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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Deadra L. Jefferson., Circuit Court Judge

2023-CP-23-1046

William S. Fordham-Brown, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

William S. Fordham-Brown appeals the Honorable Deadra L. Jefferson's Order of Dismissal filed July 30, 2026.

This 13th day of August, 2026

s/ Susannah Ross
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Attorney for Respondent

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

) CASE NO. 2023-CP-23-01046

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Deadra L. Jefferson

Susannah C. Ross, Esq.

Sydney N. Willingham, Esq.

April 20, 2026

Hollie M. Jenkins

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Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional

¹ At the evidentiary hearing Nakia Sims testified that her name is spelled Nakya Misha Sims.

violations or deprivations entitling him to relief. Accordingly, the Application is Denied and Dismissed with Prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections, Tyger River Correctional Institute, pursuant to orders of commitment from the Greenville County Clerk of Court. In a multi count indictment true billed September 25, 2018, the Greenville County Grand Jury indicted Applicant on Indictment No.: 2017-GS-23-06747 for Murder (Count 1), Burglary First-Degree (Count 2), Attempted Armed Robbery (Count 3), Possession of a Weapon During the Commission of a Violent Crime ("PWDCVC") (Count 4), and Conspiracy (Count 5).

On August 12-16, 2019, Applicant proceeded to a jury trial with the Honorable Robin B. Stilwell presiding. The State jointly tried Applicant with his co-defendant Curtis Babb on the Conspiracy Indictment. Sarah Henry, Esq. represented Mr. Babb and Applicant was represented by Scott D. Robinson, Esq.² Assistant Solicitors Katryna Owens, Esq. and Elizabeth Gary, Esq. prosecuted the case.

The jury convicted Applicant as indicted. Judge Stilwell sentenced Applicant to forty (40) years for Murder,³ forty (40) years for Burglary First-Degree,⁴ twenty (20) years for Attempted Armed Robbery,⁵ and five (5) years for Conspiracy,⁶ all to be served concurrently. Judge Stilwell gave Applicant credit for time served pursuant to S.C. Code Ann. § 24-13-40 to be calculated and

² Scott D. Robinson, Esq. was not present at the hearing. As of April 20, 2026, his membership in the South Carolina Bar is described as "Incapacity Inactive Status."

³ The offense of murder, a violent and most serious offense, is punishable by death, or by a mandatory minimum term of imprisonment for thirty (30) years to life. S.C. Code Ann. § 16-3-20.

⁴ The offense of first degree burglary, a violent and most serious offense, is punishable by imprisonment of fifteen years to life in prison. SC Code Ann. § 16-11-311.

⁵ The offense of attempted armed robbery, a violent and most serious offense, is punishable by imprisonment of no more than twenty (20) years. SC Code Ann. § 16-11-330

⁶ The offense of conspiracy must be fined not more than five thousand dollars or imprisoned not more than five (5) years. must be fined not more than five thousand dollars or imprisoned not more than five years. SC Code Ann. § 16-17-410.

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applied by SCDC. Applicant was sentenced to five (5) years for PWDCVC⁷ to be served consecutively. Judge Stilwell gave the Applicant credit for time served pursuant to S.C. Code Ann. § 24-13-40 to be calculated and applied by SCDC.

Direct Appeal

Applicant, through counsel, filed a notice of appeal. Appellate Defender Kathrine H. Hudgins of the South Carolina Commission of Indigent Defense perfected Applicant's appeal. On appeal, Applicant raised the following issue:

In this trial where a co-defendant pled guilty earlier but when called as a witness by the State at Appellant's trial asserted his Fifth Amendment right to remain silent, did the trial judge err in allowing the State to call the co-defendant's attorney as a witness and admitting a letter in evidence the attorney received from his client during the course of representation before the co-defendant pled guilty, when the attorney for the co-defendant asserted that the letter was privileged communication with his client?

The Court of Appeals affirmed Applicant's convictions in a *per curiam* unpublished opinion. State v. William Shane Fordham Brown, Op. No. 2022-UP-260 (S.C. Ct. App. filed June 8, 2022). The Remittitur was issued to the lower court on June 28, 2022.

SUMMARY OF FACTS GIVING RISE TO THE CONVICTION

The following facts are adopted from Respondent's Final Brief in Applicant's direct appeal action:

James Moss lived on "a dead-end street down there next to the railroad tracks" in Greenville. (R. p. 99, lines 3-8). Moss rented out space in the house to help with his own costs. (R. p. 99, lines 12-17). Sometime after 1:00 in the morning on December 8, 2016, Clinton Pearson was asleep on Moss' sofa when someone kicked in the door. (R. p. 100, line 2 – p. 101, line 5).

