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**S.C. Supreme Court**

NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A  
POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-43-2797

The State,.....Respondent,

Randy Yonson,.....Appellant,

Notice of Appeal

Randy Yonson appeals the order of the Honorable R. Knox McMahon dated November 26<sup>th</sup>, 2013, which affirmed his conviction in Circuit Court. Appellant received written notice of the order on December 13, 2013.

*Debra Chapman*  
Debra Y. Chapman  
2007 Lincoln Street  
Columbia, South Carolina 29201  
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Attorney for Appellant

Other Counsel of Record:

Daniel Gourley  
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PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

R. Knox McMahon

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Case No. 2010-CP-43-2797

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Daniel Gourley, Assistant Attorney General  
The State,.....Respondent,

Randy Yonson,.....Appellant,

I certify that I have served the Notice of Appeal on Daniel Gourley, Assistant Attorney General by United States mail on December 17, 2013, at 1000 Assembly Street Columbia, South Carolina 29201.

I certify that I have served the Notice of Appeal on the Office of Appellate Defense by United States mail on December 17, 2013 at 1330 Lady Street Columbia, South Carolina 29201.

I certify that I have served the Notice of Appeal on the Clerk of Court of Common Pleas by United States mail on December 17, 2013 at 141 N. Main Street Sumter, South Carolina 29150.

*SI Debra Chapman*  
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STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2010CP4302797

RECORDED

2013 DEC 11 AM 10:16

South Carolina State of

Randy Yonson

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

FILED TRUE COPY  
CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2145  
Judge Code

12/11/2013  
Date

For Clerk of Court Office Use Only

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

Randy 312280 Yonson ,  
Bradley Myers Kirkland 2007 Lincoln St. Columbia, SC  
29201  
Debra Ruilova Chapman 2007 Lincoln St. Columbia, SC  
29201

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*James C. Campbell*

Court Reporter

James C. Campbell - Clerk of Court

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

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

See attached Order.

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STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

RECORDED  
2013 DEC -9 PM 12:29  
THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Randy Yonson, #312280,

Applicant,

v.

State of South Carolina,

Respondent.

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Case No. 2010-CP-43-2797

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

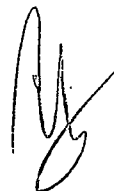
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief application filed on December 29, 2010. The Respondent made its Return on June 17, 2011. An evidentiary hearing into the matter was convened on October 4, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Bradley M. Kirkland. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the January 2007 term of the Sumter County Grand Jury for two counts of Unlawful Pistol, two counts of Possession of a Stolen Pistol, Possession of a Pistol by a person under the age of Twenty-One, Possession of a Pistol by a Person Convicted of a Crime of Violence, two counts of Assaulting a Law Enforcement Officer while Resisting, Resisting Arrest with a Deadly Weapon, and Possession of Cocaine (2006-GS-43-0179). T.D. Williams, Esquire, represented him. Applicant proceeded to a jury trial before



the Honorable Clifton Newman. Applicant was found guilty on all charges and on January 18, 2007, was sentenced to one year imprisonment for each count of Unlawful Pistol, two years imprisonment for Possession of a Pistol by a Person under Twenty-One, five years imprisonment for Possession of a Pistol by a Person Convicted of a Crime of Violence, twenty years imprisonment for the second count of Assault and Battery with Intent to Kill, ten years imprisonment for the first count of Assaulting a Law Enforcement Officer While Resisting Arrest, and five years imprisonment for Resisting Arrest with a Deadly Weapon, each of which to run concurrently to a twenty year sentence for the first charge of Assault and Battery with Intent to Kill. Additionally, those charges were to run consecutively to a five year sentence for Possession of a Firearm during the Commission of a Crime of Violence and a ten year sentence for the second charge of Assaulting a Law Enforcement Officer While Resisting Arrest, for a total sentence of thirty-five years imprisonment. The Applicant appealed to the South Carolina Court of Appeals, and the sentence was Affirmed in Part and Reversed in Part. Applicants conviction for Possession of a Pistol by a Person under Twenty-One was reversed. The Remittitur was issued on October 5, 2010.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of Counsel
  - a. Trial Counsel was ineffective when he made a motion in limine to suppress and exclude evidence of officers statement, but counsel failed to preserve such motion by making a contemporaneous objection when evidence was introduced.
  - b. Insufficient pre-trial preparation time with attorney; and
  - c. Counsel did not interview potential witnesses.

