

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Mar 27 2026

S.C. SUPREME COURT

Certiorari to Lexington County

Honorable David P. Caraker, Jr, Circuit Court Judge

CHARLES A. MOREHOUSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002161

APPENDIX

LARA M. CAUDY
Senior Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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Senior Assistant Deputy Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3737

ATTORNEY FOR PETITIONER

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street, Suite 309
Lexington, South Carolina 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

VOLUME III OF III
PAGES 1001-1146

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT #22 (AUDIO INTERVIEW CD).**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED

JAN 02 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES ALTON MOREHOUSE,

APPELLANT

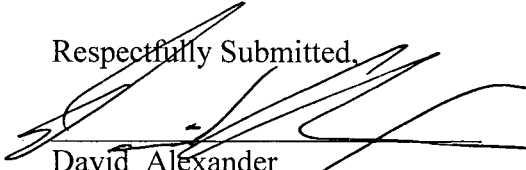
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Alton Morehouse states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Eugene C. Griffith, which was held on January 9 - 13, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Charles Alton Morehouse.

Respectfully Submitted,


 David Alexander
 Appellate Defender
 ATTORNEY FOR APPELLANT

This 2nd day of January, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 02 2018

SC Court of Appeals

Appeal from Lexington County
Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES ALTON MOREHOUSE,

APPELLANT

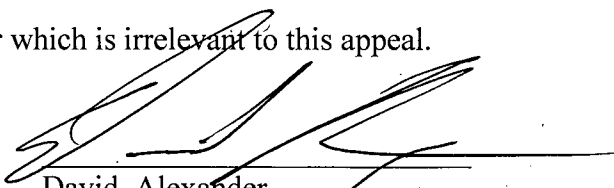
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Trial transcript;
- (3) Court's Exhibits No. 2, 3, and 4;
- (4) State's Exhibit No. 22 (to be transported)

I certify that this designation contains no matter which is irrelevant to this appeal.

January 2, 2018


David Alexander
Appellate Defender

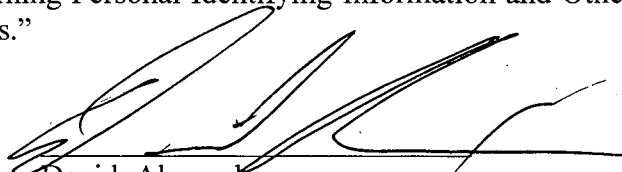
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 2, 2018.



David Alexander
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
JAN 02 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED
 JAN 02 2018
 SC Court of Appeals

THE STATE,

RESPONDENT,

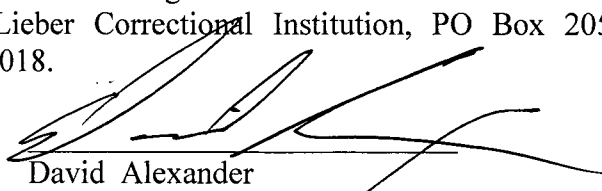
V.

CHARLES ALTON MOREHOUSE,

APPELLANT

 CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Charles Alton Morehouse, #371083, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 2nd day of January, 2018.


 David Alexander
 Appellate Defender
 ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
 this 2nd day of January, 2018.

 (L.S)
 Notary Public for South Carolina
 My Commission Expires: July 3, 2023

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Charles Alton Morehouse, Appellant.

Appellate Case No. 2017-000114

Appeal From Lexington County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-452
Submitted October 1, 2018 – Filed December 12, 2018

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Deputy
Attorney General Donald J. Zelenka, both of Columbia,
for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, SHORT, and WILLIAMS, JJ. concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 28, 2018

The Honorable Lisa M. Comer
205 East Main Street
Suite 128
Lexington SC 29072

REMITTITUR

Re: The State v. Charles A. Morehouse
Lower Court Case No. 2015GS3202939, 2016GS3200642,
2016GS3202151, 2016GS3202152
Appellate Case No. 2017-000114

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Charles Alton Morehouse, 371083
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire

STATE OF SOUTH CAROLINA)

County of Lexington)

IN THE COURT OF COMMON PLEAS

Charles A. Morehouse #371083)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Respondent.)

C/A No: 2019-CP-32-04714

APPLICATION FOR

POST-CONVICTION RELIEF

J. A. H. COHER
CLERK OF COURT
LEXINGTON SC

2019 NOV 22 AM 9:17

FILED

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
Columbia, S. Carolina, 29210
2. Name and location of Court which imposed sentence Court of General Sessions
Lexington, S. Carolina 29702
3. Name(s) of co-defendant(s) (if any) Wiley Sisk
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) SEE: ATTACHMENT - MEMORANDUM IN SUPPORT

(b) _____ 1009

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 13, 2017: Ind. No: 2015-GS-32- 02939, Life

Ind. No: 2016-GS-32-02151, 10 years; Ind. No. 2016-GS-32-02152, 5 years

Ind. No. 2016-GS-32- 00642, 5 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____ N/A

(b) after a plea of not guilty XX

(c) after a plea of nolo contendere _____ N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. APPEAL DISMISSED

ii. _____

iii. APPELLATE CASE NO. 2017-000114

(c) the date of each such result:

i. Filed December 12, 2018 Remittitur issued December 28, 2018

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No: 2018-UP-452

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) _____ N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____
- (b) SEE: ATTACHMENT – MEMORANDUM IN SUPPORT
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) SEE: ATTACHMENT – MEMORANDUM IN SUPPORT
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____ N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____ N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____ N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____ N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

In reference to all grounds raised in question (10): Counsel
failed to preserve these grounds for appellate review; therefore
Applicant's only avenue for review of claims is Post Conviction Relief

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? APPEAL - Yes; PCR - No

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. John Hillard, Esq. P.O. Box 658, Georgetown, SC.. 29442
- ii. David Alexander, S.C. Commission on Indigent defense, Appellate
Division, P.O. Box 11589, Columbia, S.C. 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trail and Sentencing
- ii. Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence under Indictment No. 2015-GS-32-0239

Re-Sentencing under Indictment No. 2016-GS-32-02151

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Charles Alton Morehouse 371083, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

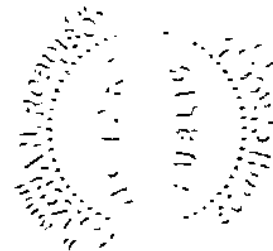
Charles A. Morehouse

Charles A. Morehouse

SWORN to and subscribed before me this 18th
day of November, 2019

Kanzena Robinson (L.S.)
(Notary Public)

My Commission Expires: 8/5/2024



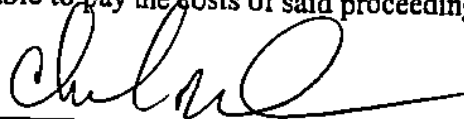
2019 NOV 22 AM 9:17
LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

FILED

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Charles A. Morehouse 371083, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
18th day of November, 2019:


Notary Public

My Commission Expires: 8/5/2024

FILED
2019 NOV 22 AM 9:17
LISA M. COMER
CLERK OF COURT
FLEMINGTON SC

STATE OF SOUTH CAROLINA]
COUNTY OF LEXINGTON

FILED

2019 NOV 22 AM 9:17

IN THE COURT OF COMMON PLEAS

LISA M. COMER
CLERK OF COURT
LEXINGTON SC
Charles Alton Morehouse, 371083,] C/A No:

2019-CP-32-Q 4714

Applicant,	]	
	]	
VS.	]	<u>APPLICANT'S MEMORANDUM</u>
	]	<u>IN SUPPORT OF</u>
	]	<u>APPLICATION FOR</u>
State of South Carolina,	]	<u>POST CONVICTION RELIEF</u>
Respondent.	]	
_____	]	

INTRODUCTION

This is an action filed under the Uniform Post Conviction Relief Procedures Act, initially filed "pro se" by Applicant, seeking relief from an unconstitutional criminal proceeding, as determined by the Supreme Court of the United States, which resulted in his unlawful imprisonment.

STATEMENT OF CASE

In December 2015, a Lexington County Grand Jury indicted Applicant for murder, a weapons charge, criminal conspiracy, and possession of methamphetamine with intent to distribute. On January 9, 2017 Applicant proceeded to trial before the Honorable

Eugene Griffith, Jr., and a jury. Applicant was present and represented by John Hillard Esq. Laura Suzanne Mayes and Lester McGill Bell appeared on behalf of the State. The jury acquitted Applicant of possession of methamphetamine with intent to distribute, but convicted him of the lesser included offense of possession. The jury convicted Applicant as indicted on the remaining charges.

Judge Griffith sentenced Applicant to a term of imprisonment of Life for murder, five (5) years on the weapons charge, five (5) on the possession charge, and ten (10) years on the conspiracy charge. All sentences are current.

A timely Notice of Appeal was file in the South Carolina Court of Appeals. On January 2, 2018, David Alexander Esq., of the South Carolina Commission on Indigent Defense filed an ANDER Brief pursuant to ANDERS v. CALIFORNIA, 386 U.S. 738, 87 S.Ct. 1396 (1967) on Applicant's behalf. The Court granted Applicant forty-five (45) days to file with the Court a "pro se" brief addressing any issues Applicant believes the Court should consider in the appeal.

On December 12, 2018 the Court of Appeals dismissed the appeal after review pursuant to ANDERS, supra., and granted counsel's Motion to be Relieved. The Remittitur was issued sent on December 28, 2018.

This Application now follows:

POST CONVICTION RELIEF APPLICATION

In reference to the following questions

PAGE 1, QUESTION 4

Indictment #'s, Offense and Sentence

Ind. # 2015-GS-32-02939, §16-3-10, Life

Ind. # 2016-GS-32-00642, §44-53-0375(B)2, §16-01-006, 5 years.

Ind. # 2016-GS-32-02151, §16-17-0410, Ten (10) years

Ind. # 2016-GS-32-02152, §16-23-0490, Five (5) years

PAGE 3, QUESTION 10 and 11

Grounds for relief and argument in support

10(A) Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, in that: ... Counsel was ineffective by failing to make a contemporaneous objection on the record to the court's evidentiary presumption charge on the element of malice; ... was prejudicial to the defense, rendering counsel's assistance ineffective under prevailing professional norms in a criminal proceeding. Sixth and Fourteenth Amend. U.S. Const.

11(A) Defense counsel failed to achieve a rudimentary understanding of the Due Process Clause within the principles of the Fourteenth Amendment; in reference to an evidentiary presumption in the trial

Court's charge to the jury, which relieved the State of its burden of proof, beyond a reasonable doubt, to every essential element encompassed within §16-3-10 of the S.C. Code; and shifted the burden upon the Applicant to refute. See: Tr. Tr. page 945, lines 2-5

A simple reading of S.C. Code §16-3-10, would have revealed every essential element of the offense with which Applicant was charged and the Due Process Clause of the 14th Amend., protects an accused in a State criminal prosecution; except upon proof beyond a reasonable doubt to "every essential element" of the charged offense.

Counsel was ineffective for failing to make a contemporaneous objection on the record to preserve the issue for appellate review, which shifted the burden of proof upon the Applicant to refute and contributed to the jury's verdict, was prejudicial and unconstitutional in a State criminal prosecution. STRICKLAND v. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052. Under prevailing professional norms counsel's ineffectiveness so undermined the proper functioning of the adversarial process in Applicant's trial, that the trial cannot be relied upon as having produced a just results. Also SEE: CHERRY v. STATE, 300 S.C. 115, 386 S.E.2d 624 (1989).

Applicant shall argue that defense counsel failed to understand the essential requirements to the offense within §16-3-10, in reference to the requirements embedded within the Fourteenth amend, to protect the accused from evidentiary presumptions that relieve the State of its burden of proof and the recognized defenses thereof.

Applicant shall further argue that counsel failed to bring these rudiments to the table, which deprived Applicant of a fair opportunity to meet the case of the prosecution. STRICKLAND, supra., which placed the Applicant at the undue risk of having no effective advocate for his defense.

Defense counsel failed to grasp the basics of the Due Process Clause requirements embedded within the principles of the Fourteenth Amend., stripping Applicant of the very means that are essential to subject the prosecutions case to an adversarial testing process. BOYKIN v. ALABAMA, 395 U.S. 238, 89 S.Ct. 1709 (1969).

CONCLUSION

As a matter of law as determined by the Supreme Court of the United States in STRICKLAND v. WASHINGTON, supra., BOYKIN v. ALABAMA, supra., the principles embedded within the Sixth Amend and the Due Process Clause pf the Fourteenth Amend. Applicant's conviction under Indictment 2015-GS-32-02939 must be vacated.

10(B) The trial court committed reversible error under the well settled principles embedded within the Fourteenth Amendment of the United States Constitution, when the trial court gave an evidentiary presumption in its charge to the jury that had the effect of relieving the State of its burden of proof on the critical element of intent (malice) in a criminal prosecution, which contributed

to the jury's verdict of guilt against Applicant. U.S. Const. Amend. 14.

11(B) The principles embedded within the Due Process Clause of the Fourteenth Amendment of the United States Constitution protects Applicant in a State criminal prosecution; except upon proof beyond a reasonable doubt to "every essential element" of the offense charged.

The trial court gave an "evidentiary presumption" in its charge to the jury (i.e. "inferred malice may arise when the deed is done by a deadly weapon") that had the effect of relieving the State of its burden of proof, beyond a reasonable doubt, and shifted the burden upon Applicant to refute was unconstitutional. YATES v. AIKEN, 108 S.Ct. 534, citing SANDSTORM v. MONTANA, 442 U.S. 510, 99 S.Ct. 2450; FRANCIS v. FRANKILN, 471 U.S. 307, 105 S.Ct. 1965, and In re WINSHIP, 90 S.Ct. 1068.

Applicant shall argue that the doctrine against burden shifting' presumptions as set forth above is not a clear break rule of law as determined by the Supreme Court of the United States. In YATES v. AIKEN, supra., which was decided prior to Applicant's case becoming final, that conclusive presumptions in a court's jury charge which shift the burden of proof upon the accused to refute violated the principles of the Fourteenth Amendment's requirements in a State criminal trial, "that the State must prove every essential element of the charged offense, beyond a reasonable doubt."

This bedrock "axiomatic and elementary" constitutional

principle prohibits the States from using evidentiary presumptions in their charge to the jury that have the effect of relieving the prosecution of its burden of proof beyond a reasonable doubt. YATES, supra., SANDSTORM, supra., FRANCIS, supra., PATTERSON v. NEW YORK, 432 U.S. 197, 97 S.Ct. 2319 (1977); MULLANEY v. WILBUR, 421 U.S. 684, 95 S.Ct. 1881 (1975) and In re WINSHIP, supra.

These Courts further held: "these type of conclusive presumptions conflict with the fact of "innocence until proven guilty beyond a reasonable doubt" with which the constitution endows an accused and invades the truthfinding function, which in criminal cases, the law assigns solely to the jury (emephasis added)."

Applicant argues "NO REAL QUESTION ARISES as to whether a decision should apply retrospectively when a reviewing court applies a well established precedent. In such case, as Applicant's, it has been a well established precedent that the "RULE OF LAW" established in earlier cases (i.e. in like circumstances), the reviewing court shall apply the application of principles as previously determined by the Supreme Court of the United States to the newer decisions. CHAIDEZ v. U.S., 568 U.S. 342, 133 S.Ct. 1103 (2013)(when the Supreme Court announces a new rule a defendant whose conviction is already final may not benefit from the decision in a habeas or similar proceeding; only when the court applies a settled rule of law may a defendant avail themselves of the decision on collateral review).

THEREFORE, the Court's evidentiary presumption that: "inferred

malice may also arise when the deed is done by a deadly weapon" had the effect of relieving the State of its burden of proof beyond a reasonable doubt; and UNCONSTITUTIONALLY shifted the burden upon Applicant to refute. See: Tr. Tr. Page 945, lines 2-5.

CONCLUSION

As a matter of law as determined by the Supreme Court of the United States in YATES v. AIKEN; SANDSTORM v. MONTANA; FRANCIS v. FRANKLIN; PATTERSON v. NEW YORK; MULLANEY v. WILBUR; and In re WINSHIP, and the principles embedded within the Fourteenth Amendment of the United States Constitution, Applicant's conviction under Indictment 2015-GS-32-02939 must be vacated.

10(C) Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution; in that, ... Counsel was ineffective by failing to make a contemporaneous objection on the record to the ten (10) year sentence the Court imposed upon Applicant for his conviction under Indictment No. 2016-GS-32-02151, for Conspiracy. See: Sixth and Fourteenth Amend. U.S. Const.

11(C) A simple reading of South Carolina Code Ann. §16-17-0410, Clearly reads:

"A person who commits the crime of

Conspiracy is guilty of a felony
and upon conviction, must be fined
not more than Five-thousand dollars
or imprisoned not more than five
years.

Counsel failed to recognize an understanding of the sentencing factors within S.C. Code Ann. §16-17-0410 which Applicant was sentenced under (i.e. not more than 5,000.00 or 5 years imprisoned).

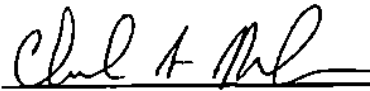
At sentencing the Court imposed a ten (10) year sentence upon Applicant under Indictment No. 2016-GS-32-02151, which is outside the statutory maximum allowed by law. Counsel failed to recognize this error, thus no objection on the record was made, was prejudicial to Applicant, stripping Applicant of the very essential principles embedded within the Sixth Amendment of the United States Constitution in having an effective advocate for his defense. SEE: STRICKLAND v. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052; BOYKIN v. ALABAMA, 395 U.S. 238, 89 S.Ct. 1709 and CHERRY v. STATE, 300 S.C. 115, 386 S.E.2d 624 (1989).

