to Dr. Robinson, Alicia Benedetto, Christalyn Thompson and Heather Smith.
8. Ineffective assistance of trial counsel for failure to object to hearsay and bolstering / vouching testimony of the State's experts. See Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), State v. Dempsey, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000), State v. Dawkins, 346 S.C. 151, 551 S.E.2d 260 (2001), Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010), State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (2012).
9. Ineffective assistance of trial counsel for failure to address possible bias expressed by the trial court stemming from a prior case. Transcript pp. 209-10.
10. Ineffective assistance of trial counsel for failure to make a directed verdict argument on all charges.
11. Ineffective assistance of trial counsel for failure to object to pitting of witnesses by the State, as pointed out by the trial court.
12. Ineffective assistance of trial counsel for opening the door to testimony during the cross-examination of Jessica Wilson and the State's reply witnesses regarding a completely unrelated allegation of sexual abuse involving Jessica Wilson's father.

13. Ineffective assistance of trial counsel for failure to advise Applicant regarding "Jessica's Law" and the changes to the jury charge and applicable sentencing range.

14. Ineffective assistance of appellate counsel for failure to raise the motion for continuance on appeal.

An evidentiary hearing into the matter was held before this Court on January 29, 2013, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The State was represented by J. Benjamin Aplin, Assistant Attorney General.

During the hearing, Applicant testified on his own behalf. Applicant's counsel also called Gaye Allen-Cook, Donna Schwartz-Watts, Gregory Robinson and trial counsel, Casey Cornwell, Esquire to the stand. Applicant's counsel introduced twenty exhibits. This Court was also provided a copy of the Application, the Respondent's Return, Applicant's Amendment, the records of the Lexington County Clerk of Court concerning the subject conviction, the trial transcript, and Applicant's records from the South Carolina Department of Corrections.

At the close of the hearing, this Court took the matter under advisement. Thereafter, this Court requested that Applicant's counsel submit a proposed Order, from which this Order follows.

B. General Sessions Procedural History

Applicant is presently confined in the South Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. During the March 2008 term of the Lexington County Grand Jury, Applicant was indicted on four counts of Criminal Sexual Conduct with a Minor (CSC), 1st Degree (Indictment No.: 2008-GS-32-789 to 792). Subsequently, Applicant was indicted for Lewd Act on a Minor (Lewd Act)

(Indictment No.: 2008-GS-32-2293) during the July 2008 term of the Lexington County Grand Jury. On July 29, 2008, a jury trial was conducted at the Lexington County Courthouse in front of the Honorable William P. Keesley. Applicant was represented by Casey Cornwell, Esquire, and Bennett Casto, Esquire, of the Lexington County Public Defender's Office. The jury found Applicant guilty as indicted. On August 1, 2008, the Honorable William P. Keesley sentenced Applicant to confinement for concurrent terms of fifteen (15) years for Lewd Act (Indictment No.: 2008-GS-32-2293), thirty (30) years for CSC, 1st Degree (2008-GS-32-789), thirty (30) years for CSC, 1st Degree (2008-GS-32-791), fifteen (15) years for CSC, 1st Degree (Indictment No.: 2008-GS-32-792) and a consecutive term of fifteen (15) years for CSC, 1st Degree (Indictment No.: 2008-GS-32-790), for an aggregate sentence of forty-five (45) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Wanda H. Carter, South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Wilson, Op. No. 2010-UP-472 (S.C. Ct. App. filed October 28, 2010). The Remittitur was issued on November 17, 2010.

II. APPLICABLE LAW

In a PCR action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

For Applicant to meet his burden of proof and prevail on his allegations of ineffective assistance of trial counsel, the two-prong test applicable to such a claim must be met. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2065 (1984).

The first prong analyzes whether counsel failed to render reasonably effective assistance under the prevailing professional norms. Id. The second prong places the burden on Applicant to show that but for counsel's deficient performance the outcome would have been different. Id. The second prong is known as the "prejudice" requirement. This requirement is met if counsel's actions or inactions resulted in prejudice to Applicant. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 539 (1995).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearing. This Court has also had the opportunity to observe each witness and pass upon his or her credibility. This Court has weighed the testimony accordingly. This Court finds the testimony of the evidentiary hearing witnesses to be generally credible.¹ Set forth below are the relevant findings of fact and conclusions of law on each issue raised by Applicant as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Trial Counsel Claims Raised by Applicant

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial. Specifically, but not limited to, failure to review the discovery with Applicant, failure to prepare defense witnesses for trial, failure to investigate the allegations and potential defenses.

At the evidentiary hearing, Applicant testified that he met with counsel three times before trial due to being out of the State for military obligations. PCR Transcript pp. 94-5. While on the stand, Applicant went through a number of discovery documents and detailed how he believed a review of such documents with counsel would have aided

¹ This Court has also made specific findings of credibility as detailed in the Findings of Fact and Conclusions of Law on each issue.

his defense. He explained he felt counsel failed to discuss defense strategy with him and failed to conduct an independent investigation. He also testified he believed that neither he nor any of the defense witnesses were properly prepared for trial. PCR Transcript p. 161.