Through PCR Counsel, Bradley Kirkland, Applicant amended his application to include



the following grounds:

1. Applicant counsel, T.D. Williams, IV, failed to meet with the Applicant a sufficient number of times to prepare for trial and failed review the discovery materials with the Applicant or provide the Applicant with a copy of the discovery materials.
  - a. Originally, Melissa Biggers was appointed to represent the Applicant. She met with Mr. Yonson, introduced herself and informed him that she had filed a Rule 5/Brady motion on his behalf. Mr. Yonson never saw Ms. Biggers again.
  - b. On or about October 4, 2006, the case was reassigned to Mr. Williams. Mr. Williams met with Mr. Yonson on one occasion prior to trial to discuss the case. On December 20, 2006, Mr. Williams met with the Applicant from 10:24 a.m. until 12:25 p.m., MacDougall's Administration Building at SCDC. This was the only time Mr. Williams met with Mr. Yonson.
  - c. At that meeting Mr. Williams allowed Mr. Yonson to view the video tapes provided by the Solicitor's office. The videos, unfortunately, do not capture the events that led to Applicant's arrest.
  - d. Mr. Williams also reviewed a 35 page SLED report with Mr. Yonson. No other discovery was showed to Mr. Yonson. Mr. Williams refused to provide a copy of the discovery to Mr. Yonson and did not review any other materials with Mr. Yonson.
  - e. The next time that Mr. Yonson met with Mr. Williams was on January 9, 2007. Mr. Williams met with Mr. Yonson in a room in the Courthouse with several other inmate present. Mr. Williams explained to Mr. Yonson that he could plead to his offenses for a 25 year sentence. Mr. Yonson told Mr. Williams he believed he had a defense to the charges and did not accept the 25 year offer. Mr. Williams did not go over any discovery at this meeting as court was in session and Mr. Yonson was sitting with several other inmates. Mr. Williams did show Mr. Yonson a new indictment at this meeting.
  - f. After this meeting Mr. Yonson no longer believed that Mr. Williams was acting in his best interest and on January 10, 2007, Mr. Yonson filed 3 motions; alleging that Mr. Williams was ineffective, a request for a copy of his discovery materials and a request for a new attorney.
  - g. On January 16, 2007, a hearing was convened on the motions filed by Mr. Yonson. Mr. Yonson explained that he had only seen his attorney on two occasions and that he had not been provided a copy of the discovery. Mr. Williams admitted that he had not provided Mr. Yonson with a copy of the discovery. Mr. Williams maintained that he had met with Mr. Yonson for 2 days for "extended periods" and had "gone through his discovery with him in [depth]." Mr. Williams also agreed that he did not provide a copy of the discovery to Mr. Yonson as he was not a "copy shop" for his clients. (Motion Hearing Transcript p. 6).
  - h. The Court denied the motions by Mr. Yonson and the trial began later that same day.
  - i. The discovery materials in the possession of Mr. Williams were over 200 pages in length and there were approximately 4 hours of video tape. The only