As a matter of law, Applicant's sentence of ten (10) years under S.C. Code Ann. §16-17-0410 is outside the statutory maximum allowed by law; and must be vacated and re-sentenced within the perimenators allowed by statutory law to section 16-17-0410.

CONCLUSION

For reasons set forth above, Applicant's sentence of ten (10) years under Indictment No. 2016-GS-32-02151, pursuant to S.C. Code Ann. §16-17-0410, must be vacated.

Respectfully submitted,



Charles A. Morehouse, 371083
Broad River Correctional Inst.
4460 Broad River Road
Columbia, S. Carolina

29210

APPLICANT

Date: Nov 15 2019

FILED

2019 NOV 22 AM 9:18

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Charles A. Morehouse, #371083,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-32-4714

**RETURN AND MOTION FOR
PARTIAL SUMMARY DISMISSAL**

The State (Respondent), making its return to the application for post-conviction relief filed by Charles A. Morehouse (Applicant) on November 22, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to orders of commitment of the Lexington County Clerk of Court. During its December of 2015 term, the Lexington County Grand Jury indicted Applicant for murder (2015-GS-32-2939). During its February of 2016 term, the Grand Jury indicted Applicant for the possession with intent to distribute methamphetamine, second offense (2016-GS-32-642). October of 2016 term, the Grand Jury indicted Applicant for the possession of a weapon during the commission of a violent crime (2016-GS-32-2152) and criminal conspiracy (2016-GS-32-2151). Applicant was represented by John M. Hilliard, III, Esquire, and Assistant Solicitors Laura Suzanne Mayes and Lester McGill Bell, Jr., both of the Eleventh Circuit Solicitor's Office, prosecuted the case. On January 9, 2017, through January 13, 2017, Applicant proceeded to a jury trial with the Honorable Eugene C. Griffith, Jr., presiding.¹ At the conclusion of trial, the jury found Applicant guilty of the possession of less than one gram of methamphetamine, second offense, as the lesser-included offense of possession with intent to

¹ Applicant and a codefendant were tried together.

distribute methamphetamine (2016-GS-32-642), and, for the remaining offenses, guilty as indicted. Judge Griffith sentenced Applicant as follows: for murder, to imprisonment for life with credit for time served; for criminal conspiracy, to imprisonment for ten years, with credit for time served, running concurrently with the first sentence; for the possession of a weapon during the commission of a violent crime, to imprisonment for five years, with credit for time served, running concurrently with the first sentence; for the possession of methamphetamine, to imprisonment for five years, with credit for time served, running concurrently with the first sentence.

Trial counsel filed a timely notice of appeal. On appeal, Appellate Defender David Alexander (appellate counsel) of the South Carolina Commission on Indigent Defense represented Applicant. Appellate counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing the trial court erred in admitting Applicant's statement to police because it was involuntary due to its being induced by law enforcement through their implied promises of leniency for Applicant's wife, and moved to be relieved as counsel. Applicant did not file a pro se brief for the consideration of the South Carolina Court of Appeals. In an unpublished opinion, the Court of Appeals affirmed Applicant's convictions and sentences. State v. Morehouse, Op. No. 2018-UP-452 (S.C. Ct. App. filed December 12, 2018) (per curiam). The Remittitur was issued on December 28, 2018.

II. Current Application

Applicant filed his application for post-conviction relief on November 22, 2019.² Applicant alleges therein that he is entitled to post-conviction relief on multiple grounds, which are as

² Applicant also filed a document entitled "Applicant's Memorandum in Support of Applicant for Post Conviction Relief" on November 22, 2019; Respondent considers this document an attachment to the application filed on the same date, and treats it herein as if it were part of the application.

follows:

- 1) Ineffective assistance of counsel;
 - a) Trial counsel was constitutionally ineffective for failing to make a contemporaneous objection to the trial court's charge that the jury could infer malice from the use of a deadly weapon;
 - b) Trial counsel was constitutionally ineffective for failing to object to the trial court's sentencing Applicant to imprisonment for ten years for criminal conspiracy; and
- 2) Trial court error;
 - a) The trial court erred in instructing the jury that it may infer malice;

Applicant prays the Court will grant post-conviction relief and vacate his conviction and sentence for murder and resentence him for criminal conspiracy. Attached to this return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions; the transcript from Applicant's trial; the Record on Appeal, brief, opinion, and Remittitur from Applicant's direct appeal; and the application for post-conviction relief and Applicant's attachment thereto. Respondent reserves the right to amend this return upon its receipt of any relevant materials.

III. Response to Applicant's Claims of the Ineffective Assistance of Counsel

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625

(1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

The trial court instructed the jury that malice could be:

[I]nferred from conduct by the [Applicant] showing a total disregard for human life. Inferred malice may also arise when the deed is done by a deadly weapon. A deadly weapon is an article or an instrument likely to cause death or great bodily injury.

Tran. 945.

Trial counsel did not have any objections to the jury charges. Tran. 960. He would have had no basis to object to the charge because the instruction was appropriate at the time it was given. The law as presented to the jury in the trial court's charge must be determined from the evidence present during trial. State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003) (citation omitted). In State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), the South Carolina Supreme Court held that "a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide." Id. at 600, 685 S.E.2d at 803-04, overruled by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019) (holding that the inferred malice instruction should not be given regardless of the evidence presented at trial; in so holding, overruling Belcher and other cases insofar as those cases could be construed as condoning the instruction in certain circumstances). There was no evidence presented in Applicant's trial that would reduce, mitigate, excuse, or justify his killing of the victim. The defense did not present a case-in-chief. Applicant did not take the stand in his own defense. Although Applicant's statement to police, wherein he claimed to have accidentally shot the victim due to his night blindness while attempting to break up a fight between the victim and Applicant's codefendant, this evidence did not reduce, mitigate, excuse, or justify the killing because Applicant admitted in the same statement that he and the codefendant had intended, upon meeting the victim, to beat him. See State v. Burriss, 334 S.C. 256, 259, 513 S.E.2d 104, 106 (1999) (instructing that, "[f]or a homicide to be excusable on the ground of accident, it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was

exercised in the handling of the weapon.”) (citing State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994)).

The State argued in closing that:

Malice aforethought can be implied by the fact that we’ve got multiple gunshot wounds [in the victim’s body], by the fact that [Applicant] pulled the trigger multiple times.”

Tran. 907.

This argument from the State was not a statement that malice can be inferred from Applicant’s use of a deadly weapon as it relates to the savagery of Applicant’s shooting the victim multiple times; however, even if the argument had been a statement that malice can be inferred from the use of a deadly weapon, it would have been proper. As the South Carolina Supreme Court clearly explained recently in Burdette:

[I]f evident is introduced [at trial] that the deed was done with a deadly weapon, the State is free to argue to the jury that it should infer the existence of malice based on that fact and any other facts that would naturally and logically allow a jury to conclude the defendant acted with malice aforethought.

Id. at 503, 832 S.E.2d at 582 (“It is axiomatic that some matters appropriate for jury argument are not proper for charring.”) (citation omitted).

Respondent submits that Applicant cannot likely cannot show trial counsel was constitutionally ineffective in failing to object to the trial court’s instruction that the jury could infer malice from Applicant’s use of a deadly weapon and to the State’s closing argument that the jury could infer malice based upon the evidence admitted at trial because neither the instruction nor the State’s closing argument was objectionable; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is

required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

III. Motion for Summary Dismissal

Applicant alleges that he is entitled to post-conviction relief because the trial court erred in instructing the jury that it could infer malice from Applicant's use of a deadly weapon. As to this issue, the undersigned hereby moves for summary dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact . . ." and the movant is entitled to judgment as a matter of law. With regard to this claim, Respondent is entitled to judgment as a matter of law and there is no genuine issue of material fact.

An applicant may commence a post-conviction relief action on the following grounds:

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 [was] 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).

Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). Because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern

simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”) (citing Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999)). Errors that could have been reviewed on direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975)). Post-conviction relief is proper only when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The claim referenced herein does not support a cognizable claim for post-conviction relief under any of the statutory grounds.

The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)). Even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law. Therefore, this Court should summarily dismiss these allegations pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

V. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCF. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VI. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on Applicant’s claims that trial counsel was constitutionally ineffective and requests that the PCR summarily dismiss the claim that the trial court erred in giving an inferred malice jury instruction.

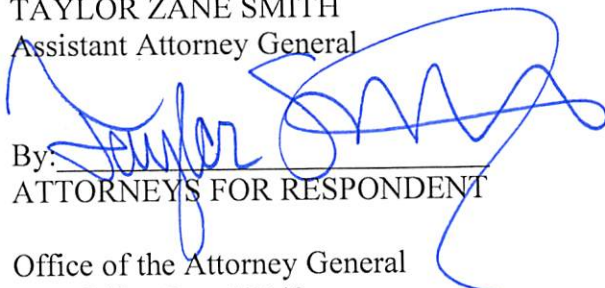
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Columbia, SC 29211
Telephone: (803) 734-3737

March 6, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2019-CP-32-4714
	)	
CHARLES A. MOREHOUSE, #371083	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for Partial Summary Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ola A. Johnson, Esquire
Ola A. Johnson, Attorney at Law
Post Office Box 549
Lexington, SC 29071

DATED this the 6th day of March, 2020.

Camille Henry
Camille Henry, Legal Assistant
For Respondent

FILED

STATE OF SOUTH CAROLINA

2024 AUG 16 PM 1:12

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

LISA H. COMER
CLERK OF COURT
LEXINGTON SC

ELEVENTH JUDICIAL CIRCUIT

CHARLES MOREHOUSE,

CASE NO.: 2019-CP-32-4714

Applicant,

v.

AMENDMENT TO APPLICATION

FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,

Respondent.

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended application adopts and includes all grounds in the original application filed November 22, 2019 by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to John M. Hilliard as follows:

1. Applicant's counsel, John M. Hilliard, failed to properly investigate the case against the applicant.

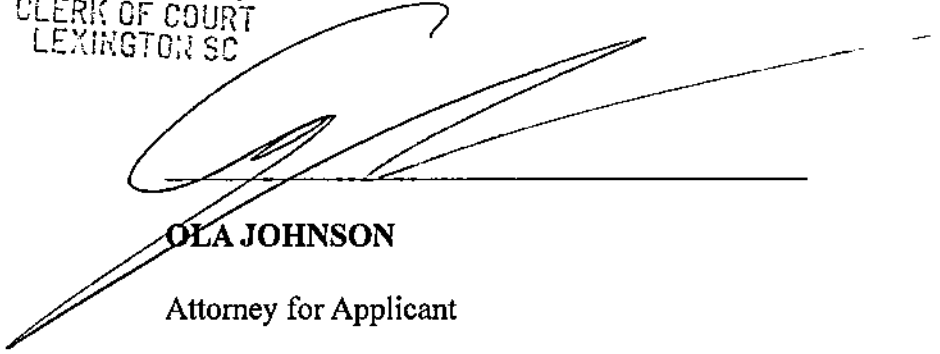
2. Applicant's counsel, John M. Hilliard, failed to review evidence with applicant and meet with the applicant a sufficient number of times to prepare for trial.
3. Applicant's counsel John M. Hilliard failed to object to phone records (p.134).
4. Applicant's counsel John M. Hilliard failed to object to the jury charge regarding inferred malice and the use of a deadly weapon (p. 945).
5. Applicant's counsel John M. Hilliard failed to object to the statements by the solicitor in closing regarding applicants statement, stating that he said he "fired 3 shots" but this did not include the statement by applicant to police that he "fired off to the side" (p. 897).
6. Applicant's counsel John M. Hilliard failed to object to testimony by Heather Owens regarding previous drug transactions between her and applicant, (p. 817).
7. Applicant's counsel John M. Hilliard failed to object to the search, testimony and introduction of exhibits from officer Heather Clary (p.687-689) regarding a search of the applicants residence with a search warrant resulting in the introduction of Exhibits 73-83 (photographs of clothing and illegal drugs).
8. Applicant's counsel John M. Hilliard failed to cross examine witnesses regarding the difference in descriptions collected by law enforcement regarding handguns.
9. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d (2006).

FILED

2024 AUG 16 PM 1:12

Respectfully submitted,

LISA M. COMER
CLERK OF COURT
LEXINGTON SC



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

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This 16 day of August, 2024.

STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 11
COUNTY OF LEXINGTON) DOCKET NO. 2019-CP-32-04714

CHARLES A. MOREHOUSE,)
 Plaintiff,)
versus)
)
STATE OF SOUTH CAROLINA,)
)
)

H E A R I N G
BEFORE THE HONORABLE DAVID P. CARAKER, JR.

DATE: August 28, 2024
TIME: 2:05 p.m.
LOCATION: South Carolina Court 11

TRANSCRIBED BY: Mary Ragsdale

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1 APPEARANCES:

2

3 OLA JOHNSON, ESQUIRE

4 Ola A. Johnson, Attorney at Law

5 PO Box 549

6 Lexington, South Carolina 29071

7 Attorney for the Plaintiff,

8

9 TALIDA BALAJ, ESQUIRE

10 Office Of The Attorney General

11 PO Box 11549

12 Columbia, South Carolina 29211-1549

13 Attorney for the Defendant.

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12 Suzanne Mayes 24 34 35

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: Yes, ma'am.

2 MS. BALAJ: Thank you, Your Honor. May I please the
3 Court? Talida Balaj on behalf of the State of
4 South Carolina. This is the post-conviction relief matter of
5 Charles Morehouse versus the State case number
6 2019-CP-32-04714 out of Lexington County.

7 Applicant was indicted at the December 2015 term. The
8 Lexington County grand jury indicted Applicant for murder.
9 Indictment number 2015-GS-32-2939. And its February 2016
10 term, the Lexington County grand jury indicted Applicant for
11 possession with intent to distribute methamphetamine second
12 offense 2016-GS-32-642. And its October 2016 term, the
13 Lexington County grand jury indicted Applicant for possession
14 of a weapon during the commission of violent crime
15 2016-GS-32-2152, in criminal conspiracy 2016-GS-32-2151.

16 Applicant was represented by John M. Hilliard. Mr.
17 Hilliard is now deceased. Laura Suzanne Mayes, Suzanne Mayes
18 and Lester McGill Bell, Jr., of the 11th Circuit Solicitor's
19 office prosecuted the case. On January 9, 2:13, 2017,
20 Applicant proceeded to trial before the
21 Honorable Eugene C. Griffith Jr., and a jury. Applicant was
22 convicted of the lesser of -- of murder criminal conspiracy,
23 possession of a weapon during the commission of violent
24 crime, and the lesser offense of possession of less than one
25 gram of methamphetamine second offense.

1 Judge Griffith sentenced Applicant to life imprisonment
2 for murder, 10 years for criminal conspiracy, five years for
3 possession of a weapon during the commission of a violent
4 crime, and five years for possession of methamphetamine to be
5 served concurrently.

6 Applicant then filed a timely notice of appeal on
7 September 4, 2019, that was perfected by David Alexander
8 through filing Anders brief raising the following issue.
9 The trial court aired in admitting Appellant statement to
10 police because it was induced by implied promises of leniency
11 for his life rendering it involuntary.

12 The South Carolina Court of Appeals affirmed
13 Applicant's convictions and sentences by unpublished opinions
14 State versus Morehouse opinion number 2018 up 452, filed
15 December 12, 2018. The permitter was returned to the circuit
16 court on December 28, 2018. Applicant then timely commences
17 PCR action on November 22, 2019. Applicant asserted he's
18 being held in custody unlawfully alleging ineffective
19 assistance of trial counsel, in that trial; counsel was
20 constitutionally ineffective, failing to make contemporaneous
21 objection to the trial court's charge that the jury could
22 infer malice from the use of a deadly weapon, and trial
23 Counsel was ineffective for failing to object to the trial
24 court's sentencing Applicant to imprisonment for 10 years for
25 criminal conspiracy.

1 And the trial court -- and trial court erred that the
2 trial court aired instructing the jury that it means her
3 malice and respondent made its return impartial motion to
4 dismiss filed March 24, 2020.

5 On August 19, 2024, Applicant filed an amended
6 application asserting the additional allegations that counsel
7 filed -- failed to properly investigate the case against
8 Applicant. Counsel failed to review the evidence with
9 Applicant and meet with Applicant a sufficient number of
10 times. Counsel failed to object to phone records, failed to
11 object to jury charge regarding inferred malice and the use
12 of a deadly weapon.

13 Counsel failed to object to the statements by the
14 Solicitor in closing regarding his statements that Applicant
15 said he fired three shots, but this did not include the
16 statement by Applicant that he fired off to the side.
17 Counsel failed to object to testimony of Heather Owens
18 regarding previous drug transactions between her and
19 Applicant.

20 Counsel failed to object to testimony, introduction of
21 exhibits from Officer Heather Cleary regarding search of his
22 residence with search warrant resulting introduction of
23 Exhibit 73 to 83. And Counsel failed to cross-examine
24 witnesses regarding the difference -- difference and
25 description connected by law enforcement about the handguns.

1 And as a relief, Applicant requests a sentence, a
2 conviction to be reversed and remanded for a new trial. And
3 at this time we would ask Mr. Johnson to indicate which
4 allegations (inaudible).

5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: Your Honor, we've got all these
7 allegations, but I will say that in the original application,
8 there's really two. And one of them -- one of them was
9 repetitive it looks like. So I will put that on the record.
10 From the original application. Mr. Morehouse put in here
11 this -- well, in some ways he -- he's alleging that it was a
12 burden shifting and there was improper jury instruction about
13 implying inferred malice may arise when the deed is done by a
14 deadly weapon. So that was in the jury instructions. We
15 repeated that in -- in our application, but he also put in
16 here the allegation that was also burden shifting.