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LEXINGTON, SC

When trial counsel (Mr. Cornwell) took the stand, he made it clear that he wished that he would have been given more time to prepare, which was the driving force behind his motion for a continuance. PCR Transcript p. 198, 211. He recalled reviewing the discovery upon receipt, but he agreed that he wished he had more time to review it with Applicant or prepare Applicant or his witnesses for trial. PCR Transcript pp. 211-12, 232-3. Regardless, he concluded that he did a “decent” job at trial. PCR Transcript p. 214.

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court of South Carolina reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. Lounds, 380 S.C. at 460, 670 S.E.2d at 649, See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Despite having limited time, as was detailed in counsel’s request for a continuance, this Court finds that counsel did conduct a reasonable investigation and prepared with Applicant prior to trial. Counsel requested and received an Order of Protection for time to prepare and it appears that counsel prepared in an adequate manner in consideration of his caseload as a public defender. Furthermore, counsel requested a continuance and explained his concerns to the trial court; thus, preserving the issue on the record. As a result, this Court finds that trial counsel was not ineffective for failing to

prepare and investigate since he did such even if his attempts were not perfect. Therefore, this claim must fail on the first prong of the Strickland analysis.

2. Ineffective assistance of trial counsel regarding the failure to obtain and/or utilize expert witnesses and failure to make a timely request for a continuance to procure necessary experts.

By way of his Amendment and through his testimony at the evidentiary hearing, Applicant alleged that trial counsel was ineffective when he failed to obtain and utilize experts. In support of his allegation, Gaye Allen-Cook and Dr. Donna Schwartz-Watts were called at the evidentiary hearing and respectively qualified as experts in “clinical therapy involving family and children, specializing in sexual and physical abuse,” and “forensic psychiatry.” PCR Transcript pp. 15, 41.

Gaye Allen-Cook testified that she reviewed the case materials, including the forensic interview video, and met with Applicant. She explained that she found Applicant to be “appropriately remorseful” and to struggle with social anxiety. PCR Transcript pp. 46-7. She addressed her review of the forensic interview video and concluded that her only concern was the length of the interview. PCR Transcript p. 44. She expressed concern with the number of people that spoke with the victim regarding her disclosure prior to the forensic interview and explained “delayed disclosure.” PCR Transcript pp. 44-5. She testified that she would have been willing to review the video with defense counsel, assist in preparation for trial and be utilized as a witness at trial. PCR Transcript pp. 48, 61.

Dr. Donna Schwartz-Watt testified that she reviewed the case materials and evaluated Applicant. She went through her findings from her evaluation of Applicant, which included a normal sexual history and a finding that he was “low risk” to reoffend.

PCR Transcript pp. 21-2, 23. She indicated that if she had been contacted prior to his trial, she would have arranged for a physiologic assessment. PCR Transcript p. 23. She explained in detail that Applicant suffers from a social phobia, which impaired his ability to testify at trial. PCR Transcript pp. 16-17, 23, She testified that she could have informed trial counsel of this phobia and assisted him with prepping Applicant for trial. PCR Transcript p. 23. When asked by the State, Dr. Schwartz-Watts indicated that this could include medication. PCR Transcript p. 30.

When trial counsel took the stand, he addressed his motion for continuance and his argument that he needed time to obtain expert(s). He explained that he would typically utilize experts to evaluate his client and to review the forensic video. PCR Transcript p. 196. When asked specifically about the experts offered at the evidentiary hearing, he concluded that the experts would have helped, especially with understanding Applicant's anxiety / social phobia. PCR Transcript p. 199. After some discussion, he clarified that he would have wanted an expert to conduct some type of arousal or sexual predator test. PCR Transcript pp. 219-220, 234-35. He also explained that he had thoroughly reviewed the forensic video and did research to prepare his cross-examination of the State's experts.

As was stated at the evidentiary hearing, this Court finds that both experts called by Applicant were duly qualified in their respective fields, but this Court struggles to find resulting prejudice from the failure to utilize such experts. PCR Transcript pp. 237-9. This Court acknowledges that counsel readily admitted at trial and at the evidentiary hearing his need for experts in the case, but failed to articulate or explain this need. Thus, this Court cannot find that counsel's failure to obtain expert witnesses amounts to

ineffective assistance that affected the outcome of trial. Therefore, as stated at the evidentiary hearing, this claim must fail.

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3. Ineffective assistance of trial counsel for failure to raise an objection to the juror shortage.

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While on the stand, Applicant pointed out two places in the transcript where the trial court noted that jurors were missing prior to the selection of the jury. Trial Transcript pp. 9, 50. As was established by the State at the evidentiary hearing and is supported by the transcript, the jury selection was completed and strikes exercised without the juror shortage creating an issue. No exceptions were made on the record to the jury selection. Trial Transcript p. 99. At the evidentiary hearing, counsel agreed that he did not object, but he concluded that he should have “strategy-wise, because maybe that would have gotten me the continuance I really needed.” PCR Transcript p. 228, lns. 17-22.

This Court is not convinced that counsel rendered deficient performance when he failed to object to the juror shortage or use it as a basis for supporting his request for a continuance as counsel alluded to at the evidentiary hearing. As the record established, a jury was selected and the juror shortage did not hinder jury selection. The record demonstrates no prejudice suffered by Applicant. Therefore, this Court finds that this claim must fail under both prongs of the Strickland analysis.