- meeting Mr. Williams had with Mr. Yonson prior to bringing Mr. Yonson to the courthouse for a plea was a 2 hours and 1 minute meeting on one occasion. Mr. Yonson was denied a reasonable opportunity to assist in his own defense.
2. Counsel failed to object to the introduction of hearsay at the Jackson v. Denno hearing, failed to contemporaneously object to the introduction of Mr. Yonson's statement during trial and failed to discuss the hearing with Mr. Yonson prior to trial so that Mr. Yonson could assist in his defense.
    - a. During the Jackson v. Denno hearing the officer testified that a nurse told him that Mr. Yonson was not taking any medications that would interfere with his ability to understand questioning by the officers. Mr. Yonson was being administered morphine at the time and does not recall the meeting with officers. Mr. Williams should have objected to this hearsay being admitted for consideration at the hearing.
    - b. Mr. Williams failed to contemporaneously object to the introduction during the trial of the case. For this reason the Court of Appeals refused to review this issue on appeal as it was not properly preserved.
    - c. Mr. Williams failed to discuss the hearing with Mr. Yonson prior to trial. Consequently Mr. Yonson was unable to assist in his defense at the hearing. Mr. Yonson claims that he would have testified at the hearing and asked his family to testify as well if Mr. Williams had explained the nature of the hearing to him.
  3. Mr. Williams failed to properly present the defense of accident. Mr. Williams failed to effectively point out the differences between the written statements of Officers Abrams and Williams and their testimony. Furthermore, had Mr. Yonson had an opportunity to assist in his defense he could have reviewed the discovery materials, explained to Mr. Williams what had happened and helped him develop proper cross examination. It was critical to the defense to establish the testimony of these officers were not credible.
  4. Mr. Williams failed to effectively establish that Mr. Yonson's voice could not be heard on the video that was played for the jury in court.

#### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, T.D. Williams, IV, Esquire (Counsel). This Court also had before it a copy of Applicant's trial transcript, motion hearing transcript, the records of the Sumter County Clerk of Court, and records from the South Carolina Department of Corrections. Additionally, Applicant introduced the following exhibits: exhibit one- Arrest warrants; exhibit two- letter dated October 6, 2006; exhibit three- letter dated October 4, 2006; exhibit four- letter



dated December 8, 2006; exhibit five- email dated February 8, 2013; exhibit six-SLED Lab report; exhibit seven-indictments; exhibit eight- three letters dated January 10, 2007; exhibit nine- transcript from motion to relieve counsel; exhibit ten- Court of Appeals Unpublished opinion No. 2010-UP-408; exhibit eleven-statement Williams; exhibit twelve- statement Boland; exhibit thirteen- SLED supplemental report; exhibit fourteen- Letter dated February 22, 2007; exhibit fifteen- letter dated March 9, 2007; exhibit sixteen-SLED interview; exhibit eighteen-list of witnesses provided by Applicant.

During the evidentiary hearing, Applicant testified Melissa Biggers (Counsel Biggers) was his original court appointed counsel. Applicant testified Counsel Biggers met with him one time to inform him that she had filed a motion for discovery but Applicant never saw her again. Applicant testified approximately fourteen months later, he was contacted by T.D. Williams (Counsel) via letter informing him that he was now his court appointed counsel. (Exhibit Two). Applicant testified he saw Counsel on December 20, 2006 for approximately two hours. (Exhibit Four, Five). Applicant testified during this meeting Counsel reviewed a portion of the videos recorded from the dash cams of the police cars present at the scene. Applicant testified there were thirteen hours of feed, however he only reviewed a small portion of the videos. Applicant further testified that one could not see the actual incident take place on the videos. In addition to the video, Counsel also reviewed a thirty-five page SLED report with the Applicant but no other discovery was discussed or reviewed. (Exhibit Six). Applicant testified that he requested a copy of all discovery materials but Counsel refused to provide any of the materials to the Applicant.

Applicant testified he met with Counsel again on January 9, 2007. Applicant was transported to the Sumter County Courthouse and placed in a room behind the court room with other inmates. Applicant testified that Counsel refused to review discovery due to the amount of



people located within the room. Specifically, Applicant recalled there being at least six South Carolina Department of Corrections officers or inmates present. During this meeting Counsel relayed a plea offer made by the State in which Applicant would plead to his charges for a negotiated 25 year sentence. Applicant further testified Counsel provided Applicant with a new indictment listing eight additional charges. (Exhibit Seven). Applicant testified Counsel left a copy of the new indictment with him but, again, refused to provide any other materials to the Applicant. Applicant testified that he refused to accept the plea offer because he believed he had a defense to the charges and he wanted to review all the discovery materials to assist in his defense prior to discussing a plea offer. Applicant was returned to SCDC and he immediately filed several motions alleging that Counsel was ineffective and demanding a copy of the discovery materials. (Exhibit Eight).

Applicant testified that the next time he met with Counsel was on January 16, 2007. Counsel met with Applicant for a few minutes and then a hearing was convened on the motions that Applicant had filed. (Exhibit Nine). At the hearing Applicant stated that he felt Counsel was ineffective during the course of his representation. Specifically, Applicant felt Counsel did not meet with him an adequate number of times. Applicant testified Counsel would not provide him with a copy of discovery and as a result, Applicant did not feel he could personally help with his case. Applicant testified that he and Counsel never had any meaningful conversations. Applicant testified that he felt Counsel did not have Applicant's best interest at heart. Applicant testified that the motions were ultimately denied and jury selection began immediately after the hearing.

Applicant testified that his statement made to law enforcement officers was involuntary. Applicant testified he was taking heavy medication, including morphine. Applicant testified he



never discussed the procedures for a Jackson v. Denno hearing with Counsel. Applicant further testified, Counsel never informed him that he could testify or call witnesses during the Jackson v. Denno hearing. Applicant testified he learned what a Jackson v. Denno hearing was through discussions with various inmates. Applicant testified had he known what a Jackson v. Denno hearing was he would have testified and had his father testify on his behalf. Applicant testified that his Counsel failed to object to hearsay testimony during the hearing and the officers were allowed to testify as to what a nurse had told them about Applicant's state of mind. Applicant testified that his statement was ultimately ruled admissible by the trial judge. Applicant explained that Counsel called no witness and only cross examined the officers who testified for the State during the hearing. Applicant testified that during the trial, Counsel failed to make a contemporaneous objection to the admission of Applicant's statement to law enforcement and the Court of Appeals refused to consider the issue on appeal as it was not properly preserved. (Exhibit Ten).

Applicant testified the incident took place on September 11, 2005 at a night club. Applicant testified Officer Williams and Officer Boland received gunshot wounds. Applicant testified he was shot three times. Applicant testified he was shot in the left leg, buttock, and back. Applicant recalled EMS arriving and attending to Officer Boland and Officer Williams. Applicant testified he was eventually transported to an ambulance where he was driven a quarter mile down the road to an empty parking lot. Applicant testified he was then air lifted to the hospital. Applicant testified he woke up two days later at a hospital and could not remember anything after being loaded onto the helicopter. Applicant testified he was in the hospital for six days prior to being transported to prison.

Applicant testified that during the incident an officer approached him from behind as he



was reaching his hand in his pocket to retrieve his keys. Applicant testified he was not aware that the Officer was approaching him and was startled when he grabbed him. Applicant testified the Officer asked for his driver's license. Applicant testified the Officer told him to stop resisting arrest and threw him to the ground. Applicant testified his shoulder was dislocated. Applicant testified a second officer came over and got on top of him. Applicant testified that when the second officer got on top of him the gun in his back pocket discharged. Applicant testified he had two separate guns, a nine millimeter pistol in his back right pocket (loaded with .380 caliber bullets) and a twenty-five millimeter pistol in his front left pocket. Applicant testified that he knew he was not in lawful possession of those weapons. However, Applicant claimed that the gun accidentally discharged when the officers were removing it from his pocket.

Applicant testified that Counsel failed to properly cross examine Officer Boland and Officer Williams. Counsel failed to adequately show that the officers gave inconsistent statements regarding the number of shots actually fired. Specifically Applicant testified, Officer Williams testified to seeing one shot and possibly hearing a second shot. Whereas, Officer Boland testified to hearing a possible three shots. Their testimony at trial was inconsistent with their written statements. (Exhibits Eleven, Twelve). Of particular importance to Applicant was the fact that only one .380 shell casing was found at the scene which, according to Applicant, proved his gun had only fired one bullet. (Exhibit Six, page 28). Applicant testified, Counsel should have more thoroughly crossed examined the Officers on their statements and the physical evidence because "someone is lying." Applicant further testified Counsel should have cross examined Officer Williams on whether he actually was able to put his finger through the trigger guard to stop the Applicant from firing additional shots. Furthermore, Counsel should have explained to the jury that it was impossible to determine who is heard yelling on the video tape