17 And the second thing in the original PCR application,
18 it appears there was a 10-year sentence given for the
19 conspiracy charge that, I think was listed as a five-year
20 felony, but if I'm wrong about that, of course the State can
21 respond that 0049 CDR and that statute number I thought was
22 -- was a five-year felony, but it was sentenced to 10 years
23 on that.

24 So the Applicant pointed that out in his original and
25 we're going on forward on that one too. And we're going

1 forward on all of the allegations in our amended application.
2 But I just wanted to point out that one was repetitive a bit
3 about the jury charge.

4 THE COURT: Ms. Balaj, is that the common law
5 conspiracy that he was convicted of?

6 MS. BALAJ: Your Honor, beg -- beg the Court's
7 indulgence --

8 THE COURT: Sure.

9 MS. BALAJ: -- very quick.

10 (Off the record.)

11 MS. BALAJ: Just a moment, Your Honor.

12 THE COURT: Sorry if I'm getting too far ahead of
13 ourselves here. I thought we might handle that one way or
14 the other rather quickly.

15 MS. BALAJ: Your Honor, concerning this, we could
16 vacate the sentence and go back for resentencing on the
17 criminal conspiracy, but it would have no bearing on the
18 post-conviction relief just because he has been sentenced to
19 life imprisonment and --

20 THE COURT: Right. Okay. I -- I'll just -- I'll take
21 a look at it and we can certainly go forward, you know, on
22 the rest of it. I just want to make sure kind of what --
23 what ballpark we were playing in as far as that goes.

24 MR. JOHNSON: I think you'll know that.

25 THE COURT: All right, sir. I'll be happy to hear from

1 you, sir.

2 MR. JOHNSON: Thank you, Your Honor. Well we're going
3 forward on all those allegations and I'd call Mr. Morehouse
4 at this time.

5 THE COURT: Yes, sir. Please come forward Mr.
6 Morehouse.

7 THE CLERK: You can raise your right hand.

8 CHARLES ALTON MOREHOUSE,
9 having been duly sworn, testifies as follows:

10 THE CLERK: Thank you. Please state your name for the
11 record spelling your last.

12 THE WITNESS: Starting with what? Charles Alton
13 Morehouse.

14 DIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q. All right. Mr. Morehouse do you remember who
17 represented you on this case?

18 A. John Hilliard, but I hired two lawyers in the
19 beginning.

20 Q. Okay.

21 A. And Mr. Caulder had to end up losing his license
22 or got suspended or something and --

23 Q. Okay. Well, Mr. Hilliard represented you at
24 trial?

25 A. John Hilliard.

1 Q. Right. Okay. And on your points you made, you
2 were sentenced to 10 years sentence on this indictment that
3 was for criminal conspiracy, correct? And Mr. Hilliard
4 didn't raise any objection to that sentence and that was
5 under indictment for criminal conspiracy 2016-GS-32-02151.
6 And you were sentenced to 10 years on that?

7 A. Yes, sir.

8 Q. And that's actually a five-year felony according
9 to your information?

10 A. Okay.

11 Q. Correct?

12 A. Yes, sir.

13 Q. Mr. Hilliard didn't raise that point?

14 A. No, sir.

15 Q. Okay. And the other point you raised, you're
16 objecting because you felt that he should have objected to a
17 jury charge where they instructed the jury that they could
18 find malice use of a deadly weapon, correct?

19 A. Yes, sir.

20 Q. And tell me about that and how that is burden
21 shifting in your opinion?

22 A. I'm trying to --

23 Q. You feel like it shifted the burden to the Defense
24 improperly?

25 A. To infer that I met matters. Nobody really knows

1 the state of mind I was in or what was going on during the
2 whole situation and I know I was never called to the stand.

3 Q. Uh-huh.

4 A. John Hilliard asked me not to testify.

5 Q. Okay.

6 A. So how could you really know my state of mind or
7 anything that was going on through. Malice means that I
8 meant harm and everything just by carrying a weapon. That
9 doesn't make no sense.

10 Q. Okay. And, Mr. Morehouse, we'll start with number
11 one on the amended application. How did Mr. Hilliard fail to
12 properly investigate the case? Did he ever bring an
13 investigator and talk to you?

14 A. No, sir.

15 Q. Did he ever have you meet with any experts
16 regarding the investigation?

17 A. No, sir.

18 Q. Did -- how many times did he meet with you?

19 A. Officially, John Hilliard met maybe at the most
20 four times. Gerald Caulder had come a few times on his own
21 and that's where a lot of the stuff had come in between. A
22 lot of my discussion with the case had come in between me and
23 Mr. Caulder and then like as again, like I said, he, you
24 know, lost his license or something happened with him, I'm
25 not sure. But at meeting with John Hilliard ain't --

1 couldn't have been no more than three, no more than five
2 times at the most.

3 Q. Did Mr. Hilliard ever advise you he had
4 interviewed any witnesses?

5 A. No.

6 Q. And so kind of moving into number two, allegation
7 on the amended application, you said he only met with you
8 four times?

9 A. Four or five, it could have been no more than
10 five.

11 Q. Okay. Do you feel that was insufficient to
12 prepare for trial?

13 A. Yes, I had no idea what was going on or nothing
14 and he never asked me about certain things. And when the
15 State got there, the witness list or gave him the -- what was
16 going on. He met with me like two days before and it was
17 like for an hour.

18 Q. Uh-huh.

19 A. And couldn't -- it was not never really discussed.

20 Q. Did he review any of the physical evidence with
21 you of the photographs or anything? Nothing?

22 A. No.

23 MR. JOHNSON: Okay. Moving on to number three --
24 Judge, these are marked and I have these down with page
25 numbers in the transcript, so I'm just going to go through

1 them.

2 BY MR. JOHNSON:

3 Q. Mr. Morehouse on page 134, did Mr. Hilliard
4 explain why he failed to object to phone records that were
5 being used against you at your trial?

6 A. He didn't explain nothing at all.

7 Q. Okay. And moving on to number four, did
8 Mr. Hilliard explain to you why he failed to object to the
9 jury charge regarding inferred malice and use of a deadly
10 weapon on page 945?

11 A. No, sir.

12 Q. Okay. And did Mr. Hilliard explain to you why he
13 failed to object to statements by the Solicitor in closing
14 where the Solicitor stated that you said you fired three
15 shots, but did he explain to you why he failed to bring up
16 any statements you had actually made about firing off to the
17 side? Did -- did he talk about that or object to that during
18 the trial?

19 A. No, sir. Not at all.

20 Q. Well, what was the truth about that? What did you
21 say about that to the police before trial?

22 A. I said I fired three grenades off to the left
23 because I'm not blind. I didn't want to shoot nobody because
24 I didn't know what was going on. I tried not -- I didn't
25 want to shoot nobody. And in fact she said I did shoot, I

1 didn't know who I shot. That's not my words at all.

2 Q. Okay. And you felt that should have drawn an
3 objection for Mr. Hilliard?

4 A. Yes, sir.

5 Q. Okay.

6 A. In fact, when I started he had two assistants
7 there. Starting off at the trial it was John Hilliard and
8 two assistants.

9 Q. Uh-huh.

10 A. So when I started asking the assistants questions,
11 I -- he kept looking at me and -- and whatnot and I kept
12 asking the -- the second or third day, the assistants weren't
13 there no more, nor was my motion to discovery because I was
14 fishing because there was certain things in there that I
15 could, you know, help argue, I felt like I could do for while
16 I was asking the assistant the rest of the trial, they
17 weren't there. So I couldn't even ask them questions of what
18 was going on.

19 Q. And did he ever explain to you why he failed to
20 object to testimony on page 817 from Heather Owens about
21 purchasing illegal drugs from you?

22 A. No, sir.

23 Q. He never objected to that or explained to you why
24 he failed to object to that?

25 A. No.

1 MR. JOHNSON: Okay. And let's see. Referencing this
2 is a range, Your Honor, from page 687 to 689.

3 BY MR. JOHNSON:

4 Q. On those pages, Mr. Hilliard, did he explain to
5 you why he failed to object to the search testimony,
6 introduction of exhibits from Officer Heather Cleary Exhibit
7 73 through 83 -- 73 through 83, including photographs of
8 clothing and illegal drugs?

9 A. No, sir.

10 Q. Have any conversation with you about that
11 objecting to that at all?

12 A. No, sir.

13 Q. And regarding number eight and the description of
14 handguns, did he ever get into any detail or -- or
15 cross-examine anyone sufficiently to indicate there might not
16 have been an accurate description of this handgun?

17 A. No. And that's one of the times that I kind of
18 interrupted. I was trying to get, he kept telling me to be
19 quiet because I was telling him there was two different
20 descriptions and he just kept telling me sure that it wasn't
21 -- it wasn't important.

22 Q. Okay. Is there anything else you can think of he
23 failed to investigate or perform adequately at trial?

24 A. No, sir.

25 Q. Okay. You have nothing to add?

1 A. No, sir. No.

2 MR. JOHNSON: Okay. Judge, that's all we've got. No
3 more questions.

4 THE COURT: All right. Cross-examination?

5 MS. BALAJ: Thank you, Your Honor. May it please the
6 Court?

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. BALAJ:

10 Q. Good afternoon, Mr. Morehouse. So you're alleging
11 in effective assistant counsel today, correct?

12 A. Yes.

13 Q. And going to the sentence for criminal conspiracy,
14 you're saying that you should have gotten a five-year
15 sentence rather a 10, correct?

16 A. Yes.

17 Q. And what were you charged -- what were you
18 ultimately convicted of at your trial?

19 A. Criminal conspiracy, possession of handgun during
20 violent crime, violation of parole, I think.

21 Q. And what was the sentence that you got for murder?

22 A. Life.

23 Q. And moving on to failure to investigate, you said
24 that your attorney did not hire an investigator, correct?

25 A. Yes.

1 Q. What would an investigator have done that your
2 attorney couldn't have?

3 A. Could have went -- basically, I had got a letter
4 -- letter from Heather Owens that pretty much counteracted
5 everything she said at trial. He could have went
6 investigated that the investigated with actually murder
7 weapon went. Like -- like I said, there's two different
8 descriptions in the guns.

9 One, there's a big difference between the letter word A
10 and the -- and I gave shot A gun. I didn't give him D gun.
11 There's other people that confessed to going to get the
12 murder weapon. They could have went and done all this and
13 got the truth. It's even in a supplemental report that
14 somebody else confessed to having the murder weapon, he
15 didn't produce none of that. Investigator could have went
16 and checked into all these facts.

17 Q. Do you recall at your trial concerning the handgun
18 that your attorney did argue and bring up multiple times in
19 cross-examination and closing that there were two different
20 handguns and that they were swapped out?

21 A. Yes. They -- what was said was -- is
22 Christopher Williams gave me one gun and that I gave a
23 different gun too, or I gave a description of the guns was
24 swapped out and they kept trying to reaffirm the point that
25 Snoop gave me the gun and that I got rid of the murder

1 weapon.

2 Q. But do you recall that your attorney brought this
3 at trial? And you also said that there were no experts.
4 What would you have needed an expert for?

5 A. Again, just to differentiate the guns and
6 investigate (inaudible) to people. I don't really know,
7 like, the murder that there was all kinds of different
8 experts about it. Like we could have used the way the lady
9 said at the end how -- how the man was shot. I -- and
10 there's no definition. I was definitely there. I have no
11 argument with that, but it's things that happened that
12 they're trying to say happened and it didn't happen that way.
13 That -- that -- that night is in my mind forever. And it
14 will always will be. It could have been experts to show the
15 -- the depth of the (inaudible) and stuff like that to show
16 how he was shot and they were trying to -- it was just a
17 miss.

18 Q. So you've also alleged that your attorney did not
19 review discovery with you, correct?

20 A. Yes.

21 Q. But you also said on direct examination that you
22 were fishing through the discovery and you saw things in it?

23 A. That he had at the trial. Okay? That he brought.
24 He brought his two assistants and they had a whole bench full
25 of stuff and like three or four -- three or four cases. And

1 I had gave them some stuff here. I only got like maybe 500
2 pages. Motion discovery was 15,000 pages.

3 And I had some stuff and I had the letter that Heather
4 Owens written me a letter that (inadible) Smith had wrote me
5 that I gave one letter to Gerald, called the one letter to
6 Eric -- John Hilliard. I was looking for those letters so
7 they can kind of go with whatever they said on the stand and
8 they weren't there. So then when I went to ask the second
9 day or second or third day, they were not there no more, then
10 (inaudible) nor was my discovery. So I -- there's a lot of
11 that stuff I never seen, I never seen the pictures of the
12 crime scene. I never seen -- I didn't -- it's just a lot of
13 things. I just didn't see it at all.

14 Q. But you also testified that you met with
15 Mr. Hilliard about four times. What did you do during those
16 meetings?

17 A. One of them, I tried to fire him. We went back in
18 front of court. I tried to fire him many times over the
19 phone and we finally went to court to fire him because he
20 wasn't doing his job. The Judge potentially said we're
21 really close to trial date, but you better go for, and I was
22 like, I ain't got no other lawyer right now.

23 So one of them was about me firing him. Another time
24 was right up towards like two days or the day before my
25 trial. He was there for like an hour time about showing me

1 the list, the witness list.

2 Another time was when I got moved, no jail called to
3 come down. And one time was in Aiken County, him and Gerald
4 came and they were just talking about, you know, what could
5 possibly happen, this -- that I was never prepped at all.

6 Q. But did you -- you said you had a prior attorney.
7 Did you review discovery with him?

8 A. Gerald Caulder or was my original lawyer that I
9 hired, Gerald Caulder brought John Hilliard in. And they
10 were kind of working as a team and Gerald was asking me, you
11 know, about the letters and stuff like that. And that's
12 where I felt like he was doing all the leg work but nothing
13 really ever came about. And he ended up getting fired or
14 suspended on -- on how the lawyer stuff works, but he ended
15 up losing his license and stuff and never saw nothing. He
16 did nothing.

17 Q. So what you're saying is you were able to review
18 discovery, just not all of the discovery?

19 A. I wasn't able to review none of it. I was telling
20 Gerald what had happened the night of -- and the letter from
21 Heather and he was asking me. I got what Gerald Caulder got
22 as far as me like discussing what happened that night and me
23 -- me discussing about the drugs and stuff like that, like
24 what people could use against me, you know, what happened
25 that evening, my whereabouts and stuff like that.

1 I really had -- I had like three, maybe four again
2 meetings with Gerald Caulder. He was trying to be really
3 involved and then he ended up, but I never saw -- I saw very
4 little of my motion to discovery.

5 Q. Moving on to your allegation concerning the phone
6 records, on what basis would your attorney have objected to
7 the phone records?

8 A. There is no -- there is a lot of implications that
9 I was thinking he was an informant or snitch or anything.
10 And there is no implications at all anywhere in the history
11 that I sold drugs to, that he ever saw me with drugs, that I
12 ever sold drugs to him. There's a lot of unanswered texts
13 there that don't mention drugs. There's some unanswered
14 calls and there might have been a one or two calls. And I --
15 this is out of -- I've -- I -- I know personally known the
16 boy, excuse me -- boy, but person.

17 Three or four weeks and he's never saw me with drugs
18 that could have proved that. At least that -- that I didn't
19 have no interaction with him on that level. So what would it
20 have mattered in my case, you just can't go to the police. I
21 can't go to you and say, oh, he sells drugs and they going to
22 go arrest him. If he doesn't have no evidence, there
23 wouldn't have been no case. There's no evidence he could
24 have ever had against me.

25 Now, yes, his little buddy had bought drugs, but he

1 didn't know. He never physically saw me give it to him.
2 Never knew I did, never heard a conversation with him. He
3 had no evidence against me. So it wouldn't have mattered
4 that if he was (inaudible).

5 Q. Do you recall that your attorney on
6 cross-examination attacked the credibility of the phone
7 records and whether or not they actually showed where your
8 location was?

9 A. He attacked my phone records not his, not the
10 records of the other states of the other -- of the victims.

11 Q. Of the victim?

12 A. Sprint -- Sprint shown what phone records showed
13 Sprint at the time. Which show like if I sent a text, it
14 wouldn't show the quality of the text. Like if I said hi, I
15 wouldn't say hi, but just say I showed a text. His Verizon
16 text shows the details of the text.

17 Q. Okay. And going on to failure to object to the
18 jury charge on inferred malice, do you -- what year was your
19 trial?

20 A. 2017.

21 Q. And was there ever any -- what was your defense
22 for the murder?

23 A. Really that just had nothing to do with it. A
24 surprise. It just -- it just happened.

25 Q. It just happened? Was -- did self-defense get

1 charged at all?

2 A. It was not self-defense -- it wasn't self-defense.
3 I -- my Co-Defendant was high and when he come, he was up in
4 the -- up in the embankment using the restroom.

5 MR. JOHNSON: Judge.

6 THE WITNESS: Excuse me. So when -- when my
7 co-Defendant was up in the woods, he -- I used the restroom,
8 whatever, he come out the woods, he just started hitting him
9 with apparently a bat.

10 And I shot the gun to the left. I didn't know what was
11 going on or nothing. He come up, snatched the gun or shoot,
12 everybody says I planned it. I did not plan the murder. I
13 didn't plan on going there to hurt him. In fact, I had said
14 at the worst I plan, maybe I had to beat him up because he
15 had my friend's stuff. That was at the worst case scenario.
16 This man had -- I had nothing against him.

17 BY MS. BALAJ:

18 Q. And regarding the allegation concern -- concerning
19 Heather Owens, how did you know Heather Owens?

20 A. We were having an affair. I was cheating on my
21 wife.

22 Q. Do you recall that she testified that she knew you
23 because she bought drugs from you?

24 A. And that's the letter that I -- that you had
25 would've contradicted her old testimony. She wrote me in

1 jail.