4. Ineffective assistance of trial counsel for agreeing to admit the video of the forensic interview of the victim.

By way of his Amendment, Applicant alleged that trial counsel was ineffective when he agreed to the admission of the video recording of the victim’s forensic interview. Trial Transcript p. 207. As was stated in the transcript and by both witnesses at

the evidentiary hearing, counsel informed Applicant that he planned to use the video as part of Applicant's defense. Trial Transcript p. 207, PCR Transcript pp. 126. As a result, this Court finds that counsel's agreement to the admission of the video was reasonable trial strategy that was discussed with Applicant. Therefore, no deficiency is found and this claim must fail under the first prong of the Strickland standard.

5. Ineffective assistance of trial counsel for failure to protect Applicant's confrontation rights during the testimony of the victim.

As is reflected in the trial record and was testified to by Applicant and trial counsel, the lower court denied the State's motion to have the victim testify outside the courtroom, and the State agreed to forego any questioning of the victim on veracity in the courtroom prior to her testimony. Trial Transcript pp. 174, 195, 198-215. Defense counsel also did not enter a challenge to her competency. Trial Transcript pp. 239-40. By way of his Amendment and his testimony at the evidentiary hearing, Applicant alleged that counsel was ineffective because accommodations were made to ensure that the victim would not have to make eye contact with him during her testimony. Applicant explained that her in court identification of him demonstrated that she was not able to see him during her testimony. Trial Transcript p. 257, PCR Transcript pp. 126-132. He alleged that counsel failed to protect his confrontation rights.

When he took the stand, trial counsel recalled that the victim could not see Applicant, but he surmised that he did not see how making a motion would have made a difference. PCR Transcript pp. 204-5. This Court agrees with trial counsel's conclusion. Clearly, counsel argued vigorously to protect Applicant's confrontation rights, and the victim was required to testify in the courtroom as a result. This Court finds Applicant's

claim to be without merit. Therefore, this claim must fail under the first prong of the Strickland analysis.

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6. Ineffective assistance of trial counsel for putting forth an unreasonable defense strategy.

While on the stand, Mr. Cornwell explained that his strategy boiled down to showing that the victim had a problem with “fibbing” and was troubled. PCR Transcript p. 226. He explained that he utilized the family members called as defense witnesses as experts on the victim and her behavior. PCR Transcript p. 210. He also explained that he did not object to the State’s pitting of the witnesses because pitting was part of his defense trial strategy. PCR Transcript p. 222.

When Applicant took the stand, he went through a number of discovery documents and detailed how he thought counsel should have further developed his trial strategy. He noted that counsel was precluded from introducing a document during the testimony of Christalyn Howard (DSS) that addressed inconsistent details regarding his son. Trial Transcript p. 299-300. He also highlighted inconsistencies in the testimony regarding his daughter’s version of events. PCR Transcript pp. 144-45.

In Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002), the South Carolina Supreme Court found that counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness and such strategy is measured under an objective standard of reasonableness. Under this standard, this Court finds that trial counsel did not put forth an unreasonable trial strategy based upon the record. Therefore, this claim must fail under the first prong of the Strickland standard.

7. Ineffective assistance of trial counsel for failing to fully ~~cross-examine the~~ State's witnesses, including but not limited to Dr. Robinson, Alicia Benedetto, Christalyn Thompson and Heather Smith.

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At the evidentiary hearing, Applicant called Gregory Robinson as a witness. Mr. Robinson explained that he is a licensed professional counselor, and he testified at trial regarding his meetings with the victim. PCR Transcript p. 72. Mr. Robinson explained that he also met with Applicant twice and Applicant appeared to be very involved and eager to help his daughter. PCR Transcript p. 76. He acknowledged that defense counsel never asked him about his meetings with Applicant. PCR Transcript p. 75.

When Applicant took the stand, he alleged that counsel should have questioned Mr. Robinson about their meetings. PCR Transcript p. 152. He explained that Mr. Robinson's testimony regarding the meetings could have refuted the State's assertion that he "didn't care." PCR Transcript pp. 152-3.

When asked about Mr. Robinson, trial counsel responded that failing to ask him about his meetings with Applicant was "oversight on his part." PCR Transcript pp. 201-2. When asked if he thought his testimony could have affected the outcome of trial, counsel stated: "I think it would have shown to the jury that he was interested in getting to the bottom of it instead of trying to cover up something, you know, I think it would have helped." PCR Transcript p. 202, Ins. 12-15.

Despite counsel's assertions that he should have further questioned Mr. Robinson and his opinion that it would have helped, this Court is not convinced that counsel's failure amounts to ineffective assistance of counsel that affected the outcome of trial. As to Alicia Benedetto, Christalyn Thompson and Heather Smith, this Court finds that Applicant has failed to establish how counsel should have more fully cross-examined

each witness. This Court also finds that the record of trial establishes that counsel

conducted a reasonable cross examination of each of these witnesses. Therefore, this

claim must fail.