From his own bedroom, Moss awoke to the noise and heard an intruder say, "Mother----, you got my money?" (R. p. 101, lines 3-10). Moss did not know how many suspects there were in total, but he remembered hearing multiple voices. (R.

⁷ The offense of possession of a weapon during the commission of a violent crime is punishable by a mandatory term of imprisonment of five (5) years, in addition to the punishment provided for the principal crime. S.C. Code Ann. § 6-23-490(A).

p. 111, lines 24-25; R. p. 114, lines 5-8). Moss heard "two voices . . . outside" the house, and heard and saw one other person enter the house. (R. p. 102, lines 20-22; R. p. 108, lines 7-13; R. p. 114, lines 5-10). Moss peeked "around the corner" and was able to "barely" view the "first person come in shooting." (R. p. 102, lines 9-11; R. p. 106, lines 2-22). Moss described the intruder as "about five-foot something," wearing a hood, and holding "a little small gun" in his hand. (R. p. 103, lines 10-17; R. p. 114, lines 16-18). Moss hid in his closet in the back room. (R. p. 101, lines 13-15; R. p. 102, lines 9-13). Moss testified that "[a]fter a while, they kicked the door next to [him] and they shot in there about three times." (R. p. 102, lines 12-14).

Moss emerged from his hiding place when the "commotion" died down. (R. p. 102, lines 14-15). After Moss called the police, he drove up the road to Poinsett Highway and met with Greenville County Deputy Judson Belding. (R. p. 103, line 22 – p. 104, line 8; R. p. 118, lines 2-5). Speaking to Belding, Moss described the intruder he saw as a short, young, dark-skinned black male. (R. p. 107, lines 10-17; R. p. 112, lines 16-20; R. p. 126, lines 11-13). Moss told Belding "there was a friend of his roommate asleep on the couch when he went to bed. And that he was woken up by the front door being kicked in. He heard someone say, [']Where is my money?['] And then he heard gunshots." (R. p. 126, lines 4-8). Moss told Belding "he hid in his closet," and that "while looking back towards the doorway of his room, he observed a male . . . go into the room of his roommate. After this, when he felt it was safe to do so, he quickly went out the back, got into his vehicle and called 911 for help." (R. p. 126, lines 9-15).

Greenville County Deputy Joshua Shaw responded to the house and located the victim on the floor inside the front entryway. (R. p. 133, lines 1-7). He was nonresponsive and had been covered with "a black cloth" that appeared to match the curtain hanging in that room. (R. p. 133, lines 7-10). Forensic pathologist Dr. Michael Ward conducted an autopsy on the victim later that morning. (R. p. 179, lines 9-18). Dr. Ward noted three gunshot wounds to the chest, each fatal or potentially fatal on its own. (R. p. 178, line 24 – p. 179, line 1; R. p. 180, lines 8-23; R. p. 182, line 18 – p. 183, line 6; R. p. 184, lines 5-14). Dr. Ward also testified that each of the three gunshots traveled in an upward direction. (R. p. 186, lines 11-13). The victim was five-foot-eleven. (R. p. 186, lines 21-22).

Dustin Kretschmar, a forensic technician with Greenville Public Safety, responded to the house and began processing the property for evidence. (R. p. 148, lines 3-25). Kretschmar collected a total of three .40 caliber shell casings from the scene. (R. p. 157 lines 1-7). He documented damage to the doorknob area of the front door. (R. p. 158, lines 13-18). He documented gunshot holes in the front window and fragments of plexiglass on the interior of the windowsill. (R. p. 159, lines 12-16). The bullet holes appeared to have been fired from the outside in. (R. p. 159, lines 12-17). He also documented a small cut to one of the victim's fingers and a cell phone in one of his hands. (R. p. 159, lines 3-6). Kretschmar documented additional

damage to the doorknob and door frame of the rear bedroom door. (R. p. 160, lines 7-8).

Also during the early morning hours of December 8, 2016, Greenville City Police Officer Ryan Weeks responded to a reported gunshot victim at an apartment complex on Shemwood Lane in Greenville. (R. p. 189, lines 15-22). He arrived at Apartment 29-C at 5:14 that morning. (R. p. 190, line 22). Inside the apartment, Weeks located a male, Connell Wells, on the sofa with a bloody wrap around his knee. (R. p. 191, lines 1-9; R. p. 197, lines 11-15). Weeks also located a female, Kia Sims, mopping up the kitchen. (R. p. 191, lines 11-16). Weeks called EMS to the scene to tend to Wells' knee. (R. p. 197, lines 15-17). Weeks observed a large injury to Wells' right knee which appeared to be a gunshot wound. (R. p. 197, lines 17-20). Weeks witnessed shotgun pellets fall from the bloody bandaging as EMS removed it from the wound. (R. p. 198, lines 7-10). Weeks also witnessed a piece of plastic shotgun wadding fall from the bandage. (R. p. 198, lines 10-12). Weeks documented a red Crown Victoria parked in front of the apartment. (R. p. 202, lines 5-10). The car was registered to Connell Wells. (R. p. 202, lines 12-16). Weeks observed "a large amount of what appeared to be blood in the back seat of the vehicle." (R. p. 204, lines 16-17).⁸