2 MS. BALAJ: Your Honor, I have no further questions.

3 THE COURT: All right. Thank you ma'am.

4 Re-direct?

5 MR. JOHNSON: Your Honor, nothing further.

6 THE COURT: You may step down, sir. Thank you.

7 Mr. Johnson, another witness?

8 MR. JOHNSON: No further witness, Your Honor. That's
9 it.

10 THE COURT: All right. Yes, ma'am.

11 MS. BALAJ: Your Honor, the State would call Lester
12 McGill Bell -- Suzanne Mayes. We would call Suzanne Mayes.

13 SUZANNE MAYES,
14 having been duly sworn, testifies as follows:

15 THE CLERK: (Inaudible) spell your name for record?

16 THE WITNESS: I'm Suzanne Mayes, M-A-Y-E-S.

17 DIRECT EXAMINATION

18 BY MS. BALAJ:

19 Q. Good afternoon, Ms. Mayes. Just some general
20 questions. How long have you been practicing law?

21 A. Since 1992.

22 Q. And how much of that has been in criminal law?

23 A. All of it.

24 Q. And besides this case, have you conducted other
25 murder trials?

1 A. Many.

2 Q. And could you give an overview of the State's
3 evidence in this case?

4 A. So I was the prosecutor in this case along with
5 assistant Solicitor Gill Bell at the time. There were two
6 persons charged. They were Charles Morehouse, the Defendant
7 here today, and his Co-Defendant, Wiley Sisk. And the
8 allegations were that the victim, David Porter, I believe he
9 was 21 years of age, had gone to a secluded location here in
10 Lexington County to meet the Defendant.

11 And just beginning with the outset of presentation of
12 evidence in this case, there was race, just evidence from the
13 victim's phone, which was found next to his body. And in
14 that phone, his last text was with the Defendant, Charles
15 Morehouse. And they were agreeing to meet at the location, I
16 think they called it the Blue Lagoon or something like that.
17 But it was obviously a location that both of them knew
18 because they agreed to meet there.

19 The description of this location is that it is a dirt
20 road in an isolated area of Lexington County off of
21 Old Orangeburg Road. They were meeting at nighttime and next
22 to the victim's body in addition to the phone or nearby the
23 victim's body was a partially burned cigarette on the dirt
24 road. And so one of the first things law enforcement did was
25 they analyzed the cigarette for DNA and it was DNA matched to

1 the Defendant. So he was developed as a suspect right away.

2 From there, there were interviews with associates of
3 his, and it was determined that he had received a gun from a
4 witness by the name of Christopher Williams, in the
5 transcript he's called Snoop, earlier that night.

6 A statement was made, from what I recall, it's
7 something to the effect of he was going to split someone's
8 wig, going to split a wig, but it would be what we argued was
9 a statement of express malice. Prior to him leaving I
10 believe he made contact with Heather Owens as well, who heard
11 some type of similar statement. But regardless, that's --
12 that's how I recall the evidence. He had made a statement,
13 he had acquired a gun and he, along with Sisk, went to this
14 location to meet with the victim. The victim had multiple
15 gunshot wounds, I believe 10 or 11.

16 Q. And can you speak a little bit about the phone
17 records in this case and a little bit more in depth about how
18 -- what they showed in this case?

19 A. I don't recall them being significant in terms of
20 overwhelming evidence in any way. I -- I think the primary
21 evidence in this case was the DNA cigarette from the crime
22 scene next to or nearby the victim's body.

23 The cell phone communication where the victim agreed to
24 meet Charles Morehouse. And I don't recall specifically how
25 the cell phone records were used in this case. I can't

1 recall if it was location data or something beyond that.

2 Q. And regarding Defense counsel, John Hilliard, do
3 you have an idea of what his reputation was in -- in practice
4 in the criminal community, criminal defense community?

5 A. So he was from the low country. He was an older
6 attorney who had many years' experience. He was easy to talk
7 with and work out our -- our scheduling issues with. I know
8 that he was retained as a private attorney in this case.

9 The Defendant at the time was held in custody at the
10 Lexington County Detention Center. And our discovery
11 would've been provided back then in both the written form and
12 then all of the digital evidence, such as the phone records
13 that you mentioned would've been provided in a CD format, but
14 would've been provided in a way that attorneys could easily
15 access. And then if they feel the need to do so, could print
16 those materials and consult with their client about them.

17 Q. And more specifically, what was your experience
18 with him in this trial?

19 A. I felt like he was very engaged. He was making a
20 lot of objections during the trial from what I remember,
21 appropriate objections. He was addressing evidence as it
22 should be addressed. He was -- in my opinion and based upon
23 my observations went above and beyond in his representation
24 of Mr. Morehouse.

25 The evidence however, was overwhelming. And that's one

1 of the things that, you know, we had discussed even prior
2 going into trial. We made no plea offer in this case. The
3 State didn't make a plea offer because the facts were
4 egregious, but he understood the evidence. And the statement
5 that Charles Morehouse gave to law enforcement was also very
6 damning for Mr. Morehouse, because in the course of that
7 statement, he actually made a reference to the victim as an
8 informant or believing that he was an informant. And that's
9 -- my belief is that certainly played a role in why he was
10 targeted and killed that night.

11 Q. And there's an allegation here that the counsel
12 failed to object to the jury charge regarding inferred
13 malice. Are you familiar with Belcher?

14 A. Yes. So -- and our trial would've been January
15 2017, and the year of the Belcher decision was?

16 Q. 2009.

17 A. Okay. So from -- from our discussions, we did
18 not, you know, find -- at that point in time, I don't recall
19 there being anything inconsistent with the charge in the
20 current state of the law, but this was not a self-defense
21 case. And so we kind of go back and cover that.

22 If this had been a self-defense case, I'm sure that
23 Judge Griffith would have addressed that appropriately. But
24 it -- it wasn't -- self-defense wasn't charged. In addition
25 to the charge on malice, there would've also been evidence of

1 express malice in this case beyond inferred or implied
2 malice.

3 Q. And regarding the allegation of failure to object
4 to Heather Owens testimony on previous drug traffic
5 transactions, excuse me, how did that come about in trial?
6 Do you recall?

7 A. Repeat that --

8 Q. Her testimony about -- do you recall the testimony
9 of Heather Owens concerning her relationship with
10 Mr. Morehouse?

11 A. I do. But I would have to reference the
12 transcript for that because I -- that part, I don't recall
13 the specifics of it. I know that she was his girlfriend and
14 that -- that came out that he had actually been at her house
15 just before leaving to commit the murder. And so she
16 would've addressed that. As far as knowing him or -- or
17 receiving drugs from him, I can't remember how that came out,
18 but I do think that there was an insinuation by the Defense
19 that she had a drug problem.

20 Q. And going to the allegation of failure to object
21 to Heather Cleary's testimony concerning the search, were
22 there any problems with the search of the residence in this
23 case where the clothing and the drugs were found?

24 A. Not that I recall.

25 Q. And do you recall that there was a pretrial motion

1 where Defense counsel objected to the search warrant as that
2 there was no probable cause?

3 A. And that would've been addressed pretrial.

4 Q. And concerning the closing statement you stated in
5 closing that he fired three shots and Mr. Morehouse's
6 alleging that Counsel should have objected to this because he
7 said he fired off to the side, but I'm going to have you read
8 an excerpt from Mr. Hilliard's closing.

9 MS. BALAJ: Beg the Court's indulgence.

10 THE COURT: Sure.

11 THE WITNESS: And while you're getting that, I'll also
12 address that the credibility of that statement would have
13 been addressed in my closing. If he is admitting in his
14 statement to police that he fired three shots, we'd have to
15 rely on his version of events that at night the three shots
16 he fired were off to the side and not striking the victim.
17 What's important to the State is that he admits being at the
18 scene and firing three shots.

19 MS. BALAJ: Your Honor, may I approach (inaudible)?

20 BY MS. BALAJ:

21 Q. Could you review page 930, 931, starting at line
22 11?

23 A. And this would be Mr. Hilliard's closing argument?

24 Q. Yes.

25 A. "During the -- you'll have I know it's a long,

1 long audio, you'll have the audio with you when you go back
2 into the jury room and you can play it at spot. And I'll ask
3 you to pay attention to the entirety of whatever spot you
4 pick. Just pick a spot, listen to a little ahead and a
5 little behind as it goes.

6 One of the things that Charlie says in there, and you
7 know, they agree with some of the things that he says, and
8 they disagree with other things that he says. And a lot of
9 their investigation is based on the things that Charlie told
10 them.

11 They got significant investigation benefit out of the
12 conversation with him. That was helpful to the -- to the
13 government. That was helpful to the police, that
14 interrogation that they did. He said, "I shot to the left,
15 not even near that boy that he's not blind." And they, you
16 know, tried to make that into something. But he also said,
17 "I shot to the left and not even near the boy." He says, "I
18 popped off three rounds."

19 Q. So Mr. Hilliard did rebut what you said in
20 closing?

21 A. He did. My recollection is that they closed last.
22 They did not put up any witnesses to my recollection.

23 Q. And just a quick question, is it -- throughout
24 your experience, is it common for defense or prosecution to
25 object during closing statements?

1 A. If it's necessary, yes, but here as to that
2 particular evaluation is how I would put it, that that
3 particular evaluation of the statement that he made and the
4 credibility of the statement that he made that -- that's
5 certainly something that the State and the Defense disagreed
6 on.

7 And he had his position about what the story was. We
8 had our position about it. But the full content of that
9 audio statement had already been offered during the State's
10 case in chief and would've gone to the jury room for further
11 evaluation by the jury if they saw fit.

12 From the State's perspective, he is acknowledging that
13 he's at the scene and he's firing three shots at the victim.
14 It comes down to is it believable that his shots were to the
15 left? There was other evidence in this case that he fired
16 all of the shots, I believe, except the final shot.

17 MS. BALAJ: Beg the Court's indulgence?

18 BY MS. BALAJ:

19 Q. On last question, Mr. Morehouse also stated on his
20 direct examination that he was not called to testify. Would
21 there be a strategic reason for not calling your Defendant to
22 testify or a witness to testify?

23 A. We certainly would not be able to -- to call him
24 as a witness. And then it is very, very common in any major
25 criminal case that a lot of strategic reasoning goes into

1 whether or not the Defendant will testify.

2 And one of those things may be that if they don't
3 testify, then they get last argument, but in addition to that
4 it -- it subjects him to cross-examination and here he
5 would've been subjected to cross-examination on the full
6 audio statement that he had already given to the police, as
7 well as other evidence that we had, such as the testimony of
8 Christopher Williams that he had given a gun to Mr. Morehouse
9 just prior to the shooting.

10 And I don't remember exactly what the conversation was,
11 but it was something to the effect of knowing and
12 understanding that he was going to settle a matter with
13 someone.

14 And he also had had contact with Heather Owens just
15 prior to going to committing the murder. And as I said, a
16 witness testified that he had made a statement that he was
17 going to split someone's wig. In his own statement, he
18 admitted or referenced -- made a reference to the victim
19 being an informant.

20 And then the phone records that you mentioned, I'm
21 trying to recall specifically whether those were just about
22 communications or whether there was also some type of
23 location data regarding Mr. Morehouse. I don't recall that
24 specifically, but regardless, he admitted being at the scene
25 and the cigarette with the DNA on it placed him at the scene.

1 And then I do believe that there were phone records
2 showing communications with Mr. Sisk, his Co-Defendant, many
3 communications that day.

4 Q. Thank you, Ms. Mayes.

5 A. Okay.

6 MS. BALAJ: No further questions, Your Honor.

7 THE COURT: Cross-examination?

8 MR. JOHNSON: Briefly, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. JOHNSON:

12 Q. When you made this testimony and the statement
13 about Ms. Owens testimony, I'm referring to page 817, and the
14 testimony from lines 20 and 21 where she stated, "Well, I met
15 him early 2015, beginning of the year through mutual friends
16 and I would buy Xanax from him." You were aware that she was
17 going to testify about purchasing drug, illegal drugs from
18 them during the trial, correct?

19 A. Give me just a moment.

20 Q. Okay. I'm sorry. That's 817.

21 A. 817?

22 Q. Yes, ma'am. 2021.

23 A. I do see that, Ola, and I don't recall exactly
24 what the prior conversations were with Ms. Owens about that,
25 but we knew, we did know that she had received drugs from him

1 in the past, and I think that might have been why he was over
2 there that night. Just prior to the murder taking place, I
3 think he came by to drop off some drugs.

4 Q. You don't have any memory of any objections being
5 raised by Defense counsel?

6 A. I don't.

7 Q. Okay. And my only other question, you testified
8 about issues regarding search warrant being handled pretrial,
9 but of course you're familiar with objections that need to be
10 repeated and raised whenever evidence or testimony is
11 presented during the trial, not just pretrial. That is needs
12 to be done to (inaudible). Okay. That was not done.

13 A. I will trust your word for that. I -- I haven't
14 reviewed that portion of the transcript, but --

15 Q. Fair enough.

16 MR. JOHNSON: No more questions, Judge.

17 THE COURT: Thank you. Any re-direct?

18 MS. BALAJ: Yes, Your Honor.

19 RE-DIRECT EXAMINATION

20 BY MS. BALAJ:

21 Q. Concerning Heather Owens testimony about the drug
22 transactions that she had with Mr. Morehouse, you did testify
23 that Defense counsel used that to address Ms. Owen's
24 credibility. That -- that he attacked the fact that she had
25 a drug problem?

1 A. That's my understanding. If you'll give me just a
2 minute, I'll go back to that portion. I believe that was
3 817. So I believe that's the very first question in his
4 cross-examination, "Back at that point in time of this event,
5 you were taking opiates and Xanax; is that right? 'Yes.'
6 You would consider yourself to be a drug addict at that
7 point? 'Yes.'"

8 And then goes on with extensive questioning about her
9 drug use. And I recall that also being an issue with two
10 other witnesses who were both females who testified in this
11 case about their knowledge that they also had drug addiction
12 issues. And certainly those points were raised by Defense
13 counsel regarding all of those witnesses to suggest that
14 because they did have addiction issues that somehow that
15 impacted their credibility.

16 MS. BALAJ: Thank you. No further questions, Your
17 Honor.

18 MR. JOHNSON: I was just trying to clarify, Judge. I
19 was going to ask what lines she read from. I did -- I missed
20 that. What page and what lines? I just didn't catch that.

21 MS. BALAJ: If I could provide the page number 828, the
22 beginning of the cross-examination.

23 ME. JOHNSON: Okay.

24 THE COURT: Looks like it starts on line 13.

25 MR. JOHNSON: Oh, thank you. Okay. No questions here.

1 Thank you.

2 THE COURT: Thank you. You may sit down. Thank you.

3 MS. BALAJ: Beg the Court's indulgence?

4 Your Honor, I have no further witnesses.

5 THE COURT: (Inaudible)?

6 MR. JOHNSON: Well, Your Honor, we would just list,
7 once again, we have those two allegations from the initial
8 application. Obviously the one that's clear about a
9 five-year felony being sentenced to 10 years with the
10 indictment ending, I believe in where we recited that for the
11 criminal conspiracy indictment, recited that number on the
12 record. And we have nothing further at.

13 THE COURT: All right. Thank you, sir.

14 Yes, ma'am. Closing?

15 MS. BALAJ: Your Honor, as for the criminal conspiracy,
16 it would not make a difference in Mr. Morehouse's sentencing
17 and failure to object to it. It's not sufficient in order to
18 grant him a new trial, especially considering that he
19 received a life sentence for murder, which was the main --
20 the most heavy charge, I think he was charged with at trial.

21 Additionally, as to all the other allegations, as
22 you've heard from the testimony from Ms. Mayes, Mr. Hilliard
23 had a very good reputation in the community as a criminal
24 Defense attorney.

25 He provided Mr. Morehouse with excellent representation

1 as can be seen through the record. He -- there is an
2 extensive record and a lot of cross-examination. He attacked
3 the phone mapping, the credibility of the phone mapping. He
4 attacked the credibility of the witnesses. He was very -- he
5 brought up the arguments for why there were different
6 weapons. He brought all these in his closing and through the
7 cross-examination of all the witnesses.

8 As for the jury charge on inferred malice, Belcher was
9 decided in 2009 and it said that it was a proper charge as
10 long as there was no excuse or justifiable reasonable for the
11 homicide. And over -- in this case, there was no justifiable
12 reason and it was a proper charge. It was only overturned in
13 2019 by (inaudible). So there is no reason for counsel to
14 object to it. And for these reasons, we ask that you would
15 deny the PCR application.

16 THE COURT: Thank you, ma'am.

17 I'll take you this matter under advisement and I'll
18 have an answer for you all in a couple days.

19 MR. JOHNSON: Thank you, Judge.

20 MS. BALAJ: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
23 2:51 P.M.)

24

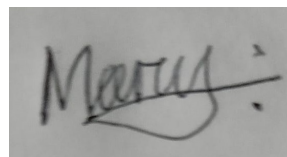
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CERTIFICATE OF TRANSCRIBER

I, Mary Ragsdale, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on the 28th Day of August, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 12, 2024

A rectangular box containing a handwritten signature in dark ink. The signature appears to be 'Mary' followed by a stylized flourish or surname.

Mary Ragsdale

Transcriber

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
2023 AUG 18)
Charles A. Morehouse, #371083,) CASE NO. 2019-CP-32-04714
Applicant,)
v.) **ORDER OF DISMISSAL**
State of South Carolina,) **WITH PREJUDICE**
Respondent.)