8. Ineffective assistance of trial counsel for failure to object to hearsay and bolstering / vouching testimony of the State's experts. See Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), State v. Dempsey, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000), State v. Dawkins, 346 S.C. 151, 551 S.E.2d 260 (2001), Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010), State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (2012).

Based upon the record, the testimony at the evidentiary hearing, the case law submitted by counsel and the arguments made by both parties, this Court finds that trial counsel rendered ineffective assistance of counsel that prejudiced Applicant when he failed to object to the testimony of Heather Smith and Alicia Benedetto.² This Court

² Pursuant to the South Carolina Rules of Evidences, a prior statement by a witness is not hearsay when: [T]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication or before the alleged improper influence or motive arose, or (C) one of identification of a person made after perceiving the person, or (D) consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident. Rule 801(d)(1), SCRE. Thus, under Rule 801(d)(1)(D), SCRE, corroborative witness testimony is limited to time and place of the alleged assault. The corroborative testimony cannot include "details or particulars" regarding the assault. Dawkins v. State, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001).

Applicant made an allegation of failure to object to hearsay testimony. At the evidentiary hearing the State argued the testimony challenged by the Applicant was neither improper vouching nor improper hearsay. PCR Transcript p.247, lns. 10-16. After listening to the State's argument in regard to vouching, this Court declined the State's request to make a specific response to the Applicant's hearsay allegation, directing the parties to instead focus on the allegation of improper bolstering/vouching.

After the hearing, the Applicant provided this Court with a list of transcript references in support of his allegations, and the State provided this Court with its response to the particular allegation of improper hearsay. The State claimed the victim's prior statements were not hearsay under Rule 801(d)(1)(B), SCRE, because they were consistent with her trial testimony and were offered by the State to rebut an express or implied charge against the victim of improper influence (the victim's repeated viewing of the videotaped forensic interview in preparation for trial), or motive (the victim's fear of getting into trouble with the solicitor if she changed her story at trial), and because they were made before the alleged improper influence or motive arose.

denied Applicant's verbal amendment to include a claim pursuant to State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), that counsel was ineffective for failing to object to the qualification of Heather Smith (forensic interviewer) as an expert.³ PCR Transcript pp. 241-2. Therefore, this claim will not be addressed.

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It is well established that it is improper for an expert to comment on the veracity of a child's accusations of sexual abuse. See State v. Dawkins, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989) (Finding therapist indicating he believed victim's allegations were genuine was improper.); See also State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct.App.2000) (Finding therapist's testimony children were being truthful in ninety-five percent of instances in which sexual abuse was alleged was improper vouching for child), State v. Hill, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct. App. 2011) ("The law is clear that it is improper for a witness to give testimony as to his or her opinion about the credibility of a child victim in a sexual abuse matter.").

Recently, in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the South Carolina Supreme Court explained:

Even though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others. It is undeniable that the primary purpose for calling a "forensic interviewer" as a witness is to lend credibility to the victim's allegations. When this witness is qualified as an expert the impermissible harm is compounded. Our courts have previously held that "[t]he assessment of witness credibility is within the exclusive province of the jury," and that witnesses generally are "not allowed to testify whether another witness is telling the truth." State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); see also L.A. Bradshaw, Annotation, Necessity and Admissibility of Expert

As it advised the parties to do at the evidentiary hearing, this Court now focuses its analysis on the issue of improper bolstering/vouching. Thus, this Court declines to find trial counsel ineffective for failing to object to the testimony of Alicia Benedetto and Heather Smith on grounds that it included hearsay in the form of the victim's out of court statements.

³ The State indicated no objection to the amendment. PCR Transcript p. 242, Ins. 2-3.

Testimony as to Credibility of Witness, 20 A.L.R.3d 684 (1968 & Supp. 2012) (stating an expert witness should not vouch for the truthfulness of a witness). Specifically, it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter. State v. Hill, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct. App. 2011); cf. Smith v. State, 386 S.C. 562, 564-65, 689 S.E.2d 629, 631 (2010) (observing the forensic interviewer interjected impermissible hearsay into the trial, which improperly bolstered the victim's testimony; the forensic interviewer testified that the victim told her that the defendant had sexually assaulted her and that she found the victim's statement "believable").

In Jolly v. State, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994), the South Carolina Supreme Court found trial counsel ineffective for failing to object to the introduction of a social worker's testimony that the child Victim had discussed her sexual abuse by Jolly. The Court reversed the PCR court's denial of relief after finding there was a "reasonable probability" that the social worker's testimony affected the outcome of Jolly's trial. Id. at 21, 443 S.E.2d at 569.

Additionally, in State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), the South Carolina Supreme Court held that the trial court erred in allowing the State to introduce portions of a forensic interviewer's written reports about interviews conducted with the three alleged minor victims. The Court stated, "In each report, the forensic interviewer stated that during the interviews, each child had 'provide[d] a compelling disclosure of abuse by [appellant].'" Id. at 480, 716 S.E.2d at 94 (alterations in original). The Court found this was error as "[t]here is no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful." Id.

In State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), the South Carolina Court of Appeals reversed and remanded finding that the trial court erred in

permitting an expert in forensic interviewing (Heather Smith) to give testimony that

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bolstered the credibility of the victim. The Court of Appeals explained:

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Smith never testified directly that she believed what the victim stated in her interviews or in her testimony. McKerley argues, however, that there is no way to interpret Smith's testimony other than as her opinion that the victim was telling the truth. We agree.