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that was produced during trial. Applicant testified that if he had been given a chance to review the discovery he could have assisted Counsel in preparing his defense.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified that he was appointed in this case in October 2006. Counsel testified Counsel Biggers had previously filed for and received discovery in Applicant's case. Counsel testified on November 3<sup>rd</sup> he reviewed the relevant portions of the videos recorded by the police car dash cams. Counsel testified he met with Applicant on December 20, 2006 for approximately two hours. During that meeting he attempted to review the discovery materials with Applicant but Applicant was more interested in a civil suit that he had filed against the officers. Counsel testified that he did the best he could to focus Applicant on the materials. During that meeting Counsel also showed the relevant portions of the in car videos to Applicant. Counsel testified he met with Amanda Teal (Teal), Applicant's girlfriend and witness on December 21<sup>st</sup>. However, for some reason unknown to Counsel, Applicant had instructed Teal not to cooperate fully with Counsel. Counsel testified he went to the incident location with Teal and viewed the scene.

Counsel further testified he met with Applicant a second time on January 9<sup>th</sup> in the grand jury room in the back of the courthouse. During this meeting, Counsel testified he reviewed a new indictment and additional discovery material. Counsel testified there was no one else present in the room while he met with the Applicant and he met with the Applicant for an extended period of time. Counsel testified he was unable to provide a copy of discovery material to Applicant due to a lack of funds from the Public Defender's Office. Counsel testified the State offered a twenty year plead deal, however Applicant refused to accept the offer and continued to assert that the shooting was an accident. Counsel further testified he challenged portions of the indictment and was able to get several charges dismissed prior to the trial.



Counsel testified he did not call any witnesses for the Jackson v. Denno hearing because Applicant readily admitted to having the pistols on his person. Counsel stated the statement was consistent with Applicant's testimony during trial and there was no reason to attempt to keep the statement out of evidence. Counsel explained, Applicant consistently asserted that the shooting was an accident and the statement supported Applicant's assertion. Counsel further testified he thoroughly cross examined all witnesses including both Officers Williams and Boland. Counsel testified Officer Williams admitted that he could not place his finger in between the trigger and trigger guard, despite his written statement saying he did such an act. Counsel further testified he did cross examine both Officers on difference between their two statements. Counsel specifically focused on the inconsistencies of Officer William's and Boland's statements regarding the amount of shots fired.

Additionally, Counsel testified he explained the defense of accident to Applicant and informed him that one of the elements of the defense of accident required Applicant to possess the weapons lawfully. Counsel testified Applicant was on probation during this time and as part of his probation he was not allowed to possess any weapons. Additionally, Applicant was under twenty-one years of age and had a prior felony conviction.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).



In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

*Applicant counsel, T.D. Williams, IV, failed to meet with the Applicant a sufficient number of times to prepare for trial and failed review the discovery materials with the Applicant or provide the Applicant with a copy of the discovery materials.*



This Court finds Applicant's allegation that Counsel was ineffective for failing to meet with him a sufficient number of times and for failing to prepare for trial is without merit. Counsel testified he met with Applicant at least two occasions and reviewed all the discovery materials. Counsel testified that he reviewed the relevant portions of the videos recovered from the police car dash cams. Counsel further testified he met with Amanda Teal, despite her reluctance to cooperate, and visited the scene of the incident to get a better understanding of the factual situation. Counsel testified he was able to get several charges dismissed including counts three and four of the indictments. Counsel further testified he successfully argued a directed verdict motion for possession of cocaine. Counsel further testified Applicant was unwilling to focus on his criminal case and was instead focused on his civil suit against the Officers. Counsel testified he was unable to give Applicant a copy of the discovery motion due to a lack of funding from the Public Defender's Office. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Applicant can prove no prejudice when he presents no evidence at PCR hearing to show what Counsel could have further investigated in preparation for a trial. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant provided no testimony or evidence which would substantiate this allegation and he has failed to show what further investigation Counsel should have undertaken in preparation for a trial. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

*Counsel failed to object to the introduction of hearsay at the Jackson v. Denno hearing, failed to contemporaneously object to the introduction of Mr. Yonson statement during trial and failed to discuss the hearing with Mr. Yonson prior to trial so that Mr. Yonson could assist in his defense.*



This Court finds Applicant's allegation that Counsel was ineffective for failing to discuss the procedures of a Jackson v. Denno hearing, failing to object to the introduction of hearsay testimony during the Jackson v. Denno hearing, and failing to contemporaneously object to the introduction of Applicant's statement during trial is without merit. Counsel testified he knew Applicant's statement was consistent with the testimony Applicant was prepared to present at trial. Counsel testified Applicant consistently asserted that the shooting was an accident and Applicant's statement to police was consistent with that assertion. Counsel testified he saw no reason to object to the hearsay testimony or attempt to keep the statement out, because in his opinion the statement only furthered Applicant's defense that the shooting of the officers was an accident. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel articulated a valid strategic reason for failing to object to the hearsay testimony introduced during the Jackson v. Denno hearing.

Furthermore, Applicant cannot show any prejudice as a result of Counsel's alleged deficiency. Applicant testified during both trial and the PCR hearing that he was not in lawful possession of the weapons. Applicant explained that he was not allowed to possess weapons as part of his probation requirements. Applicant further testified he was possessed both pistols in his pockets while present at a night club. Applicant testified he was in the process of leaving the club when an officer grabbed him and asked him for his identification. Applicant testified as a result, an altercation occurred and both arresting officers were shot. Applicant readily admitted to arming himself prior to the altercation and could offer no excuse as to why he possessed the



two pistols. In South Carolina, the defense of accident requires showing the harm caused was unintentional, the *defendant was acting lawfully* at the time of the incident, and due care was exercised in handling the weapon. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (emphasis added). This Court finds Applicant cannot show any resulting prejudice as there is evidence of overwhelming guilt. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994).

*Counsel failed to properly present the defense of accident.*

This Court finds Applicant's allegation that Counsel was ineffective for failing to properly present the defense of accident is without merit. In South Carolina, the defense of accident requires showing the harm caused was unintentional, the *defendant was acting lawfully* at the time of the incident, and due care was exercised in handling the weapon. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (emphasis added). Counsel testified he thoroughly explained the elements of the defense of accident to Applicant. Applicant testified during both the trial and the PCR hearing that he was not in lawful possession of the weapons. Applicant explained that a requirement of his probation was that he not be in possession of any weapons. Furthermore, Applicant was under the age of 21 and had a prior felony conviction. Applicant further testified during the PCR hearing that he did not own the weapons and had no reason to have them. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Applicant argued that had he been able to further review the discovery material and assist in his defense it would have led to a more thorough cross examination of the testifying officers regarding their statements and recollection of the events the night of the shooting.



However, this Court finds Counsel thoroughly cross examined both testifying officers and was able to elicit certain inconsistencies between their statements. Further, Counsel was able to impeach the credibility of Officer James Williams, by having him admit that his statement contained factual impossibilities. (Tr. p. 149 line 23—p. 150 line 13). The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2<sup>nd</sup> Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7<sup>th</sup> Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

*Ineffective assistance of counsel for failing to establish that his voice could not be heard on the video.*

This Court finds Applicant's allegation that Counsel was ineffective for failing to establish that his voice could not be heard on the video is without merit. Applicant argues in support of his allegation that the videos do not actually depict the shooting. However, Counsel testified that he reviewed the relevant portions of the video with Applicant. Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C.



329, 496 S.E.2d 415 (1998). Applicant can prove no prejudice when he presents no evidence at PCR hearing to show what Counsel could have further investigated in preparation for a trial. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant cannot show actual prejudice as a result of any alleged deficiency of counsel because he did not provide any evidence in support of his allegation.

#### ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate



procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of Nov, 2013.



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R. KNOX MCMAHON  
Presiding Judge  
Third Judicial Circuit

Layman, South Carolina

DEBRA Y. CHAPMAN

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December 17, 2013

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

Re: The State of South Carolina v. Randy Yonson  
Case No. 2010-CP-43-2797

Dear Mr. Shearouse:

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

- (1) Proof of service of the notice of appeal on respondent; Office of Indigent Defense, and the Sumter County Court of Common Pleas.
- (2) A copy of the order which is to be challenged on appeal.

Sincerely,



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Columbia, SC 29201  
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Other Counsel of Record:  
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