Presiding Judge:	Hon. David Pierce Caraker, Jr.
Applicant's Attorney:	Ola A. Johnson, Esq.
Respondent's Attorney:	Talida Balaj, Esq.
Trial Counsel:	John M. Hilliard, Esq.
Date of Hearing:	August 28, 2024

This matter comes before the Court by way of Charles A. Morehouse's (Applicant) application for post-conviction relief (PCR) filed on November 22, 2019. Respondent, the State of South Carolina, filed its Return and Motion for Partial Summary Dismissal on March 24, 2020, requesting an evidentiary hearing to resolve the claims set forth in the application. Applicant filed an amended application on August 16, 2024.

On August 28, 2024, an evidentiary hearing was held at the Lexington County Courthouse before the Honorable David Pierce Caraker, Jr. Applicant was present and represented by Ola A. Johnson, Esquire. Assistant Attorney General Talida Balaj represented Respondent. Applicant proceeded forward on the claims set forth in his original application and his amended application. In support of these claims, Applicant testified on his behalf. Respondent presented testimony from Eleventh Circuit Deputy Solicitor Suzanne Mayes (Solicitor Mayes).

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 that Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lexington County Clerk of Court. In the December 2015 term, the Lexington County Grand Jury indicted Applicant for Murder (2015-GS-32-02939). In the February 2016 term, the Lexington County Grand Jury indicted Applicant of Possession with Intent to Distribute Methamphetamine, 2nd Offense (2016-GS-32-00642). In the October 2016 term, the Lexington County Grand Jury indicted Applicant for Possession of a Weapon During Commission of a Violent Crime (2016-GS-32-02152) and Criminal Conspiracy (2016-GS-32-02151). Applicant was represented by John M. Hilliard, Esquire (Trial Counsel).¹ Deputy Solicitor Suzanne Mayes and Assistant Solicitor Lester McGill Bell, Jr., prosecuted the case.

Applicant's case proceeded to a jury trial on January 9–13, 2017, before the Honorable Eugene C. Griffith, Jr. The jury acquitted Applicant of possession of methamphetamine with intent to distribute but convicted him of the lesser-included offense of possession of methamphetamine. The jury convicted Applicant as indicted on the remaining charges of murder, possession of a weapon during a violent crime, and criminal conspiracy. Judge Griffith sentenced Applicant to life imprisonment for murder, ten (10) years imprisonment for criminal conspiracy, five (5) years imprisonment for possession of a weapon during commission of a violent crime. Additionally,

¹ Trial Counsel did not testify at the evidentiary hearing, as he is deceased.

Applicant was convicted of the lesser offense of possession of methamphetamine and sentenced to five (5) years, running concurrently to Applicant's other convictions.

Applicant filed a timely Notice of Appeal. Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense perfected Applicant's appeal by filing an Anders² brief to the Court of Appeals on January 2, 2018, presenting the following issue:

Whether the trial court erred in admitting appellant's statement to police because it was induced by implied promises of leniency for his wife, rendering it involuntary?

The Court of Appeals dismissed Applicant's appeal pursuant to Anders v. California and granted counsel's motion to be relieved. State v. Morehouse, Op. No. 2018–UP–452 (S.C. Ct. App. filed Dec. 12, 2018). The Remittitur was returned to the lower court on December 28, 2018.

SUMMARY OF FACTS ADDUCED AT TRIAL

Michael Merckel (Merckel) of the Lexington County Sheriff's Department testified he responded to a meth lab in a house in Lexington County on May 8, 2015. (Trial Tr. p. 459). Merckel testified that there were four occupants in the house whom he arrested. (Trial Tr. p. 460). Merckel testified that James David Porter, III (Victim), arrived on the scene with another person, and Merckel interviewed them both. (Trial Tr. p. 460). Merckel testified he did not arrest Victim. (Trial Tr. p. 461). Merckel testified he spoke with Victim about becoming a confidential informant. (Trial Tr. p. 460). Merckel testified that Victim did not become a confidential informant. (Trial Tr. p. 461). Merckel testified that Chad Andrews had previously been a confidential informant. (Trial Tr. p. 491). Merckel testified that in his opinion, when four people are busted at a scene, but one or two are not, those two are put under suspicion by the others. (Trial Tr. p. 492).

²Anders v. California, 386 U.S. 738 (1967).

Victim's father, James David Porter, Jr. (Porter), testified Victim was addicted to methamphetamine. (Trial Tr. pp. 259–60). Porter testified he had observed a very large weight loss in Victim since January of 2015. (Trial Tr. p. 286). Porter testified that Victim told him on the day of the drug bust that he had an addiction and that law enforcement had detained him and let him go. (Trial Tr. pp. 259–60). Porter testified he had a conversation with Victim about Victim potentially becoming a confidential informant for law enforcement and advised Victim not to become one. (Trial Tr. p. 271). Porter testified that to his knowledge, Victim did not become a confidential informant. (Trial Tr. p. 271).

Kelin Martinez (Martinez) testified that in the weeks leading up to Victim's murder, she attended a birthday party for a person named Hollywood at a bar called Mojo's Lounge. (Trial Tr. p. 624). Martinez testified she saw Applicant there that night and overheard him telling Hollywood that Victim was a snitch and an informant and that everyone else around Victim went down except him. (Trial Tr. pp. 624–25, 631). Martinez also testified that Applicant believed that the "Feds" were watching him and that he was being watched. (Trial Tr. p. 627).

Riley Furman (Furman) testified he knew of rumors about Victim being an informant, of which Victim was concerned. (Trial Tr. p. 296). Furman testified that Victim's concern appeared to grow closer to the date of the murder. (Trial Tr. p. 297).

Heather Owens (Owens) testified she met Applicant through mutual friends in early 2015 and would buy Xanax, pain pills, and similar things from him. (Trial Tr. p. 817). Owens testified that she and Applicant became closer to where they were intimate and hung out a lot. (Trial Tr. pp. 817–18). Owens testified she and Applicant were "friends with benefits." (Trial Tr. p. 819). Owens testified that early on August 3, 2015, Applicant visited her home in his burgundy Impala to help her with her water. (Trial Tr. p. 819). Owens testified that later that day, sometime between

9:30 pm and 11:30 pm, Applicant returned with Wiley Sisk (Sisk). (Trial Tr. pp. 819, 821, 823). Owens testified that Sisk worked for Applicant and would handle business and do whatever Applicant would tell him to do. (Trial Tr. p. 823). Owens testified that the word she heard to describe Sisk was "gun boy." (Trial Tr. p. 823). Owens testified that Sisk retrieved a handgun from her house that Applicant had left there on another occasion. (Trial Tr. p. 823).

Owens testified that Applicant and Sisk entered her house, and Sisk stood in the kitchen while she and Applicant went into her bedroom to talk. (Trial Tr. p. 824). Owens testified she asked Applicant to drive her and her kids to her mother's house in North Augusta, but Applicant told her he had to go help his friend handle something. (Trial Tr. pp. 823–24). Owens testified she asked Applicant what they were going to do, and Applicant responded by telling her they were going to "split somebody's wig." (Trial Tr. p. 825). Owens testified that Applicant appeared really anxious and in a hurry, and it was like Applicant was "on a mission to go." (Trial Tr. p. 826). Owens testified that Applicant told her that if she did not want him to go, she should tell him, and he would not go. (Trial Tr. p. 826). Owens testified that she told Applicant to go handle what he had to handle. (Trial Tr. p. 826). Owens testified that Applicant then said to her, "It's either him or me." (Trial Tr. p. 826). Owens testified that Applicant left the bedroom after the conversation, and both Applicant and Sisk left in Applicant's car. (Trial Tr. pp. 826–27). Owens testified that Applicant did not return to her house after he left with Sisk. (Trial Tr. p. 827).

Alicia Danielle Cline (Cline) testified that on August 3, 2015, Victim was at Porter's house with her, Molli Anna Bush (Bush), and Austin Lynch (Lynch) around 2:00 pm. (Trial Tr. p. 341–42, 354). Cline testified that the four of them were smoking methamphetamine, and that Lynch was becoming paranoid and aggressive. (Trial Tr. p. 342). Cline testified that Lynch was taking apart a cooler and claiming that he had found a camera in the cooler's fan. (Trial Tr. p. 343). Porter

testified that his career was installing surveillance cameras and that his home had surveillance cameras, but that he had never installed any surveillance camera in a cooler, fan, or any similar device to spy on Victim and his friends. (Trial Tr. pp. 276, 284–85). Bush testified that Lynch showed her the part of the fan that he claimed had the camera, but no camera was there. (Trial Tr. p. 319). Cline testified that they took Lynch to his grandmother's home. (Trial Tr. p. 343). Cline testified that after dropping Lynch off at his grandmother's house, they went to Furman's house. (Trial Tr. p. 345). Furman testified that Victim, Cline, and Bush arrived at his house at 8:00 pm. (Trial Tr. p. 305). Furman testified that he gave Victim a pair of brass knuckles because Victim was acting nervous. (Trial Tr. p. 298).

Cline testified that after leaving Furman's house, they returned to Victim's house before meeting with Furman again and going to the Days Inn, where they rented a room at 10:22 pm. (Trial Tr. pp. 346–48). Cline testified that Victim was in contact with someone via phone and text messaging while they were at the hotel. (Trial Tr. p. 349). Furman testified that Victim left the hotel about fifteen minutes after arriving there. (Trial Tr. p. 300). Furman testified that Victim was acting very nervous after Victim was on the phone. (Trial Tr. pp. 300–01). Cline testified that Victim was acting nervous and uneasy before leaving the motel. (Trial Tr. p. 350). Furman testified that Victim left the hotel alone. (Trial Tr. p. 301). Cline testified that she was not able to go with Victim. (Trial Tr. p. 350).

Christopher Williams, a.k.a. Snoop (Snoop), testified that Applicant was "a good friend to [him] when he could be," whom he had known for about two months. (Trial Tr. p. 495). Snoop testified that he would see Applicant at his house "pretty much every day," and Applicant had methamphetamines with him nearly every time Snoop saw him. (Trial Tr. p. 495). Snoop also testified that he saw Applicant with three different weapons a few times, with those weapons being

a .40 semiautomatic, a .45 semiautomatic, and a .45 revolver. (Trial Tr. pp. 495–96). Snoop testified that around 10:00 pm on August 3, 2015, Applicant and Sisk arrived at his home in a burgundy Impala. (Trial Tr. pp. 496–97). Snoop testified that he, Applicant, and Sisk were in Snoop's room and "did a line" of methamphetamine that Applicant provided. (Trial Tr. p. 499).

Snoop testified that Applicant talked about teaching somebody a "lesson" and asked Snoop if he knew a place where he could do that. (Trial Tr. p. 499). Snoop told Applicant nowhere near him and not at his place. (Trial Tr. p. 499). Snoop testified that Applicant was not afraid of Sisk and that Sisk looked up to Applicant. (Trial Tr. pp. 499–500). Before Snoop left his house, he saw Applicant and Sisk outside and spoke with Applicant, and he asked Snoop to switch his .45 handgun for the .40 handgun because the latter was quieter. (Trial Tr. p. 503). Snoop gave the .40 handgun to Applicant and put the .45 handgun under the couch. (Trial Tr. p. 503). Snoop did not see Sisk with a firearm that day or that night. (Trial Tr. p. 504).

Moody testified that Applicant and Sisk returned to Snoop's house together, and the three of them, as well as Erika Waters (Waters), used methamphetamine. (Trial Tr. p. 524). Moody testified that when Applicant and Sisk returned, Sisk handed an aluminum baseball bat to Waters. (Trial Tr. p. 527). Moody also testified that Applicant went to the bathroom and washed his hands and arms with Comet before rinsing off. (Trial Tr. p. 528). Moody testified that Sisk went to the back bedroom and changed his clothes after she gave him a pair of basketball shorts and a t-shirt. (Trial Tr. p. 528). Moody testified that, during this time, neither Applicant nor Sisk appeared to be in fear of or threatened by the other. (Trial Tr. p. 530). Moody testified that they all went into a bedroom and took methamphetamine, and Applicant suggested they watch the news to see if anything came about. (Trial Tr. pp. 530–31). Moody testified that Applicant left the residence by himself a few hours later after he announced that he was going to take the gun to Charles Belk.

(Trial Tr. p. 531). Waters testified that Applicant stated that he had to get alibis before leaving Snoop's house alone. (Trial Tr. p. 549).

Moody testified that the clothes that Sisk wore were taken outside behind Snoop's house and burned. (Trial Tr. pp. 528–29). Waters testified that Sisk was trying to light something on fire in the yard, and she told him to use Coleman's camp fuel in the house, which he used to burn his clothes and shoes that he was wearing. (Trial Tr. p. 551). Waters testified that Applicant asked Sisk what he did with the bat, and Sisk replied that he had forgotten about the bat. (Trial Tr. p. 553). Waters testified that Applicant told him to do something with it. (Trial Tr. p. 553). Waters testified that Sisk got the bat, washed it off in the shower in Snoop's old bedroom, and then hid the bat underneath the sink in the bathroom. (Trial Tr. p. 553–54). Moody testified that Applicant was gone for thirty minutes and, when he returned, told everyone that the gun was taken care of. (Trial Tr. p. 531–32).

Charles Belk, III, (Chip) testified that on the night of the murder, he was awoken by Applicant knocking at his door. (Trial Tr. p. 579). Chip testified that Applicant was "shaken up" and "frantic" and came to Chip's house because he did not know what to do with a gun he had. (Trial Tr. p. 580). Chip testified that Applicant handed him the gun, which was a semiautomatic handgun with a black action and a silver slide. (Trial Tr. p. 580–81). Chip testified that Applicant took the handgun back and removed the bullets from the magazine before handing it back to him. (Trial Tr. p. 581). Chip testified that the four or five bullets that Applicant removed from the gun had a brass casing and copper coating, and Applicant did not leave them with Chip or in Chip's house. (Trial Tr. p. 582). Chip testified that he got rid of the gun and had not seen it since then. (Trial Tr. p. 583).

Detective Joeseeph Andaloro testified that while surveilling Applicant's house, he observed

Applicant arriving home in a burgundy or purple Chevy Impala and entering the residence between 4:00 am and 6:00 am on August 4th, 2015. (Trial Tr. p. 589). Detective Benjamin Booth (Booth) of the Lexington County Sheriff's Department testified that Applicant arrived alone in his burgundy Impala at the Whiskey Tavern at 12:00 am on August 4, 2015. (Trial Tr. p. 772). Booth testified that Applicant left the Whiskey Tavern in his vehicle at around 12:50 am on August 4, 2015. (Trial Tr. p. 772). Booth testified that Applicant returned alone to the Whiskey Tavern in the exact vehicle at 2:40 am on August 4, 2015. (Trial Tr. p. 773). Booth testified that Applicant left the Whiskey Tavern in the exact vehicle at 3:06 am on August 4, 2015. (Trial Tr. p. 774).

Agent Michelle Eichenmiller (Eichenmiller) of the South Carolina Law Enforcement Division, who was an expert in firearms analysis, testified that the three fired cartridge cases from the scene were brass colored and had nickel-colored primers. (Trial Tr. pp. 757–58, 761). Eichenmiller testified that the three cartridge cases were .40 S&W caliber and were fired from the same firearm. (Trial Tr. p. 761). Eichenmiller testified that two projectiles recovered from Victim's body were consistent with being .40 S&W caliber and were fired from the same firearm. (Trial Tr. p. 761–62). Eichenmiller testified that based on his search in their database on the rifling specifications of the bullets, the bullets were fired from a Smith & Wesson. (Trial Tr. pp. 762–63). Eichenmiller testified that when a semiautomatic firearm is fired, the casings are "usually ejected with some force behind them," but it is possible for the bullets to eject a couple of feet away from the firearm. (Trial Tr. p. 764).

Doctor Janice Edwards Ross (Doctor Ross) of the Newberry Pathology Associates testified she conducted an autopsy of Victim and determined that the cause of death was exsanguination "due to multiple lacerations of multiple blood vessels primarily from a gunshot wound to the abdomen." (Trial Tr. pp. 836–37). Doctor Ross testified that the manner of death was homicide.

(Trial Tr. p. 837). Doctor Ross testified that Victim had a total of six to ten gunshot wounds, which were distant wounds, meaning the gun was fired at least two feet away from the wound. (Trial Tr. pp. 837, 839-40). Doctor Ross testified that several gunshot wounds were consistent with someone standing over Victim and firing downward. (Trial Tr. pp. 844-48). Doctor Ross testified that the gunshot wound to Victim's right torso is consistent with Victim rolling over. (Trial Tr. pp. 847-48). Doctor Ross testified that the wounds to Victim's forearm were consistent with the forearm being up in a defensive nature, and the wounds through Victim's palm that exited the back of his hand were consistent with a defensive maneuver. (Trial Tr. p. 848).

Rachel Grant (Grant), a DNA technical leader and CODIS administrator for the DNA lab at the Richland County Sheriff's Department, testified she was not able to develop a DNA profile on the swabs from the three .40-caliber Smith & Wesson shell casings. (Trial Tr. p. 729-30).

Edward Richardson (Richardson) of the Lexington County Sheriff's Department testified an undisturbed cigarette butt was located within six to ten feet from Victim's body at the crime scene. (Trial Tr. pp. 244, 248). Grant testified she developed a complete DNA profile on the major contributor of the DNA on the burnt cigarette found at the crime scene, and the profile was a match with DNA samples taken from Applicant. (Trial Tr. pp. 732-36). Grant testified that the statistical number assigned to the DNA match concerning Caucasian males among the general population was approximately one in twenty-five octillion. (Trial Tr. p. 736). Grant testified that in her opinion, the DNA on the cigarette belonged to Applicant. (Trial Tr. p. 737).