CLERK OF COURT
LEXINGTON, SC

Smith's testimony in this case describing what forensic interviewers do demonstrates that virtually all of her testimony indicates she believed the victim was truthful, and thus is inadmissible for the same reason identified by the court in Jennings. Smith explained:

We want to be able to, . . . after assessing [the child's] behavior and what they are stating in an interview, look at that along with the other information that we may have had at the beginning of the interview and give an opinion as to whether we think something happened

Smith's "opinion as to whether [she thinks] something happened" is nothing other than her inadmissible opinion as to whether the victim was telling the truth.

Id. at 465, 725 S.E.2d at 142.

After citing to Smith's testimony that she "found [both interviews with the victim] to be compelling for sexual abuse," the Court of Appeals noted a number of specific portions of her testimony that were improper.⁴ Id. at 466-7, 725 S.E.2d at 142. The Court

⁴ "We are looking for accuracy of information" given by the victim; "we are going to . . . make sure that what the child is telling us is based on something they would have experienced on their own body or that they would have seen or heard, the sensory information"; "those statements have a level of detail that . . . they would be able to tell [only] if something were to have happened"; "we are also looking at . . . are there other possible reasons, are there other possible explanations"; "we are looking to see if [this] could . . . be explained in another way"; "we are looking to be sure it adds up"; "we are looking to see if what they tell us throughout the interview is the same from the beginning to the end"; "we are also looking at their behavior and the way they are expressing themselves in the interview . . . their behavior and their language".

In forming her "opinion as to whether . . . something happened," she considered whether the victim's statements were "consistent with the other information" she has on the case; and in forming her "opinion as to whether . . . something happened," she considered "does this child appear to be giving statements that are similar to, in my experience, in my training and what I have learned, similar to what other children with the same experience may have had."

Finally, in response to a question asking her to "explain what a compelling finding would be," she stated:

concluded: "In this particular case, none of this testimony has any relevance except insofar as it informs the jury Smith believes the story told by the victim." *Id.* at 467, 725 S.E.2d at 143.

In State v. Kromah, 401 S.C. 340, 359, 737 S.E.2d 490, 500 (2013), the South Carolina Supreme Court addressed the trial testimony of Heather Smith and held:

We find Smith's testimony about a "compelling finding" to be inappropriate here. Smith should not have been allowed to testify about a compelling finding of child abuse as that was the equivalent of Smith stating the Child was telling the truth.

The Court also took the opportunity to provide a non-exclusive list of statements that should be avoided by forensic interviewers when testifying at trial, the Court explained:

Because the admissibility of forensic interviews and the testimony based thereon at trial has been the subject of several recent appeals, we believe it would be helpful to set forth, by way of example, the kinds of statements that a forensic interviewer should avoid at trial: that the child was told to be truthful; a direct opinion as to a child's veracity or tendency to tell the truth; any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse; any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or an opinion that the child's behavior indicated the child was telling the truth.

A forensic interviewer, however, may properly testify regarding the following: the time, date, and circumstances of the interview; any personal observations regarding the child's behavior or demeanor; or a statement as to events that occurred within the personal knowledge of the interviewer.

Id. at 360, 737 S.E.2d at 500-1.

The compelling findings are the things that we look at, that we talked about looking at earlier in terms of how the disclosure comes about in the interview with me; whether it is detailed, does it have consistency, does it have the sensory level of detail that a child typically wouldn't have, or only would have if something had happened to them.

At the evidentiary hearing and at this Court's request following the hearing, Applicant, through counsel, provided a detailed list of citations from the trial testimony of Heather Smith and Alicia Benedetto that Applicant submitted were objectionable.⁵ What this Court finds most troubling in the referenced trial testimony is the repeated use of the terms "compelling" and "consistent," along with the repeated explanation of the accuracy of the information obtained from the victim. Trial Transcript pp. 348, Ins. 7-10, 352, Ins. 6-25, 353, Ins. 10-25, 354-6, 388, Ins. 11-12, 389, Ins. 6-25, 390-1, 392, Ins. 24-25, 393, 394, Ins. 5-11, 399, Ins. 8-13, 466-8, 469, Ins. 8-11, 471, 479, Ins. 11-14.

Applicant, through his Amendment and counsel, argued that trial counsel rendered ineffective assistance of counsel when he failed to object to the vouching and/or bolstering testimony of Heather Smith and Alicia Benedetto. The State argued evidence of the victim's veracity was admissible pursuant to Rule 404(a)(2), SCRE, as evidence of a pertinent character trait of the victim offered by the prosecution to rebut the Applicant's attempts to depict her as having an untruthful character. This Court finds that the higher courts have made it abundantly clear that the testimony at issue is not only objectionable but inadmissible if offered for the improper purpose of vouching for a witness or bolstering credibility.

At the evidentiary hearing, trial counsel admitted that he felt that he could get overruled if he objected, so he did not enter an objection to the testimony at issue. PCR Transcript pp. 207-8. He admitted that he should have objected and that he was aware of the case law, such as the "Jolly case." PCR Transcript p. 208, Ins. 1-9. Trial counsel

⁵ The list provided to the Court is as follows: Trial Transcript pp. 332, Ins. 12-14, 346, Ins. 1-11, 348, Ins. 7-10, 349, Ins. 4-16, 350, Ins. 19-20, 352, Ins. 6-25, 353, Ins. 10-25, 354-56, 357, Ins. 7-13, 379, Ins. 6-22, 381, Ins. 10-25, 387, Ins. 16-25, 388, Ins. 11-12, 389, Ins. 6-25, 390-91, 392, Ins. 24-25, 393, 394, Ins. 5-11,

explained that he wished that he had been more aggressive with his objections at trial, and it was something that he realized during the trial not just as he reviewed the transcript post trial. PCR Transcript pp. 213-214.

The Applicant had previously acknowledged the overriding theme during his trial, according to both sides, was credibility. PCR Transcript p.179, ln. 17-p. 180, ln. 1. He identified certain documents trial counsel received during discovery he believed counsel should have used to further attack the victim's credibility. PCR Transcript .p.113, ln. 2-p.115, ln. 4; p.182, ln. 16-p.185, ln. 7. The Applicant admitted trial counsel seemed to be executing a strategy of putting the victim's character trait of being a liar into evidence by calling witnesses to show she was not a truthful person. PCR Transcript p.191, ln 4-p.192, line 13).

During cross-examination at the evidentiary hearing, trial counsel confirmed this strategy, explaining he called four witnesses in the Applicant's defense for the purpose of showing the victim fibbed a lot. He testified he wasn't sure if character trait was the right word, but acknowledged he wanted to show the victim was prone to fibbing and was stubborn and willing to stick with a lie. PCR Transcript p.226, ln. 5-p.227, ln.11. Trial counsel also reviewed pages 263-265 of the trial transcript and explained this portion of his cross-examination of the victim was an effort to show her trial testimony may have been unduly influenced by watching the video tape of her forensic interview in preparation for trial. PCR Transcript .p.224, ln. 11-p.225, ln. 5. Trial counsel next examined pages 266-267 of the trial transcript and testified it was his effort to show that

396, lns. 10-16, 399, lns. 21-22, 402, lns. 10-11, 455, lns. 24-25, 456, lns. 1-7, 461-62, 464, lns. 4-7, 466-68, 469, lns. 8-11, 4717-2, 476, 479, lns. 11-14.

the victim's fear of getting in trouble with the solicitor may have established an improper motive for her trial testimony. PCR Transcript .p.225, ln. 6-p.226, ln. 4.

As described above, the State first argued trial counsel was not ineffective for failing to object to bolstering/vouching testimony from the State's experts because evidence of the victim's veracity was admissible pursuant to Rule 404(a)(2), SCRE, as evidence of a pertinent character trait of the victim offered by the prosecution to rebut the Applicant's attempts to depict her as having an untruthful character. The State further argued the victim's prior statements were not hearsay under Rule 801(d)(1)(B), SCRE, because they were consistent with her trial testimony and were offered by the State to rebut an express or implied charge against the victim of improper influence (the victim's repeated viewing of the videotaped forensic interview in preparation for trial), or motive (the victim's fear of getting into trouble with the solicitor if she changed her story at trial), and because those statements were made before the alleged improper influence or motive arose. Finally, the State argued that even if counsel was ineffective for failing to object to the alleged vouching and hearsay testimony, the Applicant was not entitled to a new trial because he failed to prove prejudice in light of the admission of the video tape of the forensic interview. The State contended any error in admission of the testimony was harmless in light of the overwhelming evidence contained in the video tape.

After fully considering trial counsel's testimony and arguments from both parties, it is clear that counsel did not provide a reasonable strategic basis for not objecting. As summarized above, the appellate courts have made it clear that the exact testimony offered in this case has no place in a trial, yet trial counsel admittedly failed to object to

it.⁶ Based upon the record, the testimony at the evidentiary hearing, the case law submitted by counsel and the arguments made by both parties, this Court finds that trial counsel rendered ineffective assistance of counsel that prejudiced Applicant when he failed to object to portions of the testimony of Heather Smith and Alicia Benedetto.

Furthermore, this Court is not convinced of the State's harmless error argument. As Applicant and counsel stated, it is clear from the transcript that the entire case hinged on the credibility of the victim.⁷ In their opening arguments, both parties argued that the entire case boiled down to credibility. Trial Transcript pp. 231-2. Therefore, it is inconceivable that counsel's admitted error was harmless and did not affect the outcome of Applicant's trial when the testimony at issue clearly bolstered the credibility of the victim.

Based upon the foregoing, this Court finds that trial counsel was ineffective and Applicant was prejudiced as a result. Therefore, Applicant must be granted relief on this ground.

9. Ineffective assistance of trial counsel for failure to address possible bias expressed by the trial court stemming from a prior case.