Greenville County Investigator Christopher McCalmont contacted Wells at the hospital several hours later, after Wells came out of surgery and his anesthesia had worn off. (R. p. 239, line 12 – p. 240, line 7). McCalmont spoke with Wells on three occasions: December 8 in the hospital, December 9, and again on December 22. (R. p. 282, line 11 – p. 283, line 8). On December 9, 2016, McCalmont also executed a search warrant on Apartment 29-C, during which time McCalmont spoke to the female residents of the apartment, including Sims. (R. p. 284, lines 2-11; R. p. 286, line 15 – p. 287, line 11). McCalmont learned that Appellant William Shane Fordham Brown lived at Apartment 29-C. (R. p. 287, lines 12-22).

Fingerprints collected from the red Crown Victoria parked outside of Apartment 29-C matched Connell Wells and Appellant Brown. (R. p. 289, lines 5-19). Greenville County Sergeant Dar Shaw processed the Crown Victoria for evidence on December 8. (R. p. 334, lines 15-17). Inside the car, Shaw located "a stocking mask," "a boot," and what "looked like blood in different areas of the vehicle, on the outside as well as on the inside." (R. p. 336, lines 1-4). Shaw better described the mask as "a brown stocking mask with eyeholes" which he located and collected from the rear passenger floorboard. (R. p. 340, lines 15-16). Shaw collected "a black hooded sweatshirt" from the rear passenger floorboard as well. (R. p. 338, line 25 – p. 339, line 1). Shaw collected "a black hoodie with a red bandanna in the pocket," a cell phone, and "a black gym bag" from the front passenger seat. (R. p. 340, lines 16-18; R. p. 343, lines 19-24). From the trunk, Shaw collected "a red bandanna with two pair of gloves wrapped inside." (R. p. 346, lines 3-11).

⁸ Prior to this trial, Wells pled guilty to Murder. When called to testify at trial, Wells invoked the Fifth Amendment. He did testify that his nickname was "Lukeman" at the time of his arrest, not "Butta" as counsel suggested. (R. 224-27).

As a result of his investigation, McCalmont developed Appellant Brown, Connell Wells, and Curtis Babb, Jr. as suspects in the shooting that took place at the home of James Moss. (R. p. 290, lines 17-23). Law enforcement located Appellant Brown in Baltimore, Maryland, and apprehended him there on January 17, 2017. (R. p. 310, line 20 – p. 311 line 2).

Damean Wideman testified at Appellant Brown's trial. Wideman testified he lived at the apartment complex on Shemwood Lane and knew Brown "[f]rom the neighborhood." (R. p. 355, lines 10-25; R. p. 358, lines 17-22). Wideman called Brown "Little nephew," but he also knew him as "Deuce." (R. p. 358, lines 23-25; R. p. 359, lines 7-10). They are not related by blood. (R. p. 359, lines 17-21). Wideman identified Brown in the courtroom. (R. p. 361, lines 2-14). At an earlier date, Wideman told officers that he had known Deuce and his family for about two years. (State's Ex. 39 at 35:10 to 35:28). Wideman identified a photograph of Deuce for officers at that time. (R. p. 412, line 16 – p. 413, line 7; State's Ex. 39 at 37:50 to 38:06 and at 39:57 to 40:40).

At trial, Wideman testified because he had been arrested at a traffic stop a few days after the shooting. (R. p. 400, lines 15-18). He told his arresting officer "that he was afraid of a gentleman, Mr. Babb, that lived in Shemwood[.] He said he had heard on the street that Mr. Babb was involved in" the shooting at Moss' house. (R. p. 400, lines 20-25). Wideman went on to speak to a handful of officers that day. (R. p. 363, lines 7-24; State's Ex. 39). He told them he had been "threatened by several people in the neighborhood" including Babb. (R. p. 364, lines 15-24). Wideman told officers that Babb made the threat to "kill" Wideman because Babb learned Wideman "was spreading rumors on him." (R. p. 368, lines 1-8; R. p. 404, lines 13-19). Wideman provided an audio-recorded statement. (State's Ex. 39). In the statement, he repeatedly stated he was concerned about the threats he was receiving from Babb, whom Wideman at one point referred to as "one of your guys in one of your homicides." (State's Ex. 39 at 4:00 to 5:15).

Wideman spent several minutes in his statement revealing that "the night of the crime" Babb told him that he had "a lick" and asked Wideman for gloves to carry it out. When Wideman inquired further, Babb reportedly said, "Deuce got a lick set up for [them]." Wideman stated that Babb, Deuce, and "the guy that's in the hospital"⁹ met up at the Shemwood Apartments to get "suited up" in black clothing and gloves. (State's Ex. 39 at 9:50 to 13:00). Wideman said the three men intended to rob someone of "supposedly a half a brick of cocaine in the house." (State's Ex. 29 at 13:00 to 13:05). Wideman reported that when the three men got to the house they planned to kick in the door and tell the people inside "don't move just like a regular robbery," but "when they got there, Deuce shot through the window," then Babb "went in and kicked the door open and they guy was laying there dead and they pulled him off the couch." (State's Ex. 39 at 13:05 to 18:15; *id.* at 25:00 to 25:35).

⁹ Wideman presumably referred to Connell Wells, who had by that time undergone surgery for the shotgun wound to his knee.

Wideman said that people saw the three men return to the apartments with the black gym bag and then saw the incident reported on the news. Wideman stated that the three men talked about what happened “all day” after that, and that “everybody knew what they were fixin’ to do” anyway. (State’s Ex. 39 at 18:15 to 20:00). Wideman denied most of the details from his prior statement when he testified at trial, instead maintaining the information consisted of “rumors.” (R. p. 383, lines 22-25; see R. p. 368, line 1 – p. 369, line 10).

The parties stipulated at trial that Appellant Brown was known as “Deuce” and the court instructed the jury that “Deuce” was Brown’s nickname. (R. p. 528, lines 10-22). Lieutenant Robert Pendergrass with the Greenville County Detention Center testified that a keyword search in the jailhouse email system for Appellant Brown’s records containing the keyword “Deuce” returned forty-seven pages of results. (R. p. 524, lines 1-16). These results included an email Appellant Brown sent to one Andre Wagner on February 28, 2019. (R. p. 522, line 16 – p. 523, line 17). In that email, Appellant Brown instructed Wagner to quickly get in touch with Damean Wideman and tell him “not to show up at trial and to shut the f--- up.” (R. p. 841). The email specifically refers to “Butta” as the person scheduled for trial. (R. p. 841). Earlier at Appellant Brown’s trial, Wideman testified that he knew Connell Wells as “Butta.” (R. p. 361, lines 15-22).

State’s expert Jack Jamieson, SLED’s document examiner, testified that Appellant Brown prepared State’s Exhibit 23, a handwritten letter which states in part:

. . . but they know you were talkin about me bcuz you pointed me out in a lineup. But you need 2 rerace[sic] my name . . . anyways you need 2 replace my name with someone else. 4 example, you remember that N--- “D” with the light blue maxima, Kandice’s sister’s baby daddy? Well that N---- all up in our case [redaction] basically bragging saying he caught a body, SMH, I got something 4 his b---- a--. But “D” real name is “Damean Wideman.” Since he wanna snitch put his b---- a-- in it instead of me. Or remember that N---- you was beefing with that sold you that “hot” revolver? We don’t have 2 say his name but why not say his name? Why tell on your right hand man? . . . The evidence says u don’t have any blood @ the crime scene!! SMH, u told 4 nothing. U need to talk to your lawyer, the investigators, & the Solicitor & tell them I ain’t have nothing 2 do with it. If they ask u y u put my name in it just say bcus I called 911 (Ambulance) instead of driving you out of town to a far away hospital bcus I thought u would die B4 we made it. Just be like you were mad @ me 4 calling the police. I got my whole motion so I know every loophole in our case. I even know how 2 make sure u don’t get charged with murder and get off. . . . Either

way I'm gettin off eventually because the only evidence against me are your statements. That's it. It's up 2 you now N----. Wat u gonna do??? Not 2 Late 2 fix this s--- b4 it gets real ugly & u know wat I mean bra. I mean wat would you do if I snitched on you? Ion[sic] want my people 2 take it there though but you leaving me no choice bra. Hit me Back ASAP!!! . . .

(R. p. 580, line 17 – p. 581, line 8; R. pp. 836-37).¹⁰

Chris Shipman, an attorney who previously represented Connell Wells, testified that Wells gave him this letter during the course of his legal representation. Shipman passed a copy along to the State at that time. (R. p. 537, line 17 – p. 539, line 12).

Appellant Brown presented Nakia Sims at trial. (R. p. 660, lines 3-13). Sims lived with Appellant Brown at Apartment 29-C in December 2016. (R. p. 660, line 22 – p. 709, line 24). Sims testified that she saw Brown asleep in his bedroom around midnight on the night of the incident. (R. p. 664, lines 1-15). Sometime after that, Sims awoke to a banging at the door downstairs. (R. p. 665, line 20 – p. 666, line 9). When she left her bedroom to investigate she testified she ran into Appellant Brown at the staircase. (R. p. 666, lines 10-25). Sims went on to testify about the arrival of Wells with his bloody knee and Appellant Brown's calling an ambulance. (R. p. 668, line 1 – p. 669, line 25). Sims testified that, to her knowledge, Appellant Brown was at their apartment the entire time, but she did not recall what time Wells arrived. (R. p. 671, lines 11-23). She never saw Appellant Brown leave or run down the hill away from their apartment. (R. p. 675, lines 12-19).

In reply, the State called Investigator McCalmont back to the stand. (R. p. 680, lines 3-6). McCalmont testified that when he executed the search warrant on Apartment 29-C the next day, Sims agreed to speak with him and told him that "Deuce and Connell show[ed] up at her apartment together" the night that Wells sustained the knee injury. (R. p. 682, lines 21-24).

CURRENT ALLEGATIONS & RELIEF SOUGHT

Applicant filed this pro se action on March 2, 2023, raising the following claims of error:

1. "No eyewitness or physical evidence in trial linking to crime scene."
 - a. "Eyewitness testified on record that suspect was *5 feet tall and dark skinned.*"
2. "My only accuser (Wells) wrote statement to Solicitor admitting to lying."
 - a. "Wells statement to Solicitor is on file and record."
3. "Email correspondence between Wells and woman admitting falsifying statement."

¹⁰ The letter concludes with the phrase "*Lawyer name John Abdalla*" (R. 837). The parties stipulated and the jury was instructed "that at one time during the pendency of this case, Ms. Brown was represented by Attorney John Abdalla." (R. 607:6-10).

Applicant requests the following relief: "Conviction relief and pardon based on innocence and new evidence backing my claim of innocence." (PCR App. at 6).

On January 23, 2026, Applicant, through PCR counsel, amended his application to include the following allegations:

- I. Ineffective assistance of trial counsel for:
 1. Failure to preserve the argument that the trial court erred in admitting the multiple versions of a letter allegedly written by the Applicant into evidence; pp. 356, 606, 631, l. 4, 654
 2. Failing to properly object to testimony regarding a shotgun which allegedly belonged to co-defendant Babb; p. 344-5
 3. Failure to join in objection to testimony of Damean Wideman testimony, playing of tape of Wideman interview, and jail calls where it is implied that co-defendant Babb is threatening Wideman; p. 400, 473, 486
 4. Calling Nakia Sims as an alibi witness when her testimony was impeachable by prior inconsistent statement; p. 730
 5. Failing to reveal to Mr. Fordham-Brown that he was suffering from MS, a disease that can affect brain function and memory.
 6. Failing to object to SLED agent as handwriting expert and State's closing argument "We know it is his handwriting." pp. 629, 793, l. 14.
- II. Due process violation when Applicant was denied a fair trial when he was tried with a co-defendant.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹¹ (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;

¹¹ S.C. Code Ann. §§ 17-27-10 to -160.

- 5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- 6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (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. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that

"[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Further, 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 that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the

burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691. To meet this burden, counsel’s deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” Richter, 562 U.S. at 112.

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

issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety.

This Court has had the opportunity to review the records before it, including the Greenville County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from this PCR action. 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. After a careful review, 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), SCRPC (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 fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Allegation 1: Trial Counsel's Failure to Preserve the Argument that the Trial Court Erred in Admitting the Multiple Versions of a Letter Allegedly Written by the Applicant into Evidence

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to preserve the argument that the trial court erred in admitting the multiple versions of a letter allegedly written by the Applicant into evidence; pp. 356, 606, 631, l. 4, 654. This Court finds this allegation is without merit.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Rivers, 411 S.C. 551, 553, 769 S.E.2d 263, 265 (Ct. App. 2015). In order to preserve issues at trial for appellate review, the issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." Id. at 142, 587 S.E.2d

at 694.

To show prejudice where counsel fails to preserve an issue, applicant must show the trial court would have sustained an objection, and the unpreserved issue would have been successful on appeal. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018). A PCR court must view the trial court's ruling on an issue through the same lens applied on appeal, giving appropriate deference to the trial court's findings. Id. at 380, 811 S.E.2d at 804.

PCR Evidentiary Hearing

Applicant admitted on direct examination he wrote the letter at issue. Solicitor Owens testified on direct examination there were three (3) letters, one (1) typed letter and two (2) handwritten letters (the redacted copy and the original). Solicitor Owens testified that only *one* (1) letter was sent back to the jury, the redacted copy of the handwritten letter. The initial typed letter; was not admitted. The second letter was a copy of the handwritten letter and given by Connell Wells' (co-defendant) lawyer, Chris Shipman, to the Solicitor during plea negotiations. This letter was admitted as redacted to the extent that it contained admissions by Applicant about Applicant. Solicitor Owens testified when she called Attorney Shipman to the stand, she had asked him to bring the *original* of the handwritten letter. Solicitor Owens testified they found on the back of the original letter Applicant's prison cantina information. The original letter was admitted only for purposes of authentication to show the letter came from Applicant to Connell Wells. Solicitor Owens testified the jury did not see the unredacted original version, the copy was redacted for their review. Solicitor Owens testified it was her position that there was no basis to object to the letter(s) by Trial Counsel because they were not hearsay to the extent that they could be authenticated.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel

rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” Ard v. Catoe, *supra*. This Court considers the totality of the record and finds Applicant has failed to show prejudice where Trial Counsel failed to preserve an issue for appellate review. Solicitor Owens credibly testified that the redacted letter was admitted as an admission by Applicant, and the original letter was admitted for authentication purposes. Moreover, assuming *arguendo* that Trial Counsel had a basis to object and had objected to the letters; there is not a reasonable probability the outcome of trial would have been different. This Court finds the letters at issue were admissible and Applicant has failed in his burden to show the trial court would have sustained an objection, and the unpreserved issue would have been successful on appeal.

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 adequately effective assistance of counsel under prevailing professional norms. Further, 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 allegation is Denied and Dismissed.

Allegation 2: Trial Counsel's Failure to Properly Object to Testimony Regarding a Shotgun Which Allegedly Belonged to Co-Defendant Babb

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to testimony regarding a shotgun which allegedly belonged to co-defendant Babb. (PCR Tr. 78). This Court finds this allegation is without merit.

When analyzing counsel's performance, the reviewing court will “strong[ly] presum[e]” that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than

sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) (“Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.”) (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed “to promote judicial second-guessing on questions of strategy as basic as the handling of a witness”).

Trial

THE COURT: You don't think it's a directed verdict motion because you wouldn't have made it at this point if you thought it was a directed verdict motion. That's the way the State – that's the way the Court interprets it. Just know, again, the effect of telling the State they can't put evidence in the record to prove their case is, in effect, not allowing them to try their case. I don't know where the shotgun evidence is going to lead. But, clearly, it's relevant. Clearly, it's relevant. Okay. All right. So.

MR. ROBINSON: Judge.

THE COURT: Yes, sir.

MR. ROBINSON: Okay, I think my objection is going to go to hearsay in this case. Because I think the questions they're asking this officer, it's definitely offered for the truth of the matter asserted. They're, basically, saying well, from what you've gathered from this witness, statements and things like that, what did you get? That is hearsay. It's offered for the truth of the matter asserted. I don't think that – that's my objection to him testifying like that.

THE COURT: I understand. I want you to remain sensitive to that and continue to pose contemporaneous objections to testimony that is offered. Up to now, heretofore, his testimony has, essentially, been I went here because of this. He hasn't offered any statements or any substantive portion or synopsis of the statements that Mr. Wells may have given. If he does, clearly, that's inappropriate. But right now, he's just saying I went here, I saw this. I think that's clearly permissible under the rules and I don't think that's hearsay.

...
(Trial Tr. 344-45)

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Findings

This Court finds that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance of counsel and exercised reasonable professional judgment in making all significant decisions in [his] case.” Ard v. Catoe, *supra*. This Court finds there was no legal basis for an objection to the admission of the testimony regarding the shotgun that belonged to Applicant’s co-defendant, Curtis Babb. The record reflects the State’s theory was accomplice liability and the Court instructed the jury on accomplice liability: the hand of one is the hand of all. (Trial Tr. 849-50). Since Applicant was tried as a co-defendant under hand of one/conspiracy, the testimony regarding the shotgun was proper and admissible regardless of which co-defendant the gun belonged to. Further, Applicant did not prove that had this testimony been successfully objected to, that there is a reasonable probability the outcome of his trial would have been different.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Further, 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 allegation is Denied and Dismissed.

Allegation 3: Trial Counsel’s Failure to Join in Objection to Testimony of Damean Wideman Testimony, Playing Tape of Wideman Interview, and Jail Calls Where it is Implied that Co-Defendant Babb is Threatening Wideman

Applicant alleges Trial Counsel’s representation was constitutionally ineffective for failing to join in the objection to testimony of Damean Wideman, playing tape of Wideman interview, and jail calls where it is implied that co-defendant Babb is threatening Wideman; p. 400, 473, 486. This Court finds this allegation is without merit.

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

PCR Evidentiary Hearing

Solicitor Owens testified on direct examination Damean Wideman had denied making prior statements to law enforcement, therefore, the State was permitted to admit his prior statements at trial pursuant to Rule 613, SCRE.¹²

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance of counsel and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds there was no legal basis for an objection to the admission of the Damean Wideman testimony, playing the tape of Damean Wideman's interview, or the jail calls where it is implied that co-defendant Babb is threatening Wideman. Further, this Court finds Trial counsel engaged in thorough cross-

¹² Pursuant to Rule 613, SCRE, A witness may be questioned about a prior statement without first showing or disclosing it to the witness, though it must be disclosed to opposing counsel upon request. Extrinsic evidence of a prior inconsistent statement is admissible only if the witness is informed of the statement's substance, time, place, and recipient and given an opportunity to explain or deny it. If the witness admits making the statement, extrinsic evidence is inadmissible; if denied, extrinsic evidence may be admitted. This rule does not apply to admissions of a party-opponent. Rule 613(a)-(b), SCRE.

examination of Damean Wideman at trial regarding his statements to law enforcement. (Trial Tr. 435-37). This Court finds Counsel was not deficient in this regard. Further, this testimony was objected to by Applicant's co-defendant's counsel, and the objection was overruled. Therefore, Applicant cannot prove prejudice from Counsel's failure to join in on the objection that had no merit.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Further, 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 allegation is Denied and Dismissed.

Allegation 4: Trial Counsel Calling Nakia Sims as Alibi Witness When her Testimony was Impeachable by Prior Inconsistent Statement

Applicant alleges Trial Counsel's representation was constitutionally ineffective for calling Nakia Sims as an alibi witness when her testimony was impeachable by prior inconsistent statement; p. 730. This Court finds this allegation is without merit.

“No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” Strickland 466 U.S. at 688-89. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” Id. at 691. Therefore, “[j]udicial scrutiny of counsel’s performance must be highly deferential.” Id. at 689. Strickland therefore established the rule that in proving a claim of ineffectiveness, “the defendant must overcome the presumption that, under the

circumstances, the challenged action ‘might be considered sound trial strategy.’” Id.

Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). “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 circuit court is in the best position to assess witness credibility and make the necessary findings of fact.” State v. McCarty, 437 S.C. 355, 878 S.E.2d 902 (2022); see generally State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019) (“The circuit court is the fact-finder in immunity hearings, and we are reluctant to infer findings of fact which do not appear in the record.”).

PCR Evidentiary Hearing

Applicant presented the testimony of Nakia Sims¹³ at the evidentiary hearing. Nakia Sims testified that she never gave an inconsistent statement. Nakia Sims testified she never said she saw Applicant and Connell Wells come into the home together. She further testified she did not know Connell Wells.

Solicitor Owens testified on cross examination that Investigator (McCalmont) memorialized in a supplemental report Nakia Sims prior inconsistent statement.

Findings

This Court finds that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” Ard v. Catoe, *supra*. This Court additionally finds that Applicant

¹³ At the evidentiary hearing Nakia Sims testified that her name is spelled Nakya Misha Sims.

has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. This Court finds that the record is clear that Trial Counsel made a commendable attempt to raise an alibi defense on Applicant's behalf by calling Nakia Sims as a witness. Further, the record supports a finding that Trial Counsel presented evidence and made appropriate arguments based on trial strategy. Thus, Applicant failed in his burden of proving deficiency or prejudice. See Glover, supra.

At the PCR hearing, Sims testified that she did not give an inconsistent statement – which directly contradicts this allegation. This Court further finds Nakia Sims' testimony to be, at best, cumulative to the testimony presented at trial. Sims did not provide any substantive alibi testimony, and whether she was or was not called to testify at trial, would not have had a reasonable probability of changing the outcome of trial. This Court does not find that Nakia Sim's testimony would have changed the outcome of Applicant's proceedings, and therefore Applicant has failed to prove prejudice.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Further, 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 allegation is Denied and Dismissed.

Allegation 5: Trial Counsel's Failure to Reveal to Applicant that he was Suffering from MS, a Disease that can Affect Brain Function and Memory

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to reveal to Applicant that he was suffering from MS, a disease that can affect brain function and

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memory. This Court finds this allegation is without merit.

PCR Evidentiary Hearing

Solicitor Owens testified she was aware of Trial Counsel's health condition at the time of trial. Solicitor Owens further testified she did not have any reason to believe that he was not engaged or that he was incompetent.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds Solicitor Owens' testimony on the topic credible. Solicitor Owens testified that she was aware of Trial Counsel's health condition, however, she did not have any concerns based on her observations and interactions with him before and during trial. Applicant did not provide any evidence to this Court of how Counsel's condition affected his ability to try the case. Additionally, there is nothing in the record to support that Trial Counsel's condition affected his ability to try the case. Trial Counsel objected, argued, and zealously advocated when necessary for his client. Applicant has failed to provide any corroborating proof that Trial Counsel's health condition affected his ability to provide representation within the reasonable range of competence.

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 adequately effective assistance of counsel under prevailing professional norms. Further, 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 allegation is Denied and Dismissed.

Allegation 6: Trial Counsel's Failure to Object to SLED Agent as Handwriting Expert and State's Closing Argument "We Know it Is His Handwriting."

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to SLED agent as handwriting expert and State's closing argument "We know it is his handwriting." This Court finds this allegation is without merit.

When analyzing counsel's performance, the reviewing court will "strong[ly] presum[e]" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness"). "A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its contest should stay within the record and reasonable inferences to it." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998) (finding the solicitor's misstatement of the law concerning parole considerations that were not cured by the judge's instructions were improper); See Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 698, 610 (2004) ("A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.") "On appeal, the appellate court will review the alleged impropriety of the solicitor's argument in the context of the entire record." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624-625 (1996).

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[Signature]

Trial

In closing, the Solicitor presented the following:

It's also important in evaluating whether the State has met its burden with respect to Mr. Brown that you look at this letter. You've heard a lot of testimony about this letter. This is the handwritten letter about which Mr. Jack Jamieson from SLED testified. He told you he was able to compare the handwriting not only from some other documents, but from this waiver of rights that Mr. Brown signed. We know he signed it because he's on video signing it. We know this is his handwriting. And Mr. Jamieson was able to tell you that that's his job to compare handwriting and he has no doubt in his mind that William Brown wrote this letter.

....

(Trial Tr. 793).

PCR Evidentiary Hearing

Solicitor Owens testified she believed her statement, "We know this is his handwriting," was reasonable and an admissible argument to make to the jury that they should take the expert's opinion seriously. (Trial Tr. 793:1-14).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance of counsel and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds there was no legal basis for an objection to the SLED agent as a handwriting expert and Trial Counsel effectively examined the witness. Further, this Court finds there was no legal basis for an objection to the Solicitor's statement during closing argument, "We know this is his handwriting." (Trial Tr. 793:1-14). This Court finds any objection would have been non-meritorious. 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

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ALX

exclusion of the evidence). Further, Applicant did not prove that had this testimony been successfully objected to, that there is a reasonable probability the outcome of his trial would have been different. Any potential error was cured by the jury instruction to only consider the evidence, and therefore, Applicant has failed to prove prejudice.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Further, 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 allegation is Denied and Dismissed.

Allegation 7: Due Process Violation when Applicant was Denied a Fair Trial when He was Tried With a Co-Defendant

Applicant alleges his due process rights were violated when he was tried with a co-defendant. This Court finds this allegation is without merit.

“A motion for severance is addressed to the sound discretion of the trial court.” State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002). “Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced.” Simmons, 352 S.C. at 350, 573 S.E.2d at 860. “Offenses are considered to be of the same general nature where they are interconnected.” State v. Jones, 325 S.C. 310, 315, 479 S.E.2d 517, 519 (Ct.App.1996). “A severance should be granted only when there is a serious risk that a joint trial would compromise *a specific trial right* of a codefendant or prevent the jury from making a reliable judgment about a codefendant’s guilt.” State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129

(Ct.App.2005) (emphasis added).

Findings

This Court finds that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” Ard v. Catoe, *supra*. Applicant failed to present any competent evidence that he was denied due process when he was tried with his co-defendant. Applicant and his co-defendant were tried under hand of one/conspiracy. This Court further finds the trial court addressed his co-defendant’s motion to sever at the beginning of trial, which was denied by Judge Stilwell. (Trial Tr. 27). Therefore, any additional motion on this ground by Trial Counsel would have been non-meritorious, and therefore Counsel was not deficient.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Further, 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 allegation is Denied and Dismissed.

CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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

IT IS ORDERED, ADJUDGED, AND DECREED that the Application for Post-Conviction Relief is Denied and Dismissed with Prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.



Hon. Deadra L. Jefferson 2128
Presiding Judge
Thirteenth Judicial Circuit

July 21, 2016
Charleston, South Carolina
At Chambers