Detective Brian Travis (Detective Travis) of the Criminal Intelligence Unit of the Lexington County Sheriff's Department testified that on August 3, 2015, there were forty-nine cellular communications between Applicant and Sisk, with thirty-three of those communications being phone calls. (Trial Tr. p. 794). Detective Travis testified that the first call made that day

was at 12:35 am. (Trial Tr. p. 794). Detective Travis testified that the final communication made that day was at 10:48 pm. (Trial Tr. p. 794). Detective Travis testified that on August 4, 2015, there were eight cellular communications and two voicemails between Applicant and Sisk. (Trial Tr. p. 794). Detective Travis testified that on August 4, 2015, there were three calls at 12:05 am, 12:08 am, and 12:10 am. (Trial Tr. p. 794). Detective Travis testified that Applicant sent Sisk a text message at 12:13 am on August 4, 2015. (Trial Tr. p. 796).

Detective Travis testified that on August 3, 2015, there was a communication between Lynch and Applicant around 5:00 pm. (Trial Tr. p. 796). Detective Travis testified that on August 3, 2015, there were text communications between Applicant and Victim between 9:46 pm and 11:11 pm. (Trial Tr. p. 797). Detective Travis testified that after the text message between Applicant and Victim at 9:48 pm, Applicant contacted Sisk. (Trial Tr. p. 798). Detective Travis testified that between 10:48 pm and 11:59 pm on August 3, 2015, Applicant and Sisk had no communications. (Trial Tr. p. 798).

Detective Travis testified that, using information from Applicant's call detail records for between 10:47 pm and 11:59 pm on August 3, 2015, there were numerous calls that pinged off the towers closest to 2400 Old Orangeburg Road and the data placed the location of Applicant's cell phone in the same area as the incident location. (Trial Tr. p. 801–02). Detective Travis testified the last ping from Applicant's cell phone was from a cell site closest to the Congaree River and Knox Abbott Bridge in Cayce, South Carolina. (Trial Tr. p. 803).

CURRENT ACTION BEFORE THIS COURT

In his original PCR application Applicant alleges he is being held in custody unlawfully based on the following allegations of ineffective assistance of counsel:

1. "Counsel was ineffective by failing to make a contemporaneous objection on the record to the court's evidentiary presumption

- charge on the element [of] malice[.]"
2. "The trial court committed reversible error under the well settled principles embedded within the Fourteenth Amendment of the United States Constitution, when the trial court gave an evidentiary presumption in its charge to the jury that had the effect of relieving the State of its burden of proof on the critical element of intent (malice) in a criminal prosecution, which contributed to the jury's verdict of guilt against Applicant."
 3. "Counsel was ineffective by failing to make a contemporaneous objection on the record to the ten (10) year sentence the Court imposed upon Applicant for his conviction under Indictment No. 2016-GS-32-02151, for Conspiracy."

On August 16, 2024, Applicant filed an amended PCR application, alleging additional grounds regarding his claim of ineffective assistance of counsel based on the following:

4. Applicant's counsel, John M. Hilliard, failed to properly investigate the case against the applicant.
5. Applicant's counsel, John M. Hilliard, failed to review evidence with applicant and meet with the applicant a sufficient number of times to prepare for trial.
6. Applicant's counsel John M. Hilliard failed to object to phone records (p.134).
7. Applicant's counsel John M. Hilliard failed to object to the jury charge regarding inferred malice and the use of a deadly weapon (p. 945).
8. Applicant's counsel John M. Hilliard failed to object to the statements by the solicitor in closing regarding applicants statement, stating that he said he "fired 3 shots" but this did not include the statement by applicant to police that he "fired off to the side" (p. 897).
9. Applicant's counsel John M. Hilliard failed to object to testimony by Heather Owens regarding previous drug transactions between her and applicant, (p. 817).
10. Applicant's counsel John M. Hilliard failed to object to the search, testimony and introduction of exhibits from officer Heather Clary (p.687-689) regarding a search of the applicants residence with a search warrant resulting in the introduction of Exhibits 73-83 (photographs of clothing and illegal drugs).
11. Applicant's counsel John M. Hilliard failed to cross examine witnesses regarding the difference in descriptions collected by law enforcement regarding handguns.
12. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed

issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d (2006).

At the evidentiary hearing, Applicant pled additional claims of ineffective assistance of counsel, as follows:

13. Trial Counsel failed to advise Applicant of right to testify.
14. Failure to call an expert witness to testify.

Applicant requests relief in the form of "[v]acate conviction and sentence under Indictment No. 2015-GS-32-02[9]39" and "[r]e-[s]entencing under Indictment No. 2016-GS-32-02151."

Before this Court are the Lexington County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the trial transcript, and the records of this PCR action, including the PCR evidentiary hearing transcript.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act³ (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[.]

³ S.C. Code Ann. § 17-27-10 to -160.

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 (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 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), SCRPC; 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. at 687. 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 & 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.

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), SCRCF (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

As an initial matter, 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, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 3: Counsel was ineffective by failing to make a contemporaneous objection on the record to the ten (10) year sentence the Court imposed upon Applicant for his conviction under Indictment No. 2016–GS–32–02151, for Conspiracy

Applicant alleges that Trial Counsel was ineffective for failing to make a contemporaneous objection on the record to the ten (10) year sentence the Court imposed on Applicant for his conviction for Conspiracy under Indictment No. 2016–GS–32–02151. The Court finds this allegation is with merit.

S.C. Code Ann. § 16–17–410 sets out the maximum sentence that a person convicted of criminal conspiracy can be given:

A person who commits the crime of conspiracy is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned more than five years. A person who is convicted of the crime of conspiracy must not be given a greater fine or sentence than he would receive if he carried out the unlawful act contemplated by the conspiracy and had been convicted of the unlawful act contemplated by the conspiracy or had he been convicted of the unlawful acts by which the conspiracy was to be carried out or effected.

S.C. Code Ann. § 16–17–410 (2024).

Judges have discretion in sentencing within statutory limits, and a sentence is not deemed excessive if it is within the statutory limits and is not the results of partiality, prejudice, or corrupt motive. State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974); Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Wood v. State, 257 S.C. 179, 184 S.E.2d 702 (1971).

Findings

This Court finds that Trial Counsel was deficient for failing to object to the illegal sentence Applicant received concerning his conspiracy conviction. However, this Court finds that Applicant cannot show prejudice, as even had Trial Counsel objected to the illegal sentence, it would not have changed the overall outcome of Applicant's case, but grants this allegation and remands the sentence to the Court of General Sessions for the purpose of judicial equity. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 420 n.8 (2001) ("Given that Roscoe was sentenced in excess of the maximum penalty for armed robbery, we affirm the PCR court's remand for resentencing. See State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999).").

Accordingly, as Applicant was improperly sentenced on this charge, this Court **GRANTS** this allegation and **VACATES** Applicant's sentence for criminal conspiracy and **REMANDS** the conviction to the Court of General Sessions for **RE-SENTENCING**.

Allegation 4: Trial Counsel failed to properly investigate the case against the Applicant.

Applicant alleges that Trial Counsel failed to properly investigate the case against Applicant. Specifically, that Trial Counsel failed to consult with and hire an investigator, and did not advise him whether he had interviewed any witnesses. Additionally, Applicant alleges that had Trial Counsel hired an expert, the expert could have counteracted the State's experts. The Court finds this allegation to be without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends [on] a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent

investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's

judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

Additionally, Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant and make an independent investigation of the facts and circumstances of the case. Edwards, 392 S.C. at 456, 710 S.E.2d at 64; Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover, 318 S.C. at 498-99, 458 S.E.2d at 540. The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel never had him meet with any experts regarding the investigation. (PCR Tr. p. 11). Applicant testified Trial Counsel never advised him that he interviewed any witnesses. (PCR Tr. p. 12). Applicant testified he could not think of anything else Trial Counsel failed to investigate or failed to perform adequately at trial. (PCR Tr. p. 15).

On cross-examination, Applicant testified Trial Counsel did not hire an investigator. (PCR Tr. p. 16). Applicant testified that Trial Counsel could have investigated the letter he received from Heather Owens to counteract the evidence presented at trial, and investigated the murder weapon, as there were two different descriptions of the guns. (PCR Tr. p. 17). Applicant testified there is a difference between "a gun" and "the gun," and that there were other people who confessed to "going to get the murder weapon." (PCR Tr. p. 17). Applicant testified that a supplemental report contained someone's confession that they had the murder weapon. (PCR Tr. p. 17).

Applicant testified that an investigator could have checked all the facts. (PCR Tr. p. 17). Applicant testified he recalled that Trial Counsel argued and cross-examined various witnesses about the different descriptions of the gun. (PCR Tr. pp. 17–18).

On direct examination, Solicitor Mayes testified Trial Counsel had "many years' experience." (PCR Tr. p. 27). Solicitor Mayes testified Trial Counsel was "very engaged" and "making a lot of objections during the trial . . . appropriate objections." (PCR Tr. p. 27). Solicitor Mayes testified that the evidence in the case was "overwhelming." (PCR Tr. p. 27). Solicitor Mayes testified that Trial Counsel "understood the evidence" and "was addressing evidence as it should be addressed." (PCR Tr. pp. 27–28). Solicitor Mayes testified that Trial Counsel went "above and beyond" in his representation of Applicant. (PCR Tr. p. 27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court finds, based on a combination of the record and Solicitor Mayes's **credible** testimony, that Trial Counsel thoroughly investigated Applicant's case and subjected the prosecution to intense adversarial testing. Solicitor Mayes **credibly** testified that Trial Counsel was an experienced attorney who effectively represented Applicant at trial, considering the overwhelming evidence of guilt. An overview of the nearly 1000-page trial transcript reveals that Trial Counsel intensely examined the various facts and expert witnesses concerning the firearms, indicating his knowledge and familiarity with Applicant's case. Notably, Trial Counsel questioned Investigator Jesse Laintz about the co-defendant's letter confessing to being the shooter and that the co-defendant had taken full responsibility for the crime (ROA pp. 423–24), and testimony was elicited from various witnesses

about the different firearms and people who had possessed them. Otherwise, the only specific testimony Applicant provided concerning Trial Counsel's failure to investigate concerned a letter he had received from Heather Owens that he alleged would have counteracted the evidence at trial. However, Applicant did not provide the Court with this letter nor what evidence the letter allegedly countered. Overall, Applicant provided generalized testimony that Trial Counsel did not adequately investigate or advise him of the witnesses he interviewed, failing to point out any specific deficiency. Therefore, Trial Counsel is not deficient.

Additionally, Applicant failed to provide any evidence or defenses that Trial Counsel could have discovered with more investigation, which would have changed the outcome of his trial. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared))). Applicant merely testified that Trial Counsel could have investigated the murder weapon more, but did not provide, through testimony or otherwise, what Trial Counsel could have discovered that would have changed the result of the proceeding. The same applies to the Heather Owens letter.

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 5: Trial Counsel failed to review evidence with Applicant and meet with Applicant a sufficient number of times to prepare for trial.

Applicant alleges that Trial Counsel failed to review evidence with Applicant and meet with Applicant a sufficient number of times to prepare for trial. This Court finds this allegation 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 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 insure 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.E.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).

PCR Evidentiary Hearing

On direct examination, Applicant testified Trial Counsel represented him in his case, but he had two lawyers prior to Trial Counsel. (PCR Tr. p. 9). Applicant testified Gerald Caulder (Counsel Caulder) represented him prior to Trial Counsel, but Counsel Caulder had lost his license or was suspended, and Trial Counsel represented Applicant at trial. (PCR Tr. p. 9). Applicant testified Trial Counsel met with him approximately four times, and Counsel Caulder met with him a few times separately, as well. (PCR Tr. p. 11). Applicant testified a lot of his discussion of the case was between him and Counsel Caulder. (PCR Tr. p. 11). Applicant testified Trial Counsel met with Applicant at the most five times. (PCR Tr. pp. 11–12). Applicant testified the number of meetings was insufficient to prepare for trial, and he had no ideas what was going on. (PCR Tr.

p. 12). Applicant testified that Trial Counsel received the witness and met with him around two days before the trial for about an hour. (PCR Tr. p. 12).

On cross-examination, Applicant testified that Trial Counsel did not review discovery with him. (PCR Tr. p. 18). Applicant testified that Trial Counsel brought his two assistants with him to trial, and they had an entire bench filled with three or four cases of materials. (PCR Tr. p. 18). Applicant testified he had provided Trial Counsel with some of the evidence in discovery. (PCR Tr. pp. 18–19). Applicant testified he got around 500 pages while the discovery was 15,000 pages. (PCR Tr. p. 19). Applicant testified he had "some stuff," including the letter that Heather Owens (Owens) had written him and a letter that "Smith" had written him, one of which he gave to Counsel Caulder and the other to Trial Counsel. (PCR Tr. p. 19). Applicant testified he looked for these letters in the discovery to impeach the witnesses, but they were not in the discovery. (PCR Tr. p. 19). Applicant testified that there was a lot he had not seen in the discovery, such as the crime scene photos. (PCR Tr. p. 19).

Applicant testified he attempted to fire Trial Counsel over the phone and once in a meeting. (PCR Tr. p. 19). Applicant testified that he went to court to relieve counsel, and the judge denied his request to relieve Trial Counsel because the trial date was close. (PCR Tr. p. 19). Applicant testified he met with Trial Counsel two days before trial for an hour, another time when he was moved, and one time in Aiken County with Counsel Caulder concerning what could happen in his case. (PCR Tr. pp. 19–20). Applicant testified that his attorneys never prepped him. (PCR Tr. p. 20). Applicant testified Counsel Caulder asked him about the letters, but nothing came of it. (PCR Tr. p. 20). Applicant testified he was not able to review any of his discovery, but he discussed the letters with Counsel Caulder and what happened the night of the murder. (PCR Tr. p. 20). Applicant testified he had three or four meetings with Counsel Caulder, who was trying to be

involved, but he never saw his discovery motion. (PCR Tr. p. 21). Applicant testified he saw very little of his motion of discovery. (PCR Tr. p. 21).

On direct examination, Solicitor Mayes testified that Applicant was held in custody at the Lexington County Detention Center at the time of the trial. (PCR Tr. p. 27). Solicitor Mayes testified the State's discovery they provided at that time would have been in written form. (PCR Tr. p. 27). Solicitor Mayes testified that digital evidence, such as the phone records, would have been in a CD format and would have been provided in a way that attorneys could access easily. (PCR Tr. p. 27). Solicitor Mayes testified that if attorneys felt the need to do so, they could print those materials and consult with their clients about them. (PCR Tr. p. 27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. The Court finds Applicant's testimony **not credible** as to this issue. Solicitor Mayes **credibly** testified that Applicant was in custody prior to trial, and that discovery was provided to Trial Counsel in an easily accessible format—whether written or digital. This Court has no reason to believe that Trial Counsel failed to review pertinent discovery or adequately meet prior to trial based on a review of the record. The records establish a Jackson v. Denno hearing took place, extensive cross-examinations were conducted on 22 out of the 30 witnesses, various *in-camera* hearings were conducted by the State and Trial Counsel, and Trial Counsel conducted a *voir dire* of expert witness Detective Brian Travis. Trial Counsel would not have been able to perform as he did at Applicant's trial had he not consulted and met with Applicant. Additionally, it is beyond comprehension that Trial Counsel—an

experienced attorney with a good reputation—failed to do the most basic of duties of a trial attorney, review discovery.

This Court finds it even more difficult to consider this possibility based on the broad, confusing, and at times inconsistent testimony of Applicant. Applicant testified he met at most five times with Trial Counsel prior to trial, and separately a few times with Counsel Caulder, who was working as a team with Trial Counsel. However, Applicant testified that at no point did either attorney review discovery with him, but they did discuss the progress of his case, the "letters," and Applicant's version of what took place that night. At one point, Applicant testified he had 500 pages of discovery, which he had with him at trial and asked questions about, but also that he did not review "any" discovery.

Additionally, Applicant failed to provide what evidence or defenses could have been discovered with more time in consultation and review of the discovery. To prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Applicant merely referred to the Owens letter, testified he was not prepped, and that four to five meetings were not an adequate time to prepare for trial, without more.

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**.

Failure to Object Allegations

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

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that

failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

When analyzing counsel's performance, the reviewing court will "strong[ly] presum[e] that he did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 8 (2003); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

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

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); McNair v. Campbell, 307 F.Supp.2d 1277, 1312 (M.D.Ala 2004) ("Generally, courts have found that where counsel had an *articulable* strategy at sentencing, and where mitigation evidence at issue contradicted or weakened that strategy, counsel's decision not to enter the mitigation evidence was reasonable.") (emphasis added); 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).

Allegation 1: Trial Counsel failed to make a contemporaneous objection on the record to the court's evidentiary presumption charge on the element of malice, which constituted burden shifting.

Allegation 7: Failure to Object to Jury Charge Regarding Inferred Malice and Use of a Deadly Weapon.

Applicant alleges Trial Counsel was constitutionally deficient for failing to make a contemporaneous objection on the record to the court's evidentiary presumption charge on the element of malice, which constituted burden shifting. The Court finds this allegation is without merit.

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). "A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere contention that the jury might

accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

When administering a jury instruction, the instruction must be supported by facts. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003). The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

Belcher prohibits a jury charge instructing an inference of malice only in cases where evidence has been presented that would reduce, mitigate, excuse or justify the homicide. See State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) ([T]he "use of a deadly weapon" implied malice instruction has no place in a murder (or assault and battery with intent to kill) prosecution **where evidence is presented that would reduce, mitigate, excuse or justify the killing** (or the alleged assault and battery with intent to kill)).