As was addressed by Applicant, the trial court commented about another case he tried involving a four year old victim and remarked that the defendant, a police officer, reminded him of Applicant. Trial Transcript pp. 209-210. Applicant alleged that trial counsel should have objected and/or addressed on the record the court's bias expressed in

⁶ This Court has addressed the cases decided after Applicant's trial in 2008 since such cases are directly on point. This Court does not find that counsel should have been clairvoyant and made objections based upon the cases handed down after trial, but this Court does find that the body of case law was in place prior to trial, as was admitted by counsel, for an objection to be made to the testimony at issue.

⁷ When asked by this Court at the evidentiary hearing, the State agreed that "this is a credibility case, that there is no physical findings of abuse by an qualified medical doctor." PCR Transcript p. 242, Ins. 7-15.

those comments. After putting these comments in the proper context, this Court finds that this claim must fail since the trial court comments were made in support of his denial of the State's motion to have the victim testify outside the courtroom. Therefore, this Court finds no basis on which counsel should have objected or addressed the matter on the record. As a result, this claim must fail under the first prong of the Strickland analysis.

10. Ineffective assistance of trial counsel for failure to make a directed verdict argument on all charges.

By way of his Amendment and his testimony, Applicant alleged that counsel failed to make a specific argument for a directed verdict on all charges due to the variation in the dates between the indictment and the victim's testimony. PCR Transcript p. 136. This Court has reviewed the record and finds that counsel made an argument for a directed verdict on all charges. Trial Transcript pp. 483-4. Specifically, counsel noted the inconsistent and contradictory testimony. Trial Transcript pp. 483-4. Upon a review of the trial record, this Court finds that this claim must fail under the first prong of the Strickland analysis.

11. Ineffective assistance of trial counsel for failure to object to pitting of witnesses by the State, as pointed out by the trial court.

For the reasons discussed in issue #6 above, this claim is also denied.

12. Ineffective assistance of trial counsel for opening the door to testimony during the cross-examination of Jessica Wilson and the State's reply witnesses regarding a completely unrelated allegation of sexual abuse involving Jessica Wilson's father.

At trial, Jessica Wilson was called as a witness for the defense⁸. On direct the following testimony was elicited:

⁸Jessica Wilson is the mother of the victim and wife of Applicant.

Trial Counsel: What made you stand by your husband in this situation?

Ms. Wilson: I have always been told to go with your gut feeling. My heart and my gut tell me that he did not do this.

Trial Transcript p. 558, Ins. 20-24. During cross-examination, the State asked Ms. Wilson the following question: "Now, when you were young, isn't it true that your sister accused your father of molesting her?" Trial Transcript p. 575, Ins. 17-18. Trial counsel immediately objected and jury was sent out while the court heard arguments. Trial Transcript pp. 575-581. In making his ruling, the trial court concluded that the questions by trial counsel regarding "her gut and all of this" had "opened the door to this line of inquiry." Thereafter, the State was allowed to elicit testimony regarding her siding with her father after the accusations made by her sister and questions regarding her "gut" feelings. Trial Transcript pp. 584-5. In trying to explain the questions about her "gut," Ms. Wilson explained that she contacted DSS and wanted to talk to the detective, but she was informed that she could not contact the detective. Trial Transcript p. 586. When asked who she spoke with at DSS, she indicated that she did not remember but it may have been Christalyn. Trial Transcript pp. 586-7.

As a result of her testimony, the State called Arleen Callahan and Christalyn Howard in reply. While on the stand, Ms. Callahan explained that she had separated from her husband due to his drinking when the incident took place between her husband and her daughter that Ms. Wilson had been asked about. Trial Transcript p. 596. She explained that Ms. Wilson took her father's side even though he was charged and convicted of sexually abusing her sister. Trial Transcript pp. 596-7. When Christalyn Howard took the stand in reply, she testified that she never informed Ms. Wilson that she

could not call the detective and she encouraged her to talk to the victim.⁹ Trial Transcript pp. 600-1.

By way of his Amendment and testimony, Applicant alleged that trial counsel rendered ineffective assistance when he opened the door to the damaging cross-examination of Jessica Wilson and the reply testimony of Arleen Callahan. PCR Transcript pp. 167-8. He further alleged that trial counsel should have utilized the DSS “Safety Plan”, which was introduced as Applicant’s Exhibit #19, to refute the reply testimony of Christalyn Howard. PCR Transcript pp. 168-9.

When trial counsel took the stand, he readily admitted that he opened the door as the trial court ruled. PCR Transcript p. 209. He explained: “That’s kind of the risk you take when you ask those kinds of questions.” PCR Transcript p. 209, Ins. 17-18. He explained that it was detrimental to the case and it turned the case into a “mini circus.” PCR Transcript pp. 209-210. He also explained that he was heavily relying upon Ms. Wilson as one of his “experts” on the victim. PCR Transcript pp. 210-11. When asked on cross-examination, he concluded that “looking back” he would have chosen to not call Ms. Wilson as a witness. PCR Transcript p. 221, Ins. 3-23.

This Court has had the opportunity to review the complete record and weigh the testimony offered at the evidentiary hearing. This Court agrees with trial counsel’s assessment that the testimony elicited as a result of his direct examination of Ms. Wilson was detrimental to Applicant’s case, yet this Court finds that trial counsel did not provide assistance that fell below reasonable professional norms in his decision to call and in the questions asked of Ms. Wilson at trial. Furthermore, this Court is not convinced that

⁹ In the trial transcript, the name Christalyn Thompson Howard is given for the witness. On some of the exhibits and throughout the evidentiary hearing, she is referred to as Christalyn Thompson.

counsel's failure to question Ms. Howard about the "Safety Plan" amounted to ineffective assistance of counsel that affected the outcome of trial. Therefore, this claim must fail.

13. Ineffective assistance of trial counsel for failure to advise Applicant regarding "Jessica's Law" and the changes to the jury charge and applicable sentencing range.

By way of his Amendment and through his testimony at the evidentiary hearing, Applicant alleged that counsel failed to advise him regarding "Jessica's Law" and the changes to the jury charge and applicable sentencing range. PCR Transcript p. 172. When asked, trial counsel could not recall if he discussed these matters with Applicant. PCR Transcript p. 230. Regardless, this Court has reviewed the record and finds no merit to Applicant's claim that failure to discuss such should be considered ineffective assistance of counsel, particularly where satellite monitoring is a collateral consequence of the sentence. Furthermore, no prejudice can be deduced from counsel's failure, if such occurred, to discuss these matters with Applicant. Therefore, this claim must fail under both prongs of the Strickland analysis.

- B. Ineffective assistance of appellate counsel for failure to raise the motion for continuance on appeal.

Following the Applicant's trial, a timely Notice of Appeal was filed, and Applicant's direct appeal was perfected by Wanda H. Carter, Deputy Chief Appellate Defender for Appellate Defense. On July 21, 2009, a Final Anders Brief of Appellant was submitted to the South Carolina Court of Appeals. On October 12, 2009, Applicant submitted "Appellant Pro-Se Anders Brief Reply," which raised the following issue: "The Lower Court Erred in not Allowing the Appellant a Continuance to Obtain Expert Witnesses to Counter the States Expert Witnesses." On October 28, 2010, the South

Carolina Court of Appeals dismissed October 28, 2010. State v. Wilson, Op. No. 2010-UP-472 (S.C. Ct. App. filed October 28, 2010).

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At the evidentiary hearing, Applicant, through counsel and testimony, alleged that appellate counsel was ineffective for failing to raise the motion for continuance on appeal and explained that the decision entered by the South Carolina Court of Appeals did not specifically reference review of Applicant's brief. When asked, trial counsel responded that he thought the continuance would be granted and he "didn't understand why" the issue was not raised by appellate counsel. PCR Transcript p. 215.

In response, the State called Jennifer Roberts, Assistant Attorney General, to the stand.¹⁰ Ms. Roberts explained that she had previously worked as a staff attorney at the South Carolina Court of Appeals, and she testified to her experience in reviewing appeal submitted pursuant to Anders. PCR Transcript pp. 7-9. On cross-examination, Ms. Roberts admitted that she did not handle Applicant's appeal and that an Opinion would typically reference the review of an Appellant's pro-se brief. PCR Transcript pp. 9-10.

In support of his claim, this Court was provided a copy of Bennett v. State, 383 S.C. 303, 680 S.E.2d 273 (2009), which counsel stated explored the issue of ineffective assistance of appellate counsel related to an Anders Brief and requires that the Strickland standard be applied. PCR Transcript p. 254. See Smith v. Robbins, 528 U.S. 259, 120 S.Ct. 746 (2000) (Finding that even when the appellate counsel believes his client's appeal is without merit and thus files an Anders brief, the appellant may be entitled to a merits brief and the challenge of appellate counsel's performance should be reviewed under Strickland.) This Court has reviewed the submitted case law and the entire record.

¹⁰ By agreement of the parties and approval of the Court, Ms. Roberts was called as the first witness at the evidentiary hearing. PCR Transcript pp. 5-6.

This Court cannot find that appellate counsel was ineffective for failing to raise an issue that was raised in Applicant's pro-se brief and reviewed by the Court pursuant to Anders. This Court is not convinced that the omission of language in the Opinion stating that the pro-se brief was reviewed means that it was not reviewed since the brief was clock stamped by the Court of Appeals. Furthermore, the Opinion states that the Court thoroughly reviewed the record prior to dismissing the appeal and granting counsel's motion to be relieved. Therefore, this Court refuses to find appellate counsel ineffective for failing to raise an issue that she was not directed to brief by the Court of Appeals pursuant to Anders.

V. CONCLUSION

Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel as detailed above, but has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel as detailed above;
2. That Applicant has not met his burden of proof as to his allegation of ineffective assistance of appellate counsel;
3. That the Application for Post Conviction Relief be granted and the Applicant's convictions be vacated and he be granted a new trial;
4. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Lexington County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDRED this 24th day of September, 2013

[Handwritten signature]
SEP 24 2013 3:32
R. Lawton McIntosh, Circuit Judge
Tenth (10th) Judicial Circuit
CLERK OF COURT
LEXINGTON, SC

Anderson, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA
 COUNTY OF
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP- 32-402

Timothy J. Wilson
329926

State of SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

 Circuit Court Judge

 Judge Code

 Date

For Clerk of Court Office Use Only

This judgment was entered on the 9th day of Oct, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this day Oct, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Jrilia Blanchette

J. Whitmire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

John Carnage
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.