Trial

At trial, the court instructed the jury that "[m]alice aforethought may be either expressed or it may be inferred...Inferred malice may also arise when the deed is done by a deadly weapon." (Trial Tr. pp. 944-45).

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsel should have objected to the inferred malice charge as it improperly shifted the burden, as no one could know his state of mind. (PCR Tr. pp. 10–11). Applicant testified that it does not make sense to infer malice by carrying a weapon. (PCR Tr. p. 11). Applicant testified that Trial Counsel did not explain to him why he failed to object to the jury charge on use of a deadly weapon and inferred malice. (PCR Tr. p. 13).

On cross-examination, Applicant testified that self-defense was not charged. (PCR Tr. pp. 22–23). Applicant testified his defense was that he had nothing to do with the murder and that it was just a surprise that just happened. (PCR Tr. p. 22). Applicant testified Sisk was high and in the woods using the restroom before he came out and began hitting Victim with a bat. (PCR Tr. p. 23). Applicant testified he shot the gun he had to the left and did not know what was going on. (PCR Tr. p. 23). Applicant testified that Sisk took the gun from him and shot Victim. (PCR Tr. p. 23). Applicant testified he did not plan the murder, despite everybody saying he did. (PCR Tr. p. 23). Applicant testified he did not plan on going to the scene of the murder to hurt Victim. (PCR Tr. p. 23). Applicant testified that at the worst, he planned to beat up Victim, because Victim had his friend's "stuff." (PCR Tr. p. 23). Applicant testified he had nothing against Victim. (PCR Tr. p. 23).

On direct examination, Solicitor Mayes testified that the trial was in January of 2017 and State v. Belcher⁴ was decided in 2009. (PCR Tr. p. 28). Solicitor Mayes testified she did not recall any inconsistency in the jury charge with the state of the law at the time of the trial. (PCR Tr. p. 28). Solicitor Mayes testified Applicant's case was not a self-defense case. (PCR Tr. p. 28).

⁴ 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009).

Solicitor Mayes testified that the case was not a self-defense case, but if the case had been, then she was sure the judge would have addressed self-defense appropriately. (PCR Tr. p. 28). Solicitor Mayes testified that in addition to the charge on inferred malice, evidence of express malice would also have existed in the case beyond inferred or implied malice. (PCR Tr. p. 29). Solicitor Mayes testified that evidence of express malice existed in this case beyond inferred or implied malice in the form of the Applicant's statement about "going to split a wig." (PCR Tr. pp. 26, 28–29).

Solicitor Mayes testified Trial Counsel had "many years' experience." (PCR Tr. p. 27). Solicitor Mayes testified Trial Counsel was "very engaged" and "making a lot of objections during the trial . . . appropriate objections." (PCR Tr. p. 27). Solicitor Mayes testified the evidence in the case was "overwhelming." (PCR Tr. p. 27). Solicitor Mayes testified Trial Counsel "understood the evidence" and "was addressing evidence as it should be addressed." (PCR Tr. pp. 27–28). Solicitor Mayes testified that Trial Counsel went "above and beyond" in his representation of Applicant. (PCR Tr. p. 27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds, based on a combination of the record and Solicitor Mayes's **credible** testimony, that Trial Counsel was not constitutionally deficient for failing to object to the properly given inferred malice charge. Solicitor Mayes **credibly** testified that Applicant's case was not a self-defense case, and the challenged charge was correct based on the controlling law at the time. At the time of Applicant's trial, Belcher was controlling law and held that "where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon,

juries shall not be charged that malice may be inferred from the use of a deadly weapon." Belcher, 385 S.C. at 612, 685 S.E.2d at 810. However, the "permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill)." Id. Therefore, the jury charge was proper because Applicant put up no evidence reducing, mitigating, excusing, or justifying a homicide. Notably, at the evidentiary hearing Applicant testified he meant to harm Victim, but did not intend to kill him, and he was in possession of the gun that he claims fired by "surprise." See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); see also U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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 6: Trial Counsel failed to object to phone records.

Applicant has alleged Trial Counsel is constitutionally ineffective for failing to object to the phone records.⁵ This Court finds this allegation to be without merit.

Trial

At trial, prior to opening statements, Solicitor Mayes brought to the trial court's attention a stipulation Trial Counsel and the State reached that considered the Sprint records of Applicant and Sisk to be records maintained in the ordinary course of business pursuant to Rule 803.6 of the South Carolina Rules of Evidence, which Trial Counsel confirmed. (Trial Tr. p. 134). Solicitor Mayes specified that Trial Counsel stipulated that the Sprint records were considered business records and did not stipulate that the Sprint records were admissible. (Trial Tr. p. 134). Upon the State moving to admit the Sprint Records (States Exhibit 94–97), Trial Counsel did not object.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not explain at all why he failed to object to the phone records during trial. (PCR Tr. p. 13).

On cross-examination, Applicant testified that there were implications that Victim was an informant, and no evidence existed that Applicant had sold drugs to Victim. (PCR Tr. p. 21). Applicant testified there were some unanswered texts and calls that did not mention drugs in the phone records, and he did not sell drugs to Victim, and without evidence, there would be no case. (PCR Tr. p. 21). Applicant testified that Victim's friend had bought drugs from Applicant, but not Victim. (PCR Tr. pp. 21–22). Applicant testified that Trial Counsel attacked the credibility of his phone records on cross-examination, but did not attack the credibility of the Victim's phone

⁵ See page 134 of the trial transcript.

records. (PCR Tr. p. 22). Applicant testified his carrier, Sprint, did not show the contents of text messages, but Victim's carrier, Verizon, showed the details of text messages. (PCR Tr. p. 22).⁶

On direct examination, Solicitor Mayes testified that she did not recall the phone records being significant in any way in terms of overwhelming evidence. (PCR Tr. p. 26). Solicitor Mayes testified that she thought the primary evidence in the trial was the DNA on the cigarette near Victim's body at the crime scene and the cell phone communication where Victim agreed to meet Applicant. (PCR Tr. p. 26). Solicitor Mayes testified that she did not recall specifically how the phone records were used in the case, whether it was location data or "something beyond that." (PCR Tr. pp. 26–27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. The Court finds, based on a combination of the record and Solicitor Mayes's **credible** testimony, that Trial Counsel was not constitutionally ineffective for failing to object to the phone records.

The record establishes that the phone records were properly admitted into evidence under the business phone records Hearsay exception, and as there was no basis to object to their admission, Trial Counsel stipulated to their admission. See Rule 803(6), SCRE; see also State v. Young, 432 S.C. 535, 854 S.E.2d 615 (Ct. App. 2021) (Alleged untrustworthiness of text messages on defendant's cell phone, because State could not identify who sent some of the messages, did not affect whether cell phone company's records of text messages were admissible under business records exception to hearsay rule.). Applicant failed to articulate a legal basis on which Trial

⁶ Applicant failed to provide expert testimony or any evidence to support this claim.

Counsel could have objected to the admission of the phone records, merely testifying that Trial Counsel failed to communicate why he did not object to the phone records and expressed his frustration that the credibility of the victim's phone records was not attacked. Therefore, as there was no meritorious basis to object to the admission of the phone records, Trial Counsel is not constitutionally ineffective for failing to object to them. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); see also U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Notably, Solicitor Mayes credibly testified that she did not recall Applicant's phone records being very significant in terms of overwhelming evidence, but that Applicant's DNA evidence on a cigarette butt near the victim's body and evidence that the victim agreed to meet with Applicant was the primary evidence.

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 8: Trial Counsel failed to object to the Solicitor's comments in closing.

Applicant alleges that Trial Counsel failed to object to the statements by the solicitor in closing regarding Applicant's statement. Specifically, stating that Applicant said he "fired 3 shots" but this did not include the statement by Applicant to police that he "fired off to the side." The Court finds this allegation is without merit.

"A solicitor may not rely on statements not in evidence during closing argument." State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). However, "[t]he solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses." State v. Raffaldt, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995). "[C]onsiderable latitude is generally allowed in the matter of drawing and arguing inferences and deductions from evidence." Johnson v. Life Ins. Co. of Ga., 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955). Provided however that a solicitor's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor calculated to arouse his passion or prejudice." State v. Linder, 276 S.C. 304, 278 S.E.2d 335, 339 (1981).

To prevail on a claim that trial counsel was ineffective for failing to object to a solicitor's purportedly improper comment during closing argument, the PCR applicant "bears the burden of demonstrating the improper comment deprived him of a fair trial." Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). "Improper comments do not require reversal if they are not prejudicial . . . and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). "A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Huggins, 325 S.C. at 107, 481 S.E.2d at 116.

Trial

At trial in her closing argument, Solicitor Mayes referenced Applicant's statement to law enforcement that he fired three shots, but she did not mention that Applicant also stated he fired those shots off to the side. (Trial Tr. p. 897). Trial Counsel did not object to Solicitor Mayes statements.

In his closing statement, Trial Counsel mentioned Applicant's statement to law enforcement about firing three shots off to the left. (Trial Tr. pp. 930–31).

PCR Evidentiary Hearing

On direct examination, Applicant testified Trial Counsel never explained to him why he failed to object to the statement Solicitor Mayes made in her closing. (PCR Tr. p. 13). Applicant testified he told police he fired three shots off to the left because he is night blind, and he did not intend to shoot anyone. (PCR Tr. p. 13). Applicant testified that Solicitor Mayes said that he shot the victim, but that is not what he told law enforcement. (PCR Tr. p. 13). Applicant testified he felt that Trial Counsel should have objected to Solicitor Mayes' statements in closing. (PCR Tr. p. 14).

On direct examination, Solicitor Mayes testified she would have addressed the credibility of Applicant's statement about firing three shots to the side in her closing. (PCR Tr. p. 30). Solicitor Mayes testified that they would have relied on Applicant's statement of what took place, but what was important to the State was that Applicant admitted to being at the scene and firing three shots. (PCR Tr. p. 30). After reading a portion of Trial Counsel's closing argument from the trial transcript, Solicitor Mayes testified that Trial Counsel rebutted what she said in her closing argument. (PCR Tr. p. 31). Solicitor Mayes testified she recalled Trial Counsel closing last because he did not put up any witnesses. (PCR Tr. p. 31).

Solicitor Mayes testified that counsel objects during closing arguments, if necessary, but in this case, the State and defense had different positions on the credibility of Applicant's statement to law enforcement. (PCR Tr. p. 32). Solicitor Mayes testified that the audio statement to the police had already been offered in the State's case-in-chief and would have gone to the jury room for further evaluation if the jury chose to. (PCR Tr. p. 32). Solicitor Mayes testified that from the State's perspective, Applicant is acknowledging he was at the crime scene and firing three shots at Victim. (PCR Tr. p. 32). Solicitor Mayes testified that it came down to how believable the Applicant's statement was about firing off three shots to the left. (PCR Tr. p. 32). Solicitor Mayes testified that other evidence was offered to show Applicant had fired all the shots, except the final shot. (PCR Tr. p. 32).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. Solicitor Mayes **credibly** testified that the audio statements were available to the jury to review, and the State and the defense addressed the credibility of Applicant's statements in closing based on their positions. Further, Solicitor Mayes **credibly** testified that other evidence was presented to the jury that Applicant had fired all the shots, except for the final shot. *See Raffaldt, supra* ("The solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses."). Notably, the record reflects that Trial Counsel rebutted Solicitor Mayes's statement in his closing argument. This Court finds any objection on this issue would not have been meritorious, and Trial Counsel cannot be deficient for failing to make a non-meritorious objection, nor can Applicant be prejudiced by this failure. *See U.S. ex rel. Link v. Lane*, 811 F.2d 1166,

1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for the objection).

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 9: Trial Counsel failed to object to testimony by Heather Owens regarding previous drug transactions between her and applicant. (p. 817)

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to Heather Owens (Owens) testimony that she knew Applicant because he had sold drugs to her. This Court finds this allegation is without merit.

Trial

On direct examination, Owens testified she would buy "Xanax and pain pills and things like that[]" from Applicant. (Trial Tr. p. 817). Trial Counsel did not object to Owens' testimony.

On cross-examination, Trial Counsel questioned Owens about her drug use and her addiction to drugs. (Trial Tr. pp. 828–29).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not object to Owens' testimony about purchasing illegal drugs from Applicant and did not explain to Applicant why he failed to do so. (PCR Tr. p. 14).

On cross-examination, Applicant testified he knew Owens because he was having an affair with her. (PCR Tr. p. 23). Applicant testified that the letter from Owens that she wrote while he was in jail would have contradicted her old testimony. (PCR Tr. pp. 23–24).

On direct examination, Solicitor Mayes testified she recalled Owens' testimony concerning her relationship with Applicant, but she did not recall the specifics of the testimony. (PCR Tr. p. 29). Solicitor Mayes testified that she knew Owens was Applicant's girlfriend and Applicant had been at Owens' house prior to committing the murder, which Owens would have addressed. (PCR Tr. p. 29). Solicitor Mayes testified she could not remember how it came out at trial that Owens received drugs from Applicant, but she did think Trial Counsel insinuated at trial that Owens had a drug problem. (PCR Tr. p. 29).

On cross-examination, Solicitor Mayes testified that it was known that Owens had received drugs from Applicant in the past, and that was likely the reason Applicant was at Owens's residence the night of the murder. (PCR Tr. pp. 34–35). Solicitor Mayes also testified that she had no memory of Trial Counsel raising any objection to Owens's testimony. (PCT Tr. p. 35).

On re-direct examination, Solicitor Mayes testified her understanding was that Trial Counsel used Owens's testimony about her drug transactions with Applicant to attack Owens's credibility based on the fact that she has a drug problem. (PCR Tr. pp. 35–36). Upon reviewing Trial Counsel's cross-examination of Owens (Trial Tr. p. 817), Solicitor Mayes testified that Trial

Counsel extensively cross-examined Owens about her drug use, and Trial Counsel had suggested that several other witnesses' drug use affected their credibility. (PCR Tr. p. 36).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Applicant's records indicate he was tried for several crimes, including possession with intent to distribute methamphetamine. At trial, the State had to show (1) that the substance involved was in fact methamphetamine; (2) that the defendant had possession of that methamphetamine, either actual or constructive possession; and (3) that the defendant possessed the methamphetamine with intent to distribute. See S.C. Code Ann. § 44-53-375(B). In prosecuting this charge, the State presented evidence that methamphetamine was seized at Applicant's residence during a search. (Trial Tr. p. 385). To show Applicant intended to distribute the seized methamphetamine, the State presented evidence that Applicant was a known drug dealer and sold drugs to various witnesses, including Owens (Trial Tr. pp. 117, 125, 385, 388, 392, 400, 499, 562, 570, 635–36, 820–21). This evidence was appropriately presented by the State to prove the element of intent. State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000) ("A defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense."); See State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) ("We have held that evidence of a prior drug transaction is relevant on the issue of intent when the defendant has been charged with possession of a controlled substance with intent to distribute."). Therefore, there was no objectionable basis to the challenged testimony, and therefore, Applicant cannot show Trial Counsel was deficient or any resulting prejudice. See U.S. ex rel. Link v. Lane,

811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for the objection). Notably, Solicitor Mayes credibly testified that Trial Counsel's strategy was to attack various witnesses' drug use in order to diminish their credibility.

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 10: Trial Counsel failed to object to the search, testimony, and introduction of exhibits from officer Heather Clary (p. 687–89) regarding a search of the Applicant's residence with a search warrant resulting in the introduction of Exhibits 73–83 (photographs of clothing and illegal drugs).

Applicant alleges Trial Counsel failed to object to the search, testimony, and introduction of exhibits from Officer Heather Clary (Officer Clary) regarding a search of Applicant's residence with a search warrant resulting in the introduction of Exhibits 73–83. This Court finds this allegation is without merit.

Trial

In pre-trial, Trial Counsel objected to the search of Applicant's residence based on the lack of sufficient probable cause contained within the four corners of the search warrant, and the

testimony did not provide additional information upon which the search warrant was executed. (Trial Tr. pp. 130–35). The trial court found the search warrant was properly issued based upon probable cause in the affidavit presented to Judge Morgan. (Trial Tr. p. 136)

On direct examination, Officer Clary testified that a search warrant was executed on Applicant's residence and vehicles, and several items were seized and photographed, including clothing (State's Ex. 69–72) and drugs (State's Ex. 73–83). (Trial Tr. pp. 686–92). Exhibits 73–83 were admitted subject to the Trial Counsel's pre-trial objection. (Trial Tr. pp. 689–93).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not explain to him why he failed to object to the search, testimony, and introduction of exhibits from Officer Clary. (PCR Tr. p. 15).

On direct examination, Solicitor Mayes testified that she did not recall any problems with the search of Applicant's residence where the evidence of the drugs and clothing was found. (PCR Tr. p. 29). Solicitor Mayes testified that Trial Counsel's objection to the search warrant for having no probable cause would have been addressed pre-trial. (PCR Tr. p. 30).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. First, Trial Counsel objected to the search warrant on Applicant's residence and vehicles for lack of probable cause; however, the trial court ruled the search warrant was properly executed. Officer Clary testified to her knowledge, involvement, and observations of the properly executed search. Additionally, Trial Counsel objected to the admission of the photographs of the drugs, subject to his pre-trial objection. Based

on this Court's review of the record, Trial Counsel unsuccessfully attempted to suppress the search, and there was no meritorious basis to object to all the exhibits that would have prevented their admission. See U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for the objection). Solicitor Mayes **credibly** testified that she could not recall any problems related to the search of Applicant's residence. Further, Applicant failed to provide a meritorious basis that Trial Counsel could have objected to the admission of the exhibit, other than his testimony that Trial Counsel did not advise him why he failed to object.

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**.

Allegations 11: Trial Counsel failed to cross-examine witnesses regarding the difference in descriptions collected by law enforcement regarding handguns.

Applicant alleges Trial Counsel failed to cross-examine witnesses regarding the difference in descriptions collected by law enforcement regarding handguns. This Court finds this allegation is without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not go into any detail or cross-examine any witnesses sufficiently to indicate that an accurate description of the handgun might not have been given. (PCR Tr. p. 15). Applicant testified he tried to tell Trial Counsel that two different descriptions of the handguns existed, but Trial Counsel said to him that it wasn't important. (PCR Tr. p. 15).

On cross-examination, Applicant testified he recalled that Trial Counsel argued and brought up multiple times in cross-examination and closing that there were two different handguns and that they were swapped out. (PCR Tr. p. 17). Applicant testified that what was said at trial was that Snoop "gave me one gun and that I gave a different gun too, or I gave a description of the guns was swapped out and they kept trying to reaffirm the point that Snoop gave me the gun and that I got rid of the murder weapon." (PCR Tr. pp. 17–18).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. It is clear, based on a review of the record, that evidence was presented that Applicant had been seen with multiple firearms—two .45 calibers and one .40 caliber—one of which matched the firearm used to kill the victim, and a witness testified Applicant possessed the night of the murder. (Trial Tr. pp. 495–503). On the cross-examination of "Snoop," Trial Counsel questioned Snoop concerning his drug use the night of the murder, the .45 caliber and .40 caliber firearms, his testimony that the guns were swapped, and the different characteristics of the firearms (Trial Tr. pp. 513–16). Additionally, it was elicited from the direct examination of Erica Waters that she had seen Applicant with pistols and a revolver

on several occasions (Trial Tr. p. 546). Therefore, this Court finds that Trial Counsel was not deficient in this matter, as he cross-examined witnesses, one being Snoop, about the different firearms, and evidence of the various firearms was presented to the jury.

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. Therefore, this allegation must be **DENIED** and **DISMISSED**.

Allegations 13: Trial Counsel advised Applicant not to testify.

Applicant alleges Trial Counsel advised Applicant not to testify. This Court finds this allegation is without merit.

Trial

At trial, Trial Counsel informed the trial court that Applicant told him he did not wish to testify. (Trial Tr. p. 873). Trial Counsel asked the trial court if it would like to question Applicant on his right to testify, and the trial court confirmed it would. (Trial Tr. p. 873). The trial court informed Applicant of his right to testify:

Now you understand this is your case, this is your trial, these are the allegations the State has made against you. The State has a burden of proving your guilt beyond a reasonable doubt and that's what they've presented is evidence for the jury to consider. You don't have to present any defense. It's been represented to me through your lawyer that you do not wish to present anything in your

defense, including your own testimony.

Now have you had enough time to discuss with [Trial Counsel] and anyone else of your choosing your opportunity to present a defense and to present testimony by you?

(Trial Tr. pp. 873–74).

Applicant informed the trial court he would like a few more minutes to decide, and the trial court gave Applicant until the following morning to do so and further informed him of his right to testify:

I'll probably ask you again in the morning the same question, but here's what I want to understand is this is your opportunity and you've got all night to think about it. You can present testimony if you'd like. It's your decision solely. [Trial Counsel] can give you advice, but it's still your decision that you need to make with a clear head and upon cool reflection about what you want to do.

[Applicant acknowledged his understanding].

Now if you don't testify, you understand I will instruct the jury, it will be one of the last things I say to the jury is that they will not be allowed to discuss your exercising your constitutional right to not testify.

[Applicant acknowledged his understanding].

And they will not be allowed to even discuss your making that decision and basically claiming that constitutional right. They would have to consider and confine their decision solely on the basis of the State's evidence presented, not on your not testifying. They can't hold that against you in any manner whatsoever and I will emphasize that at the very end of the instructions. Do you understand that?

[Applicant acknowledged his understanding].

(Trial Tr. p. 874–75).

Applicant told the trial court that he needed to ask Trial Counsel one more question, and the trial court gave Applicant and Trial Counsel time to discuss. (Trial Tr. p. 875).

The following morning, the trial court questioned Applicant about his decision not to testify. (Trial Tr. p. 886). The trial court asked Applicant if he had plenty of opportunity to speak to Trial Counsel about his right to testify and if he had enough time to discuss this right fully with Trial Counsel, which Applicant confirmed. (Trial Tr. pp. 886–87). The trial court asked Applicant if he was clearheaded and if he had gotten a good night's sleep, which Applicant confirmed. (Trial Tr. p. 887). The trial court asked Applicant if he was confident about his decision not to testify, which Applicant confirmed. (Trial Tr. p. 887). The trial court asked Applicant whether his decision to testify was his own, which Applicant confirmed. (Trial Tr. p. 887). The trial court asked Applicant if he was not going to testify, which Applicant confirmed he was not going to do. (Trial Tr. p. 887).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel asked him not to testify. (PCR Tr. p. 11). Applicant testified that he was not called to testify, so no one knew his state of mind. (PCR Tr. p. 11).

On direct examination, Solicitor Mayes testified that the State would not be able to call Applicant as a witness, and there is a lot of strategy in the decision of whether a defendant testifies or not. (PCR Tr. pp. 32–33). Solicitor Mayes testified that one consideration would be that if a defendant doesn't testify, then the defense gets the last argument. (PCR Tr. p. 33). Additionally, Solicitor Mayes testified that if Applicant had testified, he would have been subjected to cross-examination on his statement, as well as other evidence. (PCR Tr. p. 33).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all

significant decisions in [his] case." *Ard v. Catoe, supra*. This Court finds Applicant's testimony **not credible** concerning this issue. The record indicates that the trial court advised Applicant that he could discuss his right to testify with Trial Counsel, but that it was his decision alone whether he would testify or not, and Applicant took time to consider his decision. Additionally, the record indicates Applicant discussed his right to testify fully with Trial Counsel and advised the trial court that it was his decision alone not to testify. Therefore, Trial Counsel was not ineffective for advising Applicant not to testify, where he was given an opportunity to testify to his version of events, and Applicant voluntarily, knowingly, and intelligently waived his right to testify.

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. Therefore, this allegation must be **DENIED** and **DISMISSED**.

Allegation 14: Trial Counsel Failed to call an expert to testify concerning the differentiation of the firearms and contradict the expert's testimony about how the victim was shot.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to call an expert to differentiate between the firearms and contradict the State experts concerning the manner in which the victim was shot. (PCR Tr. p. 18). This Court finds this allegation to be without merit.

An applicant for post-conviction relief "*must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.*" Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis original). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. (quoting Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel presented no expert testimony on his behalf, and an expert would have been beneficial to differentiate the firearms and contradict the State's experts concerning how the victim was shot. (PCR Tr. p. 18). Applicant testified that the way the State's experts testified that Victim was shot was not what happened, and an expert would have been beneficial to show that he did not shoot the victim but missed. (PCR Tr. p. 18).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. To show prejudice from Trial Counsel's failure to call an expert, Applicant must produce the favorable testimony that would have been produced from said witness's testimony. See Bannister, Glover, *supra*. Applicant merely provided that an expert witness would have been helpful to contradict the State's experts, without more. Therefore, Applicant has failed to meet his burden in showing Trial Counsel was constitutionally ineffective. See 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."),

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. Therefore, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS THAT ARE PROCEDURALLY BARRED

Allegation 2: **The trial court committed reversible error under the well settled principles embedded within the Fourteenth Amendment of the United States Constitution, when the trial court gave an evidentiary presumption in its charge to the jury that had the effect of relieving the State of its burden of proof on the critical element of intent (malice) in a criminal prosecution, which contributed to the jury's verdict of guilt against Applicant.**

Applicant alleges that the trial court committed reversible error when it gave an evidentiary presumption in its charge to the jury that relieved the State of its burden of proof on the element of intent, which contributed to the jury's verdict of guilt against Applicant. This allegation is not properly before this Court, and therefore, is denied and dismissed.

An applicant may commence a post-conviction relief action on the following grounds:

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 [was] 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).

These facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR.").

Accordingly, this Court finds that the allegations of trial court error are not cognizable PCR claims upon which this Court can provide relief. Thus, this allegation must be **DENIED** as **IT IS PROCEDURALLY BARRED**.

CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief, except for Applicant's allegation of failure to object to the improper sentence imposed on Applicant's criminal conspiracy conviction. Therefore, this application is denied and dismissed with prejudice, but Allegation 3 is granted, and Applicant's criminal conspiracy sentence is vacated, and the conviction is remanded to the Court of General Sessions for re-sentencing based on judicial equity.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure 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 appellate counsel's assistance in seeking review of the denial of PCR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

[ORDER AND SIGNATURE ON FOLLOWING PAGE]

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.
3. Allegation 3 is granted, and Applicant's conspiracy sentence is vacated, and the conviction is remanded to the Court of General Sessions for re-sentencing.

AND IT IS SO ORDERED this 14th day of August, 2025.



DAVID P. CARAKER, JR.
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Lexington, South Carolina

WITNESSES

Lexington County Sheriffs Department

M. Rawl

Law Enforcement Case #: 15014711

LSM

ARREST WARRANT NUMBER

2015A3210201333

ACTION OF GRAND JURY*Samela B. King*
Foreperson of Grand JuryDate: *12-17-15*

VERDICT*Guilty**Ann J. Mc*
Foreperson of Petit JuryDate: *1-13-17*

DOCKET NO. 2015GS3202939**The State of South Carolina****County of Lexington**

COURT OF GENERAL SESSIONS**DECEMBER TERM 2015**

THE STATE**vs.****Charles Alton Morehouse**

CDR #: 0116

Indictment for**Murder****§ 16-03-0010**

DONALD V. MYERS, SOLICITOR

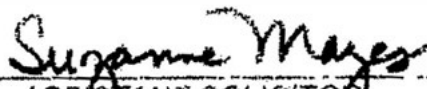
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder
§ 16-03-0010

At a Court of General Sessions, convened on DECEMBER 2015, the Grand Jurors of Lexington County present upon their oath:

That **Charles Alton Morehouse** did in Lexington County, on or about August 3, 2015, willfully and unlawfully kill one James David Porter III with malice aforethought, either express or implied, to wit: whether acting alone or in concert with another did shoot the victim with a firearm, resulting in his death, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

T Couch

Law Enforcement Case #: 15014711

LSM

ARREST WARRANT NUMBER

2015A3210201321

ACTION OF GRAND JURY**TRUE BILL**

Foreperson of Grand Jury

VERDICTGuilty of Possession of
Methamphetamine

Foreperson of Petit Jury

Date: 1-13-17

DOCKET NO. 2016GS3200642**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS**FEBRUARY TERM 2016****THE STATE**

vs.

Charles Alton Morehouse

CDR #3199**Indictment for**Possession with intent to distribute
methamphetamine - 2nd offense

§ 44-53-0375(B)2; 16-01-006

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Possession with intent to distribute
methamphetamine

§ 44-53-0375(B)2, 16-01-006

At a Court of General Sessions, convened on February 2016 the Grand Jurors of Lexington County present upon their oath:

That Charles Alton Morehouse did in Lexington County, South Carolina, on or about 8/4/2015, knowingly, willfully, intentionally, and unlawfully possess, whether actual or constructive possession, with the intent to distribute, dispense or deliver or otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver a quantity of methamphetamine greater than one gram, such being a controlled substance under the provisions of §44-53-110, et. Seq. and in violation of §44-53-375 (B)(3), Code of Laws of South Carolina, 1976, as Amended, and such being a second drug offense

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriff's Department
M. Rawl / M. Burke

Law Enforcement Case #: 15-014711

DOCKET NO. 2016GS3202151

The State of South Carolina
County of Lexington

LSM

ARREST WARRANT NUMBER

16-STR-00058

COURT OF GENERAL SESSIONS

OCTOBER TERM 2016

THE STATE
vs.

Charles Alton Morehouse

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *J. Scott White*
Date: *10-3-16*

VERDICT

Guilty

CDR #: 0049

Indictment for

Criminal Conspiracy

§ 16-17-0410

Donald V. Myers
Foreperson of Petit Jury
Date: *1-13-17*

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Criminal Conspiracy
 § 16-17-0410

At a Court of General Sessions, convened in October 2016, the Grand Jurors of Lexington County present upon their oath:

That **Charles Morehouse** did in Lexington County, South Carolina on or about July 5th, 2015 through August 4th, 2015, unlawfully and willfully, knowingly and feloniously unite, combine, conspire, confederate, agree, and have a tacit understanding with Wiley L. Sisk, and/or other individuals unknown or undisclosed, for the purpose of accomplishing criminal activity related to the possession and/or distribution of illegal narcotics and/or financial gain or monetary transactions related to the distribution of illegal narcotics and/or the criminal act of Murder, resulting in the death of James David Porter on August 3rd, 2015 in the area of Old Orangeburg Road in Lexington County, in violation of Section 16-17-410 of the South Carolina Code of Laws (1976) as amended:

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

Suzanne Mayes
 ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriff's Department
M. Rawl

Law Enforcement Case #: 15-014711

DOCKET NO. 2016GS3202152

The State of South Carolina

County of Lexington

LSM

ARREST WARRANT NUMBER

16-STR-00061

COURT OF GENERAL SESSIONS

OCTOBER TERM 2016

THE STATE

vs.

Charles Alton Morehouse

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *L. Scott White*
Date: *10-3-16*

VERDICT

Guilty

CDR #: 0549

Indictment for

Possession of a Weapon During
Commission of a Violent Crime

§ 16-23-0490

[Signature]
Foreperson of Petit Jury
Date: *1-13-17*

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Possession of a Weapon During
Commission of a Violent Crime
§ 16-23-0490

At a Court of General Sessions, convened in October 2016 the Grand Jurors of Lexington County present upon their oath:

That **Charles Morehouse** did in Lexington County, South Carolina on or about August 3rd, 2015, whether acting alone or in concert with another, knowingly and willfully and unlawfully, possess a firearm, or visibly display what appeared to be a firearm during the commission of a violent crime or attempt to commit a violent crime to wit murder of James David Porter, such weapon being a handgun, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
 STATE VS.
Charles Alton Morehouse

AKA:

Race: White Sex: [REDACTED] Age: 41DOB: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED]SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Murder / MurderINDICTMENT/CASE#: 2015GS3202939A/W#: 2015A3210201333Date of Offense: 8/3/2015S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or 1.ewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 16GS 32-152 + 151 + 642
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections. Sence 8-4-15

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,§Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.Presiding Judge [Signature]Judge Code: 2154Sentence Date: 1-13-17

(6-5yrs) a/b (\$2,500)
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
Charles Alton Morehouse

AKA:

Race: White Sex: M Age: 41

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: SC01299987

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Possession of less than one gram of meth. or cocaine base, 2nd offense

INDICTMENT/CASE#: 2016GS3200642

A/W#: 2015A3210201321

Date of Offense: 8/4/2015

S.C. Code § : 44-53-0375(B)2: 16-01-006

CDR Code #: 3777

SENTENCE SHEET

in violation of § 44-53-0375(A) of the S.C. Code of Laws, bearing CDR Code # 3017

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16 GS 32-2151+2152 15 GS 32-2939☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 8-4-15☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforc. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(I) (Vehicle Assessment) \$40/ca \$ _____

3% to County (if paid in installments) \$ _____

TOTAL

\$ 275.00Clerk of Court/Deputy Clerk Susan PorterCourt Reporter: A. Johnson

SCCA/217 (07/2016)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]Judge Code: 7154Sentence Date: 7-13-17

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
Charles Alton Morehouse

AKA:

Race: White Sex: M Age: 41DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy

In violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☐ NON-VIOLENT ☐ VIOLENT ☒ **SERIOUS** ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years, or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 16-65-32-1412-156552-2939
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
Department of Corrections. Since 8-4-15

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$125.00

Clerk of Court/Deputy Clerk Christa CarterCourt Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3202151A/W#: 16-STR-00058Date of Offense: 8/3/2015S.C. Code § : 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years, or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 16-65-32-1412-156552-2939
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
Department of Corrections. Since 8-4-15

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$125.00

Clerk of Court/Deputy Clerk Christa CarterCourt Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3202151A/W#: 16-STR-00058Date of Offense: 8/3/2015S.C. Code § : 16-17-0410CDR Code #: 0049

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ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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for a determinate term of 10 days/months/years, or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
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SPECIAL CONDITIONS:

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Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

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§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
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§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
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3% to County (if paid in installments)	\$	\$

TOTAL

\$125.00

Clerk of Court/Deputy Clerk Christa CarterCourt Reporter: [Signature]

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ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years, or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

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3% to County (if paid in installments)	\$	\$

TOTAL

\$125.00

Clerk of Court/Deputy Clerk Christa CarterCourt Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3202151A/W#: 16-STR-00058Date of Offense: 8/3/2015S.C. Code § : 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years, or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 16-65-32-1412-156552-2939
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
Department of Corrections. Since 8-4-15

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
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§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$125.00

Clerk of Court/Deputy Clerk Christa CarterCourt Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3202151A/W#: 16-STR-00058Date of Offense: 8/3/2015S.C. Code § : 16-17-0410CDR Code #: 0049

SENTENCE SHEET

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

Charles Alton Morehouse

AKA:

Race: White Sex: M Age: 41

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of 16-25-20-65
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2016GS32-2151 15GS32-2939-2012
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
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§ 50-21-14 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$125.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2016GS3202152

A/W#: 16-STR-00061

Date of Offense: 8/3/2015

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of 16-25-20-65
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2016GS32-2151 15GS32-2939-2012
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$125.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

☐ Appointed PD or appointed other counsel,
§Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date: