

Index of Exhibits

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S.C. SUPREME COURT

1. PCR Application
2. Amended PCR Application
3. Amended PCR Application
4. Order Granting Funding
5. Motion to Reconsider Funding Order
6. Order Reversing Prior Funding Order
7. Motion to Alter or Amend Order Reversing Prior Funding Order
8. Response
9. Order Denying Motion to Alter or Amend
10. Order of Dismissal
11. Motion to Alter or Amend
12. Response
13. Order Denying Motion to Alter or Amend
14. Motion to Withdraw as Counsel
15. Order Granting Motion to Withdraw as Counsel

LAURENS COUNTY
CLERK OF COURT

2019CP30-26

STATE OF SOUTH CAROLINA 2019 JAN 15 PM 1:12
COUNTY OF LAURENS)
LYNN W. LANCASTER)
DAVID LEE WALKER, 00274195)
Full name and prison number (if any) of Applicant.)
v.)
State of South Carolina)
IN THE COURT OF COMMON PLEAS
APPLICANT REPRESENTED BY
COUNSEL - J. FALKNER WILKES
APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention SCDC, BROAD RIVER CORRECTIONAL FACILITY
2. Name and location of Court which imposed sentence LAURENS COUNTY GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-30-0228, MURDER
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) TRIAL FEBRUARY 23-27, 2015, GUILTY, SENTENCED TO LIFE

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Laurens County CCCP & GS

THE UNITED STATES OF AMERICA
DOPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20250

TO: [Illegible]
FROM: [Illegible]
SUBJECT: [Illegible]

RE: [Illegible]
DATE: [Illegible]
BY: [Illegible]

OFFICE OF THE
DIRECTOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20250

TRUE COPY OF ORIGINAL

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. SOUTH CAROLINA SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. PETITION DENIED AND DISMISSED
- iii. _____
- (c) the date of each such result:
- i. April 19, 2017
- ii. February 1, 2018
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2017-UP-0169
- ii. ORDER FEBRUARY 1, 2018
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) DISCOVERY AND DUE PROCESS VIOLATIONS

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failure to properly prepare and investigate the case. (Including the failure to investigate and obtain evidence, surveillance video, police body cam video, cell phone records, cell phone video recordings, etc., that would establish a defense in the case. Failure to obtain transcripts from court proceedings wherein potential witnesses had given previous testimony or to obtain records relevant to the impeachment of the testimony of any informants or state witnesses. Failure to follow reasonable instructions or requests of the applicant. Failure to properly present an adequate defense based on the facts and circumstances of the case. Failure to properly conduct discovery in the case. Failure to properly subpoena and call witnesses and present evidence in the defense of the case. Making improper stipulations or giving consent on issues before or during the trial which were adverse to the defense of the case. Failure to move for appropriate suppression hearings and properly object to the testimony of witnesses and evidence in a timely manner. Failure to properly and effectively cross-examine the State's witnesses. Failure to raise and properly argue and preserve record and issues for appeal. Failure to make a proffer of evidence when warranted by the circumstances of the case and properly present and preserve issues for appeal. Failure to make and preserve the record in cases of conferences at the bench and in chambers. Failure of counsel to communicate all plea offers to the Applicant and to adequately discuss same in light of the evidence. Failure to properly discuss the case and advise the Applicant on the applicable law and procedure and facts known or believed to exist. (Including the failure to meet with the applicant adequately and the failure to, in a timely manner, fully review and discuss the discovery material, evidence, law, and procedure so that the applicant would fully understand the charges, consequences and choices, including plea options). Failure to fully and timely explain the advantages of a guilty plea and the plea offers and the risks of trial. Failure to fully advise as to the right to testify and the associated risks.

(b) Failure to raise and adequately brief the issues preserved at trial or for which there

was a good faith argument as to preservation of the issue.

(c) Failure of the State to produce discoverable material that would have aided in the defenses of the case, including information in the possession of the State or not in the possession of the State but that the State could reasonably have expected to exist based on information in the State's possession such that the State should have disclosed the potential for such evidence.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) The issues presented herein are properly raised in post conviction relief and no other action prior to the post relief action.

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

- (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Elizabeth P. Wiygul, 101 Whitsett Street, Greenville, SC 29601
 - ii. John H. Strom, Appellate Defender, South Carolina Commission of Indigent Defense, PO Box 11589, Columbia, SC 29211-1589
 - iii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, South Carolina, 29601
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Appeal
 - iii. This post conviction relief action.
19. State clearly the relief you seek in filing this application:
Reverse and set aside the conviction and sentence.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of Laurens

)
)
)

VERIFICATION

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

David Lee Walker

SWORN to and subscribed before me this 15th
day of Jan, 2019.
Lisa Brown-Alston (L.S.)
Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

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

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

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

David Lee Walker

Applicant

SWORN or affirmed to and subscribed before me this
15th day of June, 2019.

Lisa Brown-Alston
Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

David L. Walker,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 20119-CP-30-00026

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

As required by Rule 71.1(b), SCRPC, this application is in conformity with Form 5 of the SCRPC Appendix of Forms.

1. Place of Detention: Applicant is detained in the South Carolina Department of Corrections at the Allendale Correctional Institution.
2. Name and location of Court which imposed sentence: Laurens County General Sessions, 100 Hillcrest Square, Laurens, SC 29360.
3. Name(s) of co-defendant(s) (if any): Christopher Wells and Johnny Saxon.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-30-00228 (Murder).
5. The date of the sentence, and the terms of the sentence:
 - (a) Trial occurred on February 23 - 27, 2015.
 - (b) Sentence imposed on February 27, 2015.
 - (c) Life imprisonment.
6. A finding of guilty occurred after:
 - (a) A jury trial before the Honorable Frank Addy, Jr and jury.
7. Did you appeal from the judgment of conviction and the imposition of the sentence?
 - (a) Yes.

L. MICHELLE SIMMONS
2021 AUG 22 A 10:40
LAURENS COUNTY
CLERK OF COURT

8. If you answered "yes" to number (7), list:

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

- I. South Carolina Court of Appeals (Appellate Case No. 2017-001582).
- II. The South Carolina Supreme Court.

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

- I. Affirmed pursuant to Rule 220(b), SCACR.
- II. Denied Petition for Writ of Certiorari.

(c) The date of each such result:

- I. Order filed April 19, 2017.
- II. Denied February 1, 2018.

(d) Citation of any written opinions or orders entered on appeal:

- I. State v. Walker, Op. No. 2017-UP-169 (S.C. Ct. App. Filed April 19, 2017).

9. If you answered "no" to number (7), state your reasons for not appealing:

(a) Not applicable. Applicant filed a Direct Appeal of his convictions and sentences.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing

the standard for ineffective assistance of counsel claims; see also *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). Therefore, "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". *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

- (b) Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Appellate Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v. Lucey*, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):

- (a) Trial Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations, and all allegations raised by Applicant in the prior pleadings filed in this action are incorporated by reference as if fully set forth verbatim below:

1. Trial Counsel failed to properly prepare for Applicant's trial.
 - a. Trial Counsel met with Applicant twice prior to trial, was admittedly missing material evidence, had not consulted with the appropriate expert witnesses, and failed to adequately communicate with him.
 - b. Trial Counsel failed to obtain and review all the evidence with Applicant in

preparation for trial.

- c. Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.
 - d. Based on Trial Counsel's comments, Trial Counsel failed to prepare for the State to argue Applicant's guilt based on felony murder doctrine.
2. Trial Counsel failed to timely move for a continuance, resulting in prejudice to Applicant based on the Trial Court's comments and basis for denying the motion.
- a. Trial Counsel was not prepared to proceed to trial and should have moved for a continuance upon receiving notice for trial.
 - b. Based on the untimely disclosure of the gunshot residue (GSR) evidence, Trial Counsel failed to consult with a qualified GSR expert and should have moved for a continuance upon receiving the GSR evidence.
 - c. Trial Counsel failed to consult with the appropriate medical doctors for removing the bullet from Applicant's body to have it examined by the South Carolina Law Enforcement Division (SLED) and should have moved for a continuance upon receiving notice for trial.
3. Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense.
- a. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (holding "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview

potential witnesses and to make an independent investigation of the facts and circumstances of the case.”) (quotation citation omitted); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (finding “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.”); *Von Dahlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Sneed v. Smith*, 670 F.2d 1348, 1353 (4th Cir. 1982) (“To meet this standard, an attorney must at a minimum, conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.”) (quoting *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir. 1968)); *Hicks v. State*, 314 S.C. 280, 443 S.E.2d 907 (1994); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

4. Trial Counsel failed to file a supplemental motion for discovery or motion to compel disclosure of evidence to ensure all material and impeachment evidence had been disclosed by the State.
 - a. Trial Counsel failed to move for disclosure of all the BWC video recordings prior to trial. Prosecutor O. Warren Mowry, Jr., admitted in an affidavit that he did not collect all the BWC video recordings from the officers at the scene.
 - b. Trial Counsel failed to move for the entire SLED file (GSR, ballistics, and latent prints) including but not limited to lab records, analyst records (training, proficiency, disciplinary, hand-written notes), audit records, and communications with the prosecution and/or investigator(s).

- c. Trial Counsel failed to personally review the Solicitor's file prior to trial.
 - d. Trial Counsel failed to request whether there were any promises or deals made with witnesses Toris Moore and Kelly Ball, and whether any charges were dismissed or expunged after Applicant's trial.
 - e. Trial Counsel failed to request the cell phone extraction report.
 - f. See Giglio v. United States, 405 U.S. 150, 153-154 (1972) (holding Brady encompasses impeachment evidence); Kyles v. Whitley, 514 U.S. 419 at 442 n.134, 445-451 (1995) (finding due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks); See Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999) (holding "a Brady violation occurs when: (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.") (citation omitted); see also Kyles v. Whitley, 514 U.S. 419 (1995) (finding "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police."); State v. Gullledge, 326 S.C. 220, 227, 487 S.E.2d 590, 593 (1997).
5. Trial Counsel failed to consult with a qualified GSR expert and call that expert witness to testify at Applicant's trial.
6. Trial Counsel failed to timely move to have the bullet extracted from his body for testing by SLED prior to trial.

7. Trial Counsel failed to interview critical witnesses who could have added to the credibility of Applicant's case and challenge the credibility of the State's witnesses when it was reasonable and necessary to do so in preparation for trial.
8. Trial Counsel failed to consult with a ballistics expert to review the SLED report and records and to determine whether to conduct independent testing on the untested items of evidence.
9. Trial Counsel failed to obtain all the body-worn camera video recordings in preparation for trial.
10. Trial Counsel failed to conduct an extraction of the cell phone data and text messages in preparation for trial.
11. Trial Counsel failed to visit the incident location to determine the veracity of the witness statements and police investigation, and adequately confront witness testimony during the trial about the crime scene.
12. Trial Counsel failed to obtain witness Kelly Ball's mental health records in preparation for trial.
13. Trial Counsel failed to move for a hearing to challenge the suggestiveness of the identification. See *Neil v. Biggers*, 409 U.S. 188 (1972)
14. Trial Counsel failed to properly raise, argue, and preserve for appellate review whether Applicant voluntarily provided a statement to police. See *Jackson v. Denno*, 378 U.S. 368 (1964).
15. Trial Counsel failed to move for suppression of the hearsay statements made by the Decedent and failed to object to the admission of these statements during the trial. See Rules 801 and 802, SCRF.

16. Based on the Trial Court's denial of the request for a continuance due to the GSR issue, Trial Counsel failed to move for a mistrial when the State's GSR expert witness, Jennifer Stoner, testified that the particles found do not meet the scientific definition of GSR, but in her opinion, the evidence is constitutes GSR.
17. Trial Counsel failed to adequately cross-examine Kelly Ball based on her mental health records, inconsistent statements, criminal history, and potential deals with the Government.
18. Trial Counsel failed to adequately cross-examine Toris Moore based on her criminal history and potential promises/deals with the Prosecutor and/or police.
19. Trial Counsel failed to properly object to the untimely disclosure of the photo-lineup of his co-defendant Wells, particularly after there had been identification testimony.
20. Trial Counsel failed to move for redactions of the BWC video recordings to comply with the South Carolina Rules of Evidence.
21. Trial Counsel failed to object to the admission of the incident report into evidence. See Rules 403, 801, and 802, SCRE.
22. Trial Counsel failed to properly argue for a mistrial and to preserve that issue for appellate review (e.g., the untimely disclosure of the list of witnesses, undisclosed evidence, the untested bullet in Applicant's body, not having GSR expert witness to rebut opinion testimony, etc...).
23. Trial Counsel failed to properly object to the Trial Court's jury instruction that malice may be inferred when "one intentionally kills another during the commission of a felony" as an unconstitutional charge on the facts.

24. Trial Counsel denied Applicant his right to present a full and complete defense.
 - a. U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14.
 - b. *Crane v. Kentucky*, 476 U.S. 683 (1986) (finding "[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."); *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984) (finding "[d]ue process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense."); *Id.* (emphasis added); see also *Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985) (finding opportunity to present a full and complete defense includes "a defendant's privilege to request and obtain material evidence from the state.")).
25. Trial Counsel failed to contemporaneously object to inadmissible evidence and move to strike prejudicial testimony during Applicant's trial.
26. Trial Counsel failed to properly raise and preserve for appellate review the issue of whether the State unconstitutionally called his case for trial. See *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).
27. Trial Counsel failed to present a reasonable trial strategy in Applicant's defense.
 - a. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *Stacy v. Solem*, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth

amendment challenges.”).

28. All allegations raised by the Applicant in the prior pleadings filed in this action are hereby incorporated by reference as if fully set forth verbatim.

(b) Appellate Counsel’s acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations and all allegations raised by Applicant in the prior pleadings filed in this action are incorporated by reference as if fully set forth verbatim below:

1. Appellate Counsel failed to raise on appeal the issue of whether the Trial Court erred in denying Applicant’s motion for a mistrial.
2. Appellate Counsel failed to properly raise and argue on appeal the issue of whether the Trial Court erred in denying Applicant’s motion for a continuance. Specifically, Appellate Counsel focused on the issue of Applicant being indigent and not having enough time to retain a GSR expert, arguing that it denied his right to equal protection and due process right to present a complete defense.
3. Appellate Counsel provided ineffective assistance in the event Trial Counsel properly preserved other meritorious issues for appellate review. Cf. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].”); State v. Polanco, 402 S.C. 547, 556, 741 S.E.2d 774, 778 (Ct. App. 2013) (“The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal.” (quoting State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010))); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (2003) (“For an

appellate court to review an issue, a contemporaneous objection at the trial level is required.").

4. All allegations raised by the Applicant in the prior pleadings filed in this action are hereby incorporated by reference as if fully set forth verbatim.

12. Prior to this application, have you filed with respect to this conviction:

- (a) Any petition in a State Court under South Carolina Law? Yes.
- (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief in state court.
- (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
- (d) Any other petitions motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:

- (a) The specific nature thereof: Not applicable.
- (b) The name and location of the Court in which each was filed: Not applicable.
- (c) The disposition thereof: Not applicable.
- (d) The date of each such disposition: Not applicable.

14. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.

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

- (a) The grounds which have been presented:
- i. Not applicable.

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

i. Not applicable.

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

(a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal.

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

(a) Your plea hearing? Not Applicable.

(b) Your trial? Yes.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? Yes.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) Elizabeth Wiygul, 1218 Laurens Road, Greenville, SC 29607.

(ii) John H. Strom, PO Box 11589, Columbia, SC 29211.

(iii) Dayne C. Phillips, 1614 Taylor Street, Suite D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Elizabeth Wiygul represented Applicant at trial.

(ii) John Strom represented Applicant on his appeal.

(iii) Dayne C. Phillips, currently represents Applicant on this PCR action.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel.

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

No. Applicant is not under sentence from any other court.

August 14, 2024

PRICE BENOWITZ LLP

1614 TAYLOR STREET
SUITE D
COLUMBIA, SC 29201

OFFICE: (803) 272-4503
DIRECT: (803) 807-0214
FAX: (803) 380-8015

DAVID BENOWITZ
ADMITTED DC, MD & VA
DAYNE PHILLIPS
ADMITTED SC
JOHN YANNONE
ADMITTED MD & DC
KERRI CASTELLINI
ADMITTED NY, MD & VA
KUSH ARORA
ADMITTED MI & DC
NICOLAS TORRES
ADMITTED FL
SEAN O'BRIEN
ADMITTED IL
PETER KENT ODOM
ADMITTED NY, MD, VA, NH & CA
RANNEY BARBARI
ADMITTED DC & VA
MARVIN OCHOA
ADMITTED MD
ARREN WALDRUP
ADMITTED DC, MD & SC
KENNETH LAJOUCA
ADMITTED DC, MD & VA
JEFF STICKLE
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PARRAL HABER
ADMITTED FL, VA & DC
PAULETTE PAGAN
ADMITTED DC, MD & NC
DONNA MURPHY
ADMITTED VA & DC
JEANNE BROWN
ADMITTED VA & DC
TAYLOR COMSTOCK
ADMITTED MD, DC & VA
ELIANE MARXHOFF
ADMITTED MD & DC
TONY MUNTER
ADMITTED DC, MA & MD

107 COUNTEES

409 7TH STREET NW, SUITE 200
WASHINGTON, DC 20004

August 15, 2024

The Honorable Michelle Simmons
Laurens County Clerk of Court
PO Box 287
Laurens, SC 29360-0287

Re: David Lee Walker v. State
AMENDED APPLICATION FOR POST-CONVICTION RELIEF
Case No.: 2019CP3000026

Dear Ms. Simmons:

I have enclosed the original and one copy of the Amended Application for Post-Conviction Relief along with a Certificate of Service for filing.

I would greatly appreciate you filing the enclosed documents and returning the clocked-in copies to me. Thank you for your assistance with filing these documents.

[Page 1 of 2]

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SHAUNA RHODES
ADMITTED MD & DC

10505 JUDICIAL DRIVE, SUITE 203
FAIRFAX, VA 22030

LAURENS COUNTY
CLERK OF COURT
MICHELLE SIMMONS
2024 AUG 22 A 10:40

David Lee Walker v. State

AMENDED APPLICATION FOR POST-CONVICTION RELIEF

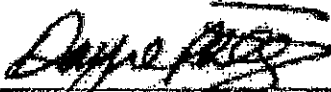
Case No.: 2019CP3000026

August 15, 2024

Page 2 of 2

If you have any questions or concerns, please do not hesitate to contact me. Thank you.

Sincerely,



Dayne C. Phillips, Esq.

Price Benowitz LLP

1614 Taylor Street, Suite D.

Columbia, SC 29201

O: 803-272-4503

C: 803-807-0234

F: 803-380-8035

dayne@pricebenowitz.com

ATTORNEY FOR THE APPLICANT

Enclosures (noted)

cc: David Lee Walker
Zachary Jones, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

David L. Walker,

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019 - CP - 30 - 00026

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
Address: 1614 Taylor Street, Ste. D.
Columbia, SC 29201

SC Bar #: 77712
Telephone #: (803) 807-0234
Fax #: (803) 380-8035
Other: 803-272-4503
E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete-*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Construction (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Dispute (170)
☐ Employment (180)
☐ Other (190)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intend Case #
20-____-NR_____
☐ Nurses/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Conversion (310)
☐ Motor Vehicle Accidents (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Stalking/Abuse (380)
☐ Other (399)

- Real Property**
☐ Claim and Delivery (400)
☐ Eminent Domain (410)
☐ Ejectment (420)
☐ Mechanics Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Partition and Sale (460)
☐ Other (499)

- Administrative Law/Relief**
☒ PER (500)
☐ Professional (520)
☐ Public Corps (530)
☐ Other (599)

- Administrative Law/Relief**
☐ Reinstatement License (600)
☐ Judicial Review (610)
☐ Relief (620)
☐ Permanent Injunction (630)
☐ Petition for Habeas (640)
☐ Forfeiture - Consent Order (650)
☐ Other (699)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payments Rehear
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799)

- Appeals**
☐ Arbitration (800)
☐ Magistrate Civil (810)
☐ Magistrate Criminal (820)
☐ Municipal (830)
☐ Probate Court (840)
☐ SCRP (850)
☐ Worker's Comp (860)
☐ Zoning Board (870)
☐ Public Service Comm (880)
☐ Employment Security Comm (890)
☐ Other (899)

- Special/Complex/Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (610)
☐ Permanent Restraining Order (680)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-suit Discovery (670)

Submitting Party Signature: _____

Date: August 14, 2024

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

David L. Walker,)

Applicant,)

v.)

State of South Carolina,)

Defendant.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 20119-CP-30-00028

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Zachary Jones, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

The Honorable Michelle Simmons
Laurens County Clerk of Court
PO Box 287
Laurens, SC 29360-0287

4. MICHELLE SIMMONS
2024 AUG 22 A 10 41
LAURENS COUNTY
CLERK OF COURT

By: Courtney Powers
Courtney Powers
Paralegal for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 216-5561
F: (803) 380-8035
courtney@pricebertowitz.com

August 15, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
David L. Walker,	)	Case No. 20119-CP-30-00026
	)	
Applicant,	)	<u>SECOND</u>
	)	
v.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
State of South Carolina,	)	
	)	
Defendant.	)	

As required by Rule 71.1(b), SCRPC, this application is in conformity with Form 5 of the SCRPC Appendix of Forms.

1. Place of Detention: Applicant is detained in the South Carolina Department of Corrections at the Allendale Correctional Institution.
2. Name and location of Court which imposed sentence: Laurens County General Sessions, 100 Hillcrest Square, Laurens, SC 29360.
3. Name(s) of co-defendant(s) (if any): Christopher Wells and Johnny Saxon.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GJS-30-00228 (Murder).
5. The date of the sentence, and the terms of the sentence:
 - (a) Trial occurred on February 23 - 27, 2015.
 - (b) Sentence imposed on February 27, 2015.
 - (c) Life imprisonment.
6. A finding of guilty occurred after:
 - (a) A jury trial before the Honorable Frank Addy, Jr and jury.
7. Did you appeal from the judgment of conviction and the imposition of the sentence?
 - (a) Yes.

MICHELLE SIMMONS
 2024 AUG 22 A 10:43
 LAURENS COUNTY
 CLERK OF COURT

8. If you answered "yes" to number (7), list:

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

- I. South Carolina Court of Appeals (Appellate Case No. 2017-001582).
- II. The South Carolina Supreme Court.

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

- I. Affirmed pursuant to Rule 220(b), SCACR.
- II. Denied Petition for Writ of Certiorari.

(c) The date of each such result:

- I. Order filed April 19, 2017.
- II. Denied February 1, 2018.

(d) Citation of any written opinions or orders entered on appeal:

- I. State v. Walker, Op. No. 2017-UP-169 (S.C. Ct. App. Filed April 19, 2017).

9. If you answered "no" to number (7), state your reasons for not appealing:

(a) Not applicable. Applicant filed a Direct Appeal of his convictions and sentences.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668 (1984) (establishing

the standard for ineffective assistance of counsel claims); see also *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). Therefore, "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". *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

- (b) Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Appellate Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v. Lucy*, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):

- (a) Trial Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations, and all allegations raised by Applicant in the prior pleadings filed in this action are incorporated by reference as if fully set forth verbatim below:

1. Trial Counsel failed to properly prepare for Applicant's trial.
 - a. Trial Counsel met with Applicant twice prior to trial, was admittedly missing material evidence, had not consulted with the appropriate expert witnesses, and failed to adequately communicate with him.
 - b. Trial Counsel failed to obtain and review all the evidence with Applicant in

-
- preparation for trial.
- c. Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.
 - d. Based on Trial Counsel's comments, Trial Counsel failed to prepare for the State to argue Applicant's guilt based on felony murder doctrine.
2. Trial Counsel failed to timely move for a continuance, resulting in prejudice to Applicant based on the Trial Court's comments and basis for denying the motion.
- a. Trial Counsel was not prepared to proceed to trial and should have moved for a continuance upon receiving notice for trial.
 - b. Based on the untimely disclosure of the gunshot residue (GSR) evidence, Trial Counsel failed to consult with a qualified GSR expert and should have moved for a continuance upon receiving the GSR evidence.
 - c. Trial Counsel failed to consult with the appropriate medical doctors for removing the bullet from Applicant's body to have it examined by the South Carolina Law Enforcement Division (SLED) and should have moved for a continuance upon receiving notice for trial.
3. Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense.
- a. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (holding "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview

potential witnesses and to make an independent investigation of the facts and circumstances of the case.”) (quotation citation omitted); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (finding “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.”); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Sneed v. Smith*, 670 F.2d 1348, 1353 (4th Cir. 1982) (“To meet this standard, an attorney must at a minimum, ‘conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.’”) (quoting *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir. 1968)); *Hicks v. State*, 314 S.C. 280, 443 S.E.2d 907 (1994); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Cl. App. 2015).

4. Trial Counsel failed to file a supplemental motion for discovery or motion to compel disclosure of evidence to ensure all material and impeachment evidence had been disclosed by the State.
 - a. Trial Counsel failed to move for disclosure of all the BWC video recordings prior to trial. Prosecutor O. Warren Mowry, Jr., admitted in an affidavit that he did not collect all the BWC video recordings from the officers at the scene.
 - b. Trial Counsel failed to move for the entire SLED file (GSR, ballistics, and latent prints) including but not limited to lab records, analyst records (training, proficiency, disciplinary, hand-written notes), audit records, and communications with the prosecution and/or investigator(s).

- c. Trial Counsel failed to personally review the Solicitor's file prior to trial.
- d. Trial Counsel failed to request whether there were any promises or deals made with witnesses, including but not limited to Teris Moore and Kelly Ball, and whether any charges of these witnesses were dismissed or expunged after Applicant's trial.
- e. Trial Counsel failed to request the cell phone extraction report.
- f. See *Giglio v. United States*, 405 U.S. 150, 153-154 (1972) (holding *Brady* encompasses impeachment evidence); *Kyles v. Whitley*, 514 U.S. 419 at 442 n.134, 445-451 (1995) (finding due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks); *See Gibson v. State*, 334 S.C. 513, 514 S.E.2d 320 (1999) (holding "a *Brady* violation occurs when: (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.") (citation omitted); *see also Kyles v. Whitley*, 514 U.S. 419 (1995) (finding "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police."); *State v. Gullette*, 326 S.C. 220, 227, 487 S.E.2d 590, 593 (1997).
- 5. Trial Counsel failed to consult with a qualified GSR expert and call that expert witness to testify at Applicant's trial to rebut the testimony presented by the State's expert witness at trial.

6. Trial Counsel failed to timely move to have the bullet extracted from his body for testing by SLED prior to trial.
7. Trial Counsel failed to interview critical witnesses who could have added to the credibility of Applicant's case and challenge the credibility of the State's witnesses when it was reasonable and necessary to do so in preparation for trial.
8. Trial Counsel failed to consult with a ballistics expert to review the SLED report and records and to determine whether to conduct independent testing on the untested items of evidence.
9. Trial Counsel failed to obtain all the BWC video recordings in preparation for trial.
10. Trial Counsel failed to obtain and conduct an extraction of the cell phone data and text messages in preparation for trial.
11. Trial Counsel failed to visit the incident location to determine the veracity of the witness statements and police investigation, and adequately confront witness testimony during the trial about the crime scene.
12. Trial Counsel failed to obtain witness Kelly Ball's mental health records in preparation for trial for adequate confrontation of this witness.
13. Trial Counsel failed to move for a hearing to challenge the suggestiveness of the identification. See *Neil v. Biggers*, 409 U.S. 188 (1972)
14. Trial Counsel failed to properly raise, argue, and preserve for appellate review whether Applicant voluntarily provided a statement to police. See *Jackson v. Denno*, 378 U.S. 368 (1964).
15. Trial Counsel failed to move for suppression of the hearsay statements made by the Decedent and failed to object to the admission of these statements during the trial.

See Rules 801 and 802, SCRE.

16. Based on the Trial Court's denial of the request for a continuance due to the GSR issue, Trial Counsel failed to move for a mistrial when the State's GSR expert witness, Jennifer Stoner, testified that the particles found do not meet the scientific definition of GSR, but in her opinion, the evidence constitutes GSR.
17. Trial Counsel failed to adequately cross-examine witness, Kelly Ball, based on her mental health records, inconsistent statements, criminal history, and potential deals with the Government.
18. Trial Counsel failed to adequately cross-examine Toris Moore based on her criminal history and potential promises/deals with the Prosecutor and/or police.
19. Trial Counsel failed to properly object to the untimely disclosure of the photo-lineup of his co-defendant Wells, particularly after there had been identification testimony.
20. Trial Counsel failed to move for redactions of the BWC video recordings to comply with the South Carolina Rules of Evidence.
21. Trial Counsel failed to object to the admission of the incident report into evidence when it contained unduly prejudicial, inadmissible hearsay, and any purported trial strategy would have been unreasonable. See Rules 403, 801, and 802, SCRE.
22. Trial Counsel failed to properly argue for a mistrial and to preserve that issue for appellate review (e.g., the untimely disclosure of the list of witnesses, undisclosed evidence by the State, untested ballistics evidence, the untested bullet in Applicant's body, not having GSR expert witness to rebut opinion testimony, etc...).

23. Trial Counsel failed to properly object to the Trial Court's jury instruction that malice may be inferred when "one intentionally kills another during the commission of a felony" as an unconstitutional charge on the facts.
24. Trial Counsel denied Applicant his right to present a full and complete defense.
 - a. U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14.
 - b. Crane v. Kentucky, 476 U.S. 683 (1986) (finding "[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."); State v. Mabg, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing California v. Trombetta, 467 U.S. 479 (1984) (finding "[d]ue process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense."); Id. (emphasis added); see also Town of Fairfax v. Smith, 285 S.C. 458, 330 S.E.2d 290 (1985) (finding opportunity to present a full and complete defense includes "a defendant's privilege to request and obtain material evidence from the state.").
25. Trial Counsel failed to contemporaneously object to inadmissible evidence and move to strike prejudicial testimony during Applicant's trial.
26. Trial Counsel failed to properly raise and preserve for appellate review the issue of whether the State unconstitutionally called his case for trial. See State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012).
27. Trial Counsel failed to present a reasonable trial strategy in Applicant's defense.
 - a. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured

under an objective standard of reasonableness"); Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges.").

28. All allegations raised by the Applicant in the prior pleadings filed in this action are hereby incorporated by reference as if fully set forth verbatim.

(b) Additional allegations of ineffective assistance of Trial Counsel:

29. Based on the applicable issues, exhibits, and testimony of attorney Aimee Zmroczek (who represented co-defendant Johnny Saxon) referenced in the Order Granting Post-Conviction Relief for Applicant's co-defendant, Christopher J. Wells, the Honorable B. Alex Hyman found that the attorney who represented Wells provided ineffective assistance of counsel for failing to conduct an adequate investigation and failing to properly cross-examine witness, Kelly Ball, regarding her mental health records and inconsistent statements. Specifically, these allegations also apply to Applicant's PCR case and prove Trial Counsel provided ineffective assistance of counsel.

30. Trial Counsel failed to move for a dismissal or other appropriate remedy based on prosecutorial misconduct based on the discovery violations and resulting prejudice to Applicant.

31. Trial Counsel failed to properly move for a mistrial based on the discovery violations.

32. Trial Counsel failed to present evidence of the text messages from the cell phone that was in custody of the police. Specifically, text messages to the Decedent that

could be considered threatening in nature.

33. Trial Counsel failed to visit the incident location to determine the potential visibility of the witness who purportedly identified the co-defendant.
34. Trial Counsel failed to adequately challenge the credibility of witness Kelly Ball during cross-examination based on her using drugs the day of the crime, providing multiple inconsistent statements, being on a call with her mother, BWC video recording contradicting her statements.
35. Trial Counsel failed to properly object and preserve for appellate review the State argument to the jury for a felony murder conviction when Applicant was not charged with underlying felony (i.e., not charged with armed robbery).
36. Trial Counsel failed to object to the Solicitor's improper comments regarding felony murder during the Prosecutor's opening statement.
37. Trial Counsel failed to timely and properly argue for a continuance by not consulting with ballistics expert prior to trial.
38. Trial Counsel failed to timely and properly argue for a continuance by not consulting with a digital forensic expert regarding the cell phone evidence prior to trial.
39. In connection with Trial Counsel's failure to timely move for a continuance upon receiving notice for trial, Trial Counsel failed to timely and properly move for ex parte funding orders to obtain expert witness in the following areas: GSR, Ballistics, and Digital Forensics.
40. Trial Counsel failed to properly cross-examine Investigator Bryant Cheek regarding his investigation, the State's evidence, and his bias/connection with the

Decedent.

41. The testimony presented by State's GSR expert was unduly prejudicial because Applicant was shot prior to the GSR test, according to the SLED Forensic Services Laboratory Customer Service Notice 2021-03 dated December 20, 2021, Regarding Analysis of GSR Kits, providing, relevant part: "Effective January 1, 2022, the SLED Trace Evidence Department will not longer routinely accept and analyze gunshot primer residue (GSR) kits collected from the following two categories of casework: - Shooting victims, to include suicides - Persons known/found to be in the possession of a firearm (to include police officers)."

(c) Appellate Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations and all allegations raised by Applicant in the prior pleadings filed in this action are incorporated by reference as if fully set forth verbatim below:

1. Appellate Counsel failed to raise on appeal the issue of whether the Trial Court erred in denying Applicant's motion for a mistrial.
2. Appellate Counsel failed to properly raise and argue on appeal the issue of whether the Trial Court erred in denying Applicant's motion for a continuance. Specifically, Appellate Counsel focused on the issue of Applicant being indigent and not having enough time to retain a GSR expert, arguing that it denied his right to equal protection and due process right to present a complete defense.
3. Appellate Counsel provided ineffective assistance in the event Trial Counsel properly preserved other meritorious issues for appellate review. Cf. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to

be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]." State v. Polican, 402 S.C. 547, 556, 741 S.E.2d 774, 778 (Ct. App. 2013) ("The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal." (quoting State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010))); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (2003) ("For an appellate court to review an issue, a contemporaneous objection at the trial level is required.").

4. All allegations raised by the Applicant in the prior pleadings filed in this action are hereby incorporated by reference as if fully set forth verbatim.

12. Prior to this application, have you filed with respect to this conviction:

- (a) Any petition in a State Court under South Carolina Law? Yes.
- (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief in state court.
- (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
- (d) Any other petitions motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:

- (a) The specific nature thereof: Not applicable.
- (b) The name and location of the Court in which each was filed: Not applicable.
- (c) The disposition thereof: Not applicable.
- (d) The date of each such disposition: Not applicable.

14. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to number (14), identify:
- (a) The grounds which have been presented:
- i. Not applicable.
- (b) The proceedings in which each ground was raised:
- i. Not applicable.
16. If any ground set forth in number (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal.
17. Were you represented by an attorney at any time during:
- (a) Your plea hearing? Not Applicable.
- (b) Your trial? Yes.
- (c) Your sentencing? Yes.
- (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? Yes.
- (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of number (17), list:
- (a) The name and address of each attorney who represented you:
- (i) Elizabeth Wiggul, 1218 Laurens Road, Greenville, SC 29607.

(ii) John H. Strom, PO Box 11589, Columbia, SC 29211.

(iii) Dayne C. Phillips, 1614 Taylor Street, Suite D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Elizabeth Wiygul represented Applicant at trial.

(ii) John Strom represented Applicant on his appeal.

(iii) Dayne C. Phillips, currently represents Applicant on this PCR action.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel.

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

No. Applicant is not under sentence from any other court.

August 15, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
David L. Walker,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 20119-CP-30-00026

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Second Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Zachary Jones, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

The Honorable Michelle Simmons
Laurens County Clerk of Court
PO Box 287
Laurens, SC 29360-0287

LAURENS COUNTY
CLERK OF COURT
MICHELLE SIMMONS
2024 AUG 22 A 10 43

By: _____

Courtney Powers
Courtney Powers
Paralegal for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 218-5561
F: (803) 380-8035
courtney@pricebenowitz.com

August 16, 2024

PRICE BENOWITZ LLP

1614 TAYLOR STREET
SUITE D
COLUMBIA, SC 29201

OFFICE: (803) 372-4503
DIRECT: (803) 507-0214
FAX: (803) 388-8035

DAVID BENOWITZ
ADMITTED DC, MD & VA
DAYNE PHILLIPS
ADMITTED DC
JOHN YAMNICH
ADMITTED MD & DC
ERRI CASTELLINI
ADMITTED DC, MD & VA
KEITH ARONA
ADMITTED MD & DC
NICOLAS TORRES
ADMITTED DC
BLAND BROWN
ADMITTED DC
PETER KENT OGDON
ADMITTED DC, MD, VA, WA & OR
RAMON BARRERA
ADMITTED DC & VA
MARVIN COHOA
ADMITTED MD
ARREN WALDRUP
ADMITTED DC, MD & VA
KENNETH LADUCA
ADMITTED DC, MD & VA
JEFF STICKLE
ADMITTED MD & DC
FARUK HABER
ADMITTED DC, MD & VA
BRUCE E. ZAGAN
ADMITTED DC, MD & VA
DONNA MURPHY
ADMITTED DC & DC
JEANNE BROWN
ADMITTED VA & DC
TAYLOR CONSTOCK
ADMITTED MD, DC & VA
DEANNE MARCHLOFF
ADMITTED MD & DC
TONY MINTER
ADMITTED DC, MD & MD

SETH PRICE
ADMITTED DC & DC
TAMMY BEGUN
ADMITTED DC & MD
KAREN HILEY DORTCH
ADMITTED DC
SETH CHEN
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DENNIS SOMECH
ADMITTED DC & VA
ARICAH DICKLER
ADMITTED MD
JON NORD
ADMITTED DC, VA & DC
MICHAEL LEE
ADMITTED DC & DC
CHAD PROFFT
ADMITTED DC
DANIEL SMITH
ADMITTED DC & VA
CHAD SHEFFER
ADMITTED DC
SIMPHERT "VICE" BINGH
ADMITTED DC
KEN KOPPELMAN
ADMITTED IL, IN & VA
BRYAN MONTANAN
ADMITTED IL & MD
HANNAH AMUNDSON
ADMITTED IL, IN & MD
JUSTIN TURNER
ADMITTED MD & DC
KIMBERLY PHILLIPS
ADMITTED VA & DC
ANDREW LINDSEY
ADMITTED VA
DAN SWANSON
ADMITTED DC
ASHLEY WILSON
ADMITTED VA & DC
SHARINA RHODES
ADMITTED MD & DC

400 7TH STREET NW, SUITE 200
WASHINGTON, DC 20004

10505 JUDICIAL DRIVE, SUITE 200
FAIRFAX, VA 22030

August 16, 2024

The Honorable Michelle Simmons
Laurens County Clerk of Court
PO Box 287
Laurens, SC 29360-0287

Re: David Lee Walker v. State
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF
Case No.: 2018CP3000026

Dear Ms. Simmons:

I have enclosed the original and one copy of the Second Amended Application for Post-Conviction Relief along with a Certificate of Service for filing.

I would greatly appreciate you filing the enclosed documents and returning the clocked-in copies to me. Thank you for your assistance with filing these documents.

[Page 1 of 2]

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WWW.PRICEBENOWITZ.COM

1. MICHELLE SIMMONS
2024 AUG 22 A 9:43
CLERK OF COURT

David Lee Walker v. State

SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF

Case No.: 2019CP3000026

August 16, 2024

Page 2 of 2

If you have any questions or concerns, please do not hesitate to contact me. Thank you.

Sincerely,

s/ Dayne C. Phillips

Dayne C. Phillips, Esq.

Price Benowitz LLP

1614 Taylor Street, Suite D.

Columbia, SC 29201

O: 803-272-4503

C: 803-807-0234

F: 803-380-8035

dayne@pricebenowitz.com

ATTORNEY FOR THE APPLICANT

Enclosures (noted)

cc: David Lee Walker
Zachary Jones, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

David L. Walker,

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019 - CP - 30 - 00026

SECOND AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
Address: 1614 Taylor Street, Ste. D,
Columbia, SC 29201

SC Bar #: 77712
Telephone #: (803) 807-0234
Fax #: (803) 380-8035
Other: 803-272-4303
E-mail: dayne@phillipsbenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action to Judgment/Settlement is not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Construction (100)
☐ Debt Collection (110)
☐ General (120)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (190) | Torts - Professional Malpractice
☐ General Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-____-SJ-_____
☐ Notice of Intent Med Mal (230)
☐ Other (240) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (390) | Real Property
☐ Ejectment (400)
☐ Easements (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Quiet Title (460)
☐ Condominium Dispute (470)
☐ Other (480) |
| Intestate Estates
☒ Prob (500)
☐ Guardianship (510)
☐ Habeas Corpus (520)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement License (600)
☐ Judicial Review (610)
☐ Relief (620)
☐ Permanent Injunction (630)
☐ Fair Labor Practices (640)
☐ Fair Labor - Consent Order (650)
☐ Other (699) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Mortgage Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Tax Foreclosure (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confirmation of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (790) | Appeals
☐ Administrative (800)
☐ Appellate Civil (810)
☐ Appellate Criminal (820)
☐ Appellate (830)
☐ Probate Court (840)
☐ SCDCIT (850)
☐ Worker's Comp (860)
☐ Zoning Board (870)
☐ Public Service Comm. (880)
☐ Employment Security Comm. (890)
☐ Other (899) |
| Special Complaints / Other
☐ Environmental (900)
☐ Automobile Arb. (910)
☐ Medical (920)
☐ Other (990) | ☐ Pharmaceuticals (930)
☐ Unfair Trade Practices (940)
☐ Out-of-State Depositions (950)
☐ Motion to Quash Subpoena in
an Out-of-County Action (960)
☐ Pre-Suit Discovery (970) | ☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (790) | ☐ Other (999) |

Submitting Party Signature: Dayne C. Phillips

Date: August 15, 2024

Notes: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

David Lee Walker,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2019CP3000026

**ORDER GRANTING MOTION FOR
FUNDING TO OBTAIN EXPERT**

This matter comes before the Court at the request of Counsel for the above-referenced Applicant. On April 3, 2025, Applicant appeared before the Court for an evidentiary hearing. Dayne Phillips represented the Applicant, and Zachary Jones represented the State. Applicant's Counsel moved for continuance at the hearing. Specifically, Applicant requested a continuance because attorney Aimee Zmroczek, who represented Applicant's co-defendant, Johnny Foxon, was unavailable to testify at that hearing. Ms. Zmroczek had previously testified at Co-defendant Christopher Well's PCR evidentiary hearing.

Applicant's Counsel also moved for the Court to determine whether Applicant is indigent solely for the purpose of retaining expert services that are reasonably necessary for effective representation and determination of whether Applicant is entitled to post-conviction relief. This Court took this motion under advisement.

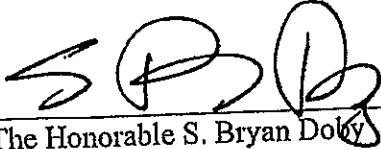
This Court finds that Applicant is indigent solely for the purpose of funding to retain expert services as outlined in the motion. I find that Applicant is entitled to receive funding pursuant to the Office of Indigent Defense (OID) policy.

[Signature Page to Follow]

SPD

AND IT IS SO ORDERED this 22 day of May, 2025.

Bethsville, South Carolina


The Honorable S. Bryan Doby
2784

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
DAVID LEE WALKER,	)	
	)	Case No.: 2019-CP-30-00026
v.	)	
	)	
STATE OF SOUTH CAROLINA	)	SCCID MOTION TO RECONSIDER AND
	)	ALTER OR AMEND THE JUDGEMENT AND
Defendant,	)	OBJECTION TO ORDER GRANTING
	)	FUNDING AUTHORITY

South Carolina Commission on Indigent Defense (SCCID) by and through undersigned counsel, hereby objects to the Order Granting Motion for Funding to Obtain Expert issued by this court on May 22, 2025, and filed with the Clerk of Court office on June 2, 2025. SCCID moves to be heard on this matter and requests the Court to reconsider the order and issue an order vacating the same.

I. PROCEDURAL HISTORY

According to the Public Index of records and the Order Granting Motion for Funding to Obtain Expert, Mr. Walker retained J. Falkner Wilkes, Esq. to represent him in this Post Conviction Relief (PCR) action. The application was filed in January 2019. The State filed its Return. In September 2023, Mr. Walker retained Dayne C. Phillips, Esq. to assume representation of him in this pending PCR action. An evidentiary hearing was scheduled for April 3, 2025 in this matter but it was continued. On April 3, 2025, Mr. Walker, by and through his retained counsel, asked the court to find him indigent solely for the purpose of retaining expert services. The court took the request under advisement and on or about May 22, 2025, granted Mr. Walker's request. The written order granting this request was filed on June 2, 2025 with the Laurens County Clerk of Court office. Counsel for Mr. Walker provided SCCID with a

K. MICHELLE
 CLERK OF COURT
 LAURENS COUNTY
 JUNE 2, 2025
 11:18 AM

copy of this Order on June 24, 2025, by email. The undersigned reached out to Attorney Phillips to discuss this matter and the agency's objections and was instructed to file the objections with the court.

II. JURISDICTION TO HEARING FUNDING OBJECTIONS

This motion is filed pursuant to Rule 59(e), SCRCP and by the authority granted to SCCID by the SC Supreme Court regarding vouchers or requests for funding payments. Rule 59(e), SCRCP, provides that "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."

In 2006, the SC Supreme Court established rules and procedures for the processing of indigent defense vouchers. The Order restated the legislative intent of the funds managed by SCCID to be used for the defense of indigents. The Order provides that SCCID notify the court and trial counsel of any objections.

1. Rule 59(e)

Rule 59(e), SCRCP, provides that "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." An evidentiary hearing was scheduled in this case for April 3, 2025. The hearing was continued, and the Applicant requested the court to determine he was indigent solely for the purpose of retaining expert services. The court took the motion under advisement. A written Order was executed on May 22, 2025, and filed with the Clerk of Court on June 2, 2025. By electronic mail, the Applicant provided SCCID with notice of this order on June 24, 2025. SCCID, by reply electronic mail, notified Applicant, through his counsel, that the agency did not have the authority to pay fees and/or costs in cases where counsel is retained and would therefore object to the order.

2. Authority from the SC Supreme Court

The South Carolina Commission on Indigent Defense is the entity created by the South Carolina General Assembly for the purpose of developing rules, policies, procedures, regulations and standard to carry out the provisions of the Defense of Indigents Act. SCCID shall serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents including funds for attorney's fees and expenses in non-capital cases. SCCID is not a typical party in criminal cases. SCCID becomes involved in a case if a court appointed attorney obtains a funding order from the trial court and submits a voucher to the agency for fees or expenses reimbursements. Pursuant to the authority granted to it by the General Assembly, in SC Code § 17-3-110, the Supreme Court of South Carolina issued an order on September 29, 2006, establishing the rules and procedures for the processing of indigent defense vouchers. In this order the Court provided that if there were objections by SCCID, then the agency shall notify the trial court and counsel of any objection and shall forward any necessary materials to the trial court in writing or electronically. The order further provides that the trial court may determine the matter with or without a hearing, as may be appropriate, or upon submission of written materials. The Court's order provides that nothing in the order preclude the trial court from taking immediate action on requests during the pendency of a case. Lastly, the order provided that the procedures outlined shall remain in effect until altered or changed by subsequent order or legislation. There have not been any subsequent order or legislation that altered or changed the procedure.

Pursuant to the authority granted by the General Assembly, in SC Code § 17-3-310, SCCID developed a Voucher Payment Policy that included the Court's procedure regarding objections in the processing of indigent defense vouchers. The Voucher Payment Policy was

amended in 2021 to require attorneys to submit funding orders to SCCID within 15 days of the Court signing such orders to allow for issues and objections to be raised and for the trial court to take immediate action on issues and objections during the pendency of a case and as early as possible.

The trial court has the jurisdiction and authority to hear SCCID's motion and objection to the Order Granting Motion for Funding to Obtain Expert herein.

III. BASIS FOR MOTION AND OBJECTIONS

a. Determination of Indigency / Ability to Retain Counsel

Indigency deals with a person's financial ability to retain or employ counsel. Incidental to the appointment of counsel is access to funds that the State has appropriated to cover the fees and expenses of the indigent presentation. Indigency in South Carolina does not deal solely with the person's financial ability to afford the cost of litigation. South Carolina law and court rules provides that if a person is financially unable to retain or employ counsel, the person may submit an application for the appointment of counsel. See S.C. Code of Laws § 17-3-10; § 17-3-30; § 17-3-45. See also Rule 602, SCACR. A person that has a right to counsel and is financial unable to retain/employ counsel may request the appointment of counsel as required by law. In this case, there is no claim that Mr. Walker is not financial able to retain/employ counsel and there is no request for the appointment of counsel.

Rule 602 is the only authority that references the redetermination of indigency. This redetermination refers to a person begin initial determined to be indigent and there are subsequent factors that may support that the person is no longer indigent. The rule states:

The initial designation of the Public Defender of appointment of counsel to represent an accused shall be subject to review by the court if it subsequently appears that the accused is in fact financially able to employ counsel, has obtained counsel of his own, or for other good cause shown.

Rule 602(c), SCACR.

The rule contemplates that if a person has retained counsel, counsel is unable to continue the representation and the person is not financially able to retain new counsel that the person can be determined indigent and appointed counsel.

During the trial stage, trial counsel may be relieved only for good cause upon written petition to and by written order of the trial judge. In all cases where relief from representation is sought by trial counsel, a copy of the petition shall be served on the accused and the prosecuting attorney. The Public Defender also shall be served when relief is sought by retained or appointed counsel. If trial counsel is relieved for good cause, the trial court shall immediately appoint substitute counsel. Rule 602(e)(1), SCACR.

Rule 602 also provides for a person's indigency status to be redetermined at the end of the trial stage so that counsel may be appointed to represent him in the appeal stage of the case. The person must request a determination of his indigency status from the Office of Appellate Defense.

Section 17-3-10 also contemplates a similar opportunity for a person that had retained counsel to later be considered indigent when he is not longer financially able to retain counsel.

The section states:

The fact that the accused may have previously engaged or partially paid private Counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel. § 17-3-10

At no point, has Mr. Walker requested the appointment of counsel. At the time of his funding request, he never presented nor argued to the court that he was not able to afford to retain or continue the employment of counsel. Counsel never moved to be relieved. His request had nothing to do with his inability to retain counsel

b. Defense of Indigents Fund is for Public Defenders and Appointed Attorneys

The Defense of Indigents Act can be found in Chapter 3 of Title 17 of the South Carolina Code. Multiple sections reference the payment of fees and/or expenses in cases where the court has appointed counsel, being either the public defender or "private appointed counsel". Section 17-3-50 is specifically titled "Determination of fees for appointed counsel and public defenders . . ." [emphasis added] This section begins with the words "When private counsel is appointed pursuant to this chapter. . ." Section 17-3-80 is titled "Appropriation for expenses of appointed private counsel and public defenders; restrictions and limitations." The text of the section provides that "This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses, . . . actually incurred in the representation of persons pursuant to this chapter, so long as expenses are approved by the trial judge." Section 17-3-90 is titled "Vouchers for payment for services by private appointed counsel and for reimbursement of expenses: approval and submission for payment." The section's text begins with "Private, appointed counsel shall submit . . . and the public defender shall do likewise. . ."

The Legislative intent and plain language of Chapter 3 of Title 17 is clear that defense of indigent funds is limited to cases where private counsel or the public defender is appointed. This is also SCCID's interpretation of this statutory language, which SCCID is tasked with implementing. See *Brown v. DHEC*, 348 S.C. 507, 560 S.E.2d 410 (2002), the Supreme Court has held that "the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation."

Because Attorney Phillips is retained counsel for the applicant, the applicant is not entitled to access to the Defense of Indigents Fund. The South Carolina Supreme Court explained in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011), statutes

"must be read as a whole and sections which are part of the same General statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). We therefore should not concentrate on isolated phrases within the statute. *Id.* Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose. *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App.2008), *aff'd*, 386 S.C. 339, 688 S.E.2d 569 (2010).

Section 17-3-50 must be read as a whole and construed together. The statute addresses fees and expenses for private attorneys appointed to represent indigent defendants and public defenders and approved experts in their cases. The "defendant" referenced in the statute is the indigent defendant and the attorney the statute references is the private appointed attorney or the public defender.

c. Rule 602, SCACR, Restricts Indigent Funds

Rule 602 also provides for the appointment of the Public Defender or private counsel but also specifically addresses cases where counsel has been retained. The rule states that "If counsel shall have been retained and partially paid for his services in either trial or appeal stages, no reimbursement may be had from indigent funds." Only upon completion of the trial stage may there be a redetermination of indigency for purposes such as the appeal.

d. Defense of Indigents Fund is Not an Insurance Policy

The funds appropriated by the General Assembly are intended to be used to comply with the mandates to provide for indigent representation to those citizens that are not financially able to retain counsel. The funds are not appropriated to supplement fees and costs for privately

retained counsel. People who are financially able to retain counsel possesses the ability to hire the attorney of their choice and assumes the cost of that litigation. This becomes an agreement or contract between the person and the counsel to hire them and to provide representation. The agreement of the parties controls their obligations to perform under the terms of that agreement. The State is not a party to their agreement and should not be made to filling the gaps of their agreement. How an attorney set their fee and how much they decide to charge is the decision of that attorney. Rule 1.5 of the Rules of Professional Responsibility provides a list of factors the attorney should consider in determining their fee. The rule requires that the attorney communicate to the client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible, preferably in writing, before or within a reasonable time after commencing the representation. Presumably, an attorney will consult with the potential client in order to determine the needs to provide the representation needed. Through the consultation, the attorney should, based upon his experience, be able to determine the reasonable expenses that may be needed to provide that representation and discuss the same with the client. The attorney and client should agree to the client hiring counsel, at the certain cost of the fees and expenses, and the attorney providing representation accordingly.

In this case, it appears that Mr. Walker, or someone on his behalf, consulted and hired 2 attorneys in this matter. Initially, Mr. Walker retained attorney J. Falkner Wilkes. Attorney Wilkes represented Mr. Walker from about January 2019 until about September 2023. In September 2023, Mr. Walker retained attorney Dayne Phillips to represent him in this PCR action. SCCID does not have any information about the retainer agreements for either of these attorneys with Mr. Walker. Presumably, counsels extended offers to represent him, and he accepted the offers and retained counsels. Because they reached their agreements, the State

should not be required to supplement the representation with funds appropriated for the defense of persons who are financially unable to employ counsel.

e. Detrimental Consequences to the Defense of Indigents Fund

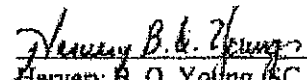
There would be profound detrimental consequences to the legal system if retained counsel had unfettered access to funds for investigative, expert, or other services based upon the bare assertion of indigency after the client has paid the retainer fee - especially paid in full. This could create an unbalanced system, giving an advantage to retained counsel of moving the court for resources from SCCID to fund their retained client's defense. This would pervert the purpose and mission of SCCID and empty its coffers to aid retained counsel on retained cases with crucial funds needed to support the public defender system and true court appointed counsel who are truly providing indigent representation to those that could not retain counsel in the first place. This would create a system ripe for exploitation by some retained counsels who would use the monies they collected to cover their attorney fees while SCCID fund the actual cost of their client's defense.

The General Assembly has given the court the authority to protect these limited funds to ensure that the funds are available for their intended needs.

CONCLUSION

The Court had jurisdiction pursuant to the order of the Supreme Court to hear any objections raised by SCCID to funding orders and vouchers.

With jurisdiction to hear this matter, the court should reconsider and vacate this funding order as
SCCID does not have the authority to pay fees / costs in cases where counsel has been retained.


Harvey B. O. Young, SC Bar No. 7013
SC Commission on Indigent Defense
Post Office Box 11433
Columbia, South Carolina 29211
(803) 734-1343
Email: hyoung@scid.sc.gov

Columbia, South Carolina

July 2, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
DAVID LEE WALKER,	)	
	)	Case No.: 2019-CP-30-00026
v.	)	
	)	
STATE OF SOUTH CAROLINA	)	CERTIFICATE OF SERVICE
	)	
Defendant.	)	
	)	

The undersigned hereby certifies that he served a copy of the attached RULE 59(e) MOTION AND OBJECTION filed in the above referenced case upon the parties herein, by and through their attorneys of record, pursuant to the Supreme Court's Order on Methods of Electronic Filing and Service under Rule 262, SCACR, by emailing the same as a PDF attachment to the attorneys' primary email address listed in the Attorney Information System (AIS) as follows:

Dayne C. Phillips
dayne@pricebenowitz.com

Henry B. O. Young
Henry B. O. Young, SC Bar # 7013
SC Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
P: (803) 734-1343
E: hyoung@scid.sc.gov

Columbia, South Carolina

July 7, 2023

K. MICHELLE SIMMONS
2023 JUL - 8 AM 11:40
LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

DAVID LEE WALKER,)
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-30-00026

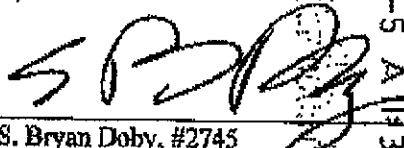
**ORDER REVERSING PRIOR ORDER
GRANTING MOTION FOR FUNDING
TO OBTAIN EXPERT**

This matter comes before the Court on October 16, 2025, by way of the South Carolina Commission on Indigent Defense's (SCCID) Motion to Reconsider and Alter or Amend the Judgment and Objecting to Order Granting Funding Authority, which was filed on July 7, 2025. Present and appearing at the hearing was Dayne C. Phillips, Esq., representing the Applicant, along with Hervery B.O. Young, Esq., representing SCCID.

After careful consideration, I hereby reverse this Court's prior Order Granting the Motion for Funding to Obtain Expert, signed on May 22, 2025, and filed with the Clerk of Court on June 2, 2025. The Court overturns its earlier order due primarily to the argument of SCCID that if SCCID is required to pay costs for experts in this matter, every case in which the Applicant is indigent will require costs to be paid by SCCID, even if counsel for the Applicant is not court ordered appointed. Such a result is not contemplated by the legislature.

IT IS ORDERED, ADJUDGED, AND DECREED that the Order Granting the Motion for Funding to Obtain Expert is reversed.

IT IS SO ORDERED.


S. Bryan Doby, #2745
Circuit Court Judge

This 5 day of November 2025
Bishopville, South Carolina

2025 NOV -5 A 11:39
CLERK OF COURT
CIRCUIT COURT

pk

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

DAVID LEE WALKER,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2019-CP-30-00026

MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO
RULE 59(E), SCRPC

The Applicant, by and through the undersigned attorney ("Counsel"), respectfully moves to alter or amend the Court's order reversing its prior order granting Applicant's motion for funding to obtain expert services pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. See U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; *Ake v. Oklahoma*, 470 U.S. 68 (1985); S.C. Code Ann. § 17-3-50(B) and (C); Rule 602, SCACR. Counsel received notice of the Court's order on November 5, 2025.

In support of this motion, Applicant submits the following arguments and does not abandon or waive any previous issues or arguments raised in the prior pleadings and hearings in this action:

(1) The Applicant has a constitutional right to effective assistance of counsel and to present a meaningful defense. The General Assembly has not expressly prohibited the Court from providing funding in this situation, and it appears this is a novel issue in South Carolina that is pending on appeal. Therefore, the Court erroneously held, "The Court overrules its earlier order due primarily to the argument of SCCID that if SCCID is required to pay costs for experts in this matter, every case in which the Applicant is indigent will require costs to be paid by SCCID, even if counsel for the Applicant is not

court ordered appointed. Such a result is not contemplated by the legislature." (Order dated November 5, 2025). See generally *Bailey v. State*, 309 S.C. 455, 459, 424, S.E.2d 503, 506 (1992) (quoting *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087 (1985) (noting that "the United States Supreme Court has held that the defendant must have 'a fair opportunity to present his defense,' thereby requiring the State to provide the 'basic tools' for an adequate defense to an indigent defendant. . . . Thus, although the State is not required to provide the indigent defendant with unlimited funding, it must ensure that the defendant has competent counsel and the service of experts necessary to a meaningful defense[.]").

(2) In *Reeves v. State*, our Court of Appeals noted the procedure for when this situation occurs:

If Reeves was indigent and could not afford to pay for an expert, the South Carolina Office of Indigent Defense could have provided the funds needed to secure an expert witness. See S.C. Code Ann. § 17-3-50 (B) (2003) ("Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses . . .").

Reeves v. State, 415 S.C. 366, 377 n.5, 782 S.E.2d 747, 753 n.5 (Cl. App. 2015); Cf. *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052 (1984).

(3) Respectfully, neither law nor logic supports the Court's reversal of its prior order because an appointed attorney represented Applicant at trial, the Office of Appellate Defense represented Applicant on appeal, and the undersigned Counsel was not retained by the Applicant. In other words, if the undersigned Counsel is relieved as Applicant's lawyer to ensure the Applicant receives effective assistance of counsel, Applicant then

would be appointed an attorney to represent him on this matter and would be eligible to receive funds from SCCID for expert services. Based on SCCID's argument, if an organization raised funds for an indigent defendant's legal representation, that defendant would then no longer qualify as indigent despite that the defendant does not have access or control over how those funds are ultimately used. That is an absurd result and not the intent of the federal and state constitutions or our General Assembly. Therefore, this determination should be on a case-by-case basis, and the unique circumstances of this case make it reasonable and necessary for the Court to grant funding for expert services.

(4) Due to the serious nature of the offense, the State's evidence, Applicant's sentence; expert services are critical to ensuring effective assistance of counsel, affording Due Process, and determining whether Applicant is entitled to post-conviction relief.

CONCLUSION

Based on the foregoing reasons, the Applicant respectfully requests this Court reconsider its reversal of the prior order granting funding to obtain expert services.

IT IS SO MOVED.

Respectfully submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.

Price Benowitz LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

ATTORNEY FOR THE APPLICANT

November 17, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
DAVID LEE WALKER,	)	
	)	Case No.: 2019-CP-30-00026
Applicant,	)	
	)	
v.	)	SCCID RESPONSE TO APPLICANT'S
	)	MOTION TO ALTER OR AMEND
STATE OF SOUTH CAROLINA,	)	JUDGEMENT PURSUANT TO
	)	RULE 59(E), SCRCP
Defendant.	)	

South Carolina Commission on Indigent Defense (SCCID), by and through undersigned counsel, responses to the Applicant's Motion to Alter or Amend Judgement pursuant to Rule 59(E), SCRCP, as detailed below.

I. PROCEDURAL HISTORY

According to the Public Index of records, Applicant, David Lee Walker, retained J. Falkner Wilkes, Esq. to represent him in this Post Conviction Relief (PCR) action. The application was filed in January 2019. The State filed its Return. In September 2023, Mr. Walker retained Dayne C. Phillips, Esq. to represent him, replacing Attorney Wilkes as the attorney of record on his pending PCR application. An evidentiary hearing was scheduled for April 3, 2025, in this matter but it was continued. On April 3, 2025, Mr. Walker, by and through his retained counsel, asked the court to find him indigent solely for the purpose of retaining expert services. The court took the request under advisement and on or about May 22, 2025, granted Mr. Walker's request. The written order granting this request was filed on June 2, 2025, with the Laurens County Clerk of Court office. Counsel for Mr. Walker provided the South Carolina Commission on Indigent Defense (SCCID) with a copy of this Order on June 24, 2025, by email. Counsel for SCCID

reached out to Attorney Phillips to discuss this matter and the agency's objections and was instructed to file the objections with the court. The objection and motion to vacate the order was filed with the Court on July 7, 2025. A hearing on the objection was held on October 16, 2025. The Court issued an Order Reversing Prior Order Granting Motion for Funding to Obtain Expert on November 5, 2025. The applicant filed his Motion to Alter or Amend Judgment on November 17, 2025.

II. APPLICANT'S RELIANCE ON CONSTITUTIONALLY PROTECTED RIGHTS OF INDIGENTS IN CRIMINAL CASES IS MISPLACED

Applicant asserts that he has a constitutional right to effective assistance of counsel and to present a meaningful defense. The right to effective assistance of counsel is a fundamental legal principal ensuring that defendants in criminal cases receive competent legal representation as guaranteed by the Sixth Amendment of the U. S. Constitution. The Sixth Amendment states that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." Sixth Amendment, U.S. Constitution. This right encompasses the necessity for counsel to provide effective assistance. This right is crucial for a defendant to ensure a fair trial and a just outcome. However, this constitutional right is only in criminal cases.

There is no constitutional issue at play before this Court, as the state is not obligated by the constitution to provide counsel or expenses related to a PCR action. *See Murray v. Giarratano*, 492 U.S. 1, 109 S. Ct. 2765 (1989) (holding prisoners seeking judicial relief from their sentence in state proceedings were not entitled to counsel under the constitution); *Gunter v. State*, 267 S.C. 486, 229 S.E.2d 723 (1976) (holding a PCR applicant does not have an absolute right to a free transcript since it is not constitutionally mandated). Applicant's Rule 59(e), SCRCF, motion conflates the rights a criminal defendant enjoys when facing trial with the statutory right granted by our Legislature in the PCR setting. By operation of statute, Post Conviction Relief actions are

civil in nature. While the subject matter of these civil lawsuits is the validity of a criminal conviction against the defendant, the suit itself is civil, filed in civil (common pleas) court, governed by civil rules of procedure, and allows for civil relief.

If an applicant is indigent as that term is defined by our statutory scheme, the applicant will have an attorney appointed for him through the authority of S.C. Code Ann. § 17-27-60 and Rule 71.1(d), SCRPC. These provisions defer funding to the "amounts and to the extent funds are made available to indigent defendants by the General Assembly." S.C. Code Ann. § 17-27-60. The Sixth Amendment applies to criminal prosecutions and not civil lawsuits. The issue before this Court is not constitutional, but whether the General Assembly has authorized payment of expert witness fees and other expenses during a PCR action when an applicant is represented by privately retained counsel. As noted below, no such authorization exists.

III. THE GENERAL ASSEMBLY HAS NOT AUTHORIZED PAYMENT OF EXPERT WITNESS FEES DURING A PCR ACTION WHEN AN APPLICANT IS REPRESENTED BY PRIVATELY RETAINED COUNSEL.

A. Applicant is not indigent as defined by the Defense of Indigents Act for access to public funds for litigation expenses since he has retained counsel.

In South Carolina, a person is indigent if it is determined that he is financially unable to retain counsel under the Defense of Indigents Act. S.C. Code Ann. § 17-3-10. *See also* S.C. Code Ann. § 17-3-20; § 17-3-30; § 17-3-45; Rule 602, SCACR. An applicant for PCR is granted access to these funds only if they fall within the provisions required by the Act. As an initial matter, this Court's order denying funding for experts is supported by the fact that applicant does not meet the definition of indigent under the Defense of Indigents Act since he has retained counsel. An applicant is only indigent, for access to the funding provisions of the Defense of Indigents Act

when they are unable to retain counsel. Here, applicant has retained counsel and is not indigent for access to funds reserved for the defense of indigents.

The General Assembly has created a single-source allowance for fees and costs for indigent criminal defendants and PCR applicants. As with any right, an indigent person in this setting is free to waive access to such funding and seek private, retained representation. *See Hilton v. State*, 422 S.C. 204, 810 S.E.2d 852 (2018) (finding PCR applicant may waive statutory right to counsel and proceed *pro se*). Under the Defense of Indigents Act, to gain access to state funds to cover litigation expenses, an indigent defendant (or applicant for PCR), must opt into the legal representation authorized by the General Assembly: either court-appointed counsel or the public defender's office. An indigent defendant (or applicant for PCR) who privately retains counsel has, by voluntary choice, opted out of access to public funds.

This single source model is followed in other states. In reviewing the funding for indigents in Kentucky, the Kentucky Supreme Court noted the impact of the single source model:

Be this as it may, in our view, KRS 31.100, *et. seq.*, is a unified enactment which contemplates the necessity of a comprehensive determination whether a defendant qualifies for the benefits provided. For it to be determined that he does, he must be without the independent means to obtain counsel. The statute surely does not contemplate that a defendant would be indigent for purposes of KRS 31.110(1)(b), but still able to hire an attorney.

Morton v. Com., 817 S.W.2d 218, 220 (Ky. 1991).

By contrast, other state statutes specifically allow access to state funding for privately retained counsel. The State of Florida is an example of a state where the Legislature allows taxpayer funds to be used for costs when an attorney is retained. *See Fla. Stat. Ann. § 27.52(5)*. Florida's provision is entitled "Indigent for Costs." It contains a comprehensive regulatory scheme that allows for application by the defendant and review by Florida's Justice Administrative

Commission. The commission is allowed "to contest any motion to declare a person indigent for costs." Fla. Stat. Ann. § 27.52(5)(b). The statute lists six specific criteria for a court to consider when allowing a defendant to be declared indigent for costs. *Id.* at § 27.52(d)(1-6). The sixth factor is the amount the defendant paid the attorney. It contains "a presumption that the applicant is not indigent for costs if the amount of attorney's fees exceeds \$5,000 for a noncapital case or \$25,000 for a capital case in which the state is seeking the death penalty." By creating a detailed statutory scheme for the examination of private fee agreements, the Florida Legislature has adopted specific provisions that alter the single source approach used in South Carolina and Kentucky.

South Carolina's General Assembly established a system that focuses on the appointment of counsel and provides access to appointed counsel the resources to present the defense of their clients. Every person who is unable to employ counsel may apply for the appointment of counsel. If counsel is appointed, that person would have access to funds appropriated by the General Assembly to cover expenses of the representation. When a person is financially able and chooses to employ private counsel, that person opts out of the State's system to provide for indigent defense. That person assumes the cost of their choice and the contract they enter into with that private attorney controls the terms of that engagement. In this case, the Applicant employed private counsel to file and prosecute this post-conviction relief application. Unlike most PCR applicants, he did not file a pro-se application and ask the court to appoint counsel for him. His initial attorney represented him from January 2019 until September 2023. In September 2023, the Applicant employed another private attorney, Attorney Phillips, to take over the prosecution of his PCR application. Attorney Phillips has represented the applicant from that date to present. The Applicant opted out of the State's indigent defense system by privately retaining counsel as was

his right. Applicant cannot selectively enjoy the benefits of the system adopted by our General Assembly by selecting, piecemeal, which aspect of the Defense of Indigents Act apply.

B. The Defense of Indigents Act and the rules enacted by our Supreme Court only allow access to public funds only for court-appointed counsel or public defenders.

By its express terms, access to funding under the Defense of Indigents Act is restricted to public defenders and court appointed counsel. S.C. Code Ann. § 17-3-50 begins with the words, "When private counsel is appointed pursuant to this chapter. . ." S.C. Code Ann. § 17-3-50(A) (emphasis added). Other sections of the Defense of Indigents Act support the Agency and the trial court's interpretation. Section 17-3-80 is titled, "Appropriation for expenses of *appointed private counsel* and public defenders; restrictions and limitations." S.C. Code Ann. § 17-3-80 (emphasis added). The text of the section provides, "This fund must be used to reimburse *private-appointed counsel*, public defenders, and assistant public defenders for necessary expenses . . . actually incurred in the representation of persons pursuant to this chapter, so long as expenses are approved by the trial judge." *Id.* (emphasis added). Section 17-3-90 is titled "Vouchers for payment for services by *private appointed counsel* and for reimbursement of expenses: approval and submission for payment." S.C. Code Ann. § 17-3-90 (emphasis added). This section's text begins with "Private, appointed counsel shall submit . . . and the public defender shall do likewise. . ." As noted, the Act defines the standard for indigency as a person who "is financially unable to employ counsel." S.C. Code § 17-3-30(A).

The Legislature expressly gave the Supreme Court the authority to make rules necessary for the administration of the Defense of Indigents Act. S.C. Code Ann. § 17-3-110. The Supreme Court used this authority in Rule 602, SCACR. This rule provides for the appointment of public

defenders or private counsel but also to specifically addresses cases where counsel has been retained. The rule states that, "If counsel shall have been *retained and partially paid for his services* in either trial or appeal stages, *no reimbursement may be had from indigent funds.*" See Rule 602(c), SCACR (emphasis added).

The General Assembly did not, nor did the Supreme Court in the creation of our court rules, create a system that allows a person to be determined to be indigent ONLY for the purpose of expenses. Reading the statutes and court rules in their plain language, the court can only interpret them to deal with the appointment of counsel and not the opening of the State's purse for retained counsel.

C. The SCCID has interpreted the Defense of Indigents Act to only encompass payment for court appointed counsel and not privately retained counsel.

The South Carolina Commission on Indigent Defense (SCCID) has implemented a Voucher Payment Policy (VPP) originally adopted by the Commission on September 25, 2007, and revised on February 26, 2021.¹ Under the Agency rules for payments to attorneys from funds allocated by the General Assembly, "[e]very attorney who represents or expects to *represent an indigent client pursuant to court appointment or any Indigent Defense Contract* (formerly Rule 608 Contract) assignment must register online with SCCID (www.sccid.sc.gov) for a User Account, be approved, and be issued an attorney password." VPP Rule I (A)(2) (emphasis added). The Agency rules provide that "[w]ithin 15 days of *receiving notice of the appointment or*

¹ The Voucher Payment Policy is published on the policies page of the SCCID's website and is available to the public and all members of the bar. See <https://sccid.sc.gov/docs/SCCID%20Voucher%20Payment%20Policy-Rev%2021%20Final.pdf>.

assignment of any indigent defense case, counsel must register the case with SCCID online at www.sccid.sc.gov." VPP Rule Rule I (B)(1) (emphasis added). The Agency requires "[d]uring the case-registration process, counsel is required to upload a copy of the Order of Appointment as verification of the appointment." VPP Rule I (B)(2) (emphasis added).

These rules comport with Rule 602(c)'s plain language and also accords with the Agency's interpretation of section 17-3-50 that payment from public funds is available solely to court-appointed attorneys and not, as in the present case, privately retained counsel. The intent of the General Assembly and the plain language of Chapter 3 of Title 17 are clear that Defense of Indigent funds are limited to cases where private counsel is court appointed. This court should defer to SCCID's interpretation of this statutory language, which the agency is tasked with implementing. See *Brown v. DHEC*, 348 S.C. 507, 560 S.E.2d 410 (2002) (stating that "the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation.").

If the General Assembly wants to subsidize privately retained attorneys in PCR settings, it is free to do so by creating the statutory authority and properly funding the same. This Court cannot, especially on the facts of this case, create an unfunded mandate that could financially hamstring the Defense of Indigents Fund.

IV. THE DICTA IN *REEVES V. STATE* DOES NOT GIVE RETAINED COUNSEL ACCESS TO THE DEFENSE OF INDIGENT FUNDS

Applicant mistakenly relies on *dicta* in *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Cl. App. 2015). While *Reeves* was a PCR case, it did not specially deal with the issue before this court since the propriety of requiring the SCCID to pay for expert witness fees when counsel for an applicant was privately retained was not presented, briefed or argued in *Reeves*. Trial counsel in

Reeves did almost nothing. Counsel failed to recognize the need for an expert medical witness. *Reeves* at 377-78, 782 S.E.2d at 752-53. He did not discuss with his client about need to consult or hire an expert. *Id.* The specific holdings of the case were that trial counsel (1) "should have discussed hiring a medical expert with" his client, and (2) "did not provide a legitimate trial strategy for failing to consult with an expert before trial or call a medical expert witness to testify at trial." *Id.* Trial counsel could recall almost nothing about the case except there was a "question about money." *Id.* His file was destroyed. *Id.*

Applicant's reliance of *Reeves* is premised not on the holding of *Reeves* - that trial counsel failed to even consult with an expert or his client about getting an expert - but *dicta* in a footnote. In a footnote, the Court of Appeals noted "if *Reeves* was indigent and could not afford to pay for an expert, the South Carolina Office on Indigent Defense could have provided funds needed to secure an expert." *Reeves* at n.5. While *Reeves* involved retained counsel, it does not stand for the principal that the Defense of Indigents Funds are available to retained counsel. The issue of indigency was never raised in *Reeves* at the trial level (and thus not are part of the record) and only referenced in *dicta* through a footnote during the appeal stage. *Reeves* did not weigh the factors to determine indigency and did not rule upon or even consider the effect of counsel being retained on the ability to access indigent funds.

Applicant is asking this Court to ignore the current law and require SCCID to pay costs without budgetary authorization from the General Assembly. While some states have made provisions in their statutes for retained counsel to potentially access taxpayer funds, South Carolina is not one of them. Any decision to provide access to state funds for retained counsel is an issue for the General Assembly to address through their "power of the purse" in the annual appropriations acts or statutory changes.

V. CONCLUSION

This Court did not error in vacating the funding order previously issued in this case. In this case, the applicant asked the court to ONLY find him indigent so that he may have the State to pay for his experts while he paid the fees necessary to hire two (2) attorneys. There are no provisions under the Defense of Indigents Act that allow access to public funds for persons who retain private counsel. For the reasons stated herein and in argument, the Court should deny the Applicant's motion to reconsider.


Herve B. O. Young, SC Bar 7013
Deputy Director / General Counsel
SC Commission of Indigent Defense
Post Office Box 11433
Columbia, SC 29211
(803) 734-1343
Email: hyoung@sccid.sc.gov

Columbia, South Carolina

November 21, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
DAVID LEE WALKER,	)	
	)	Case No.: 2019-CP-30-00026
Applicant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

I certify that on this day, I served the SCCID RESPONSE TO APPLICANT'S MOTION TO ALTER OR AMEND JUDGEMENT PURSUANT TO RULE 59(E), SCRPC upon the below listed counsels by email using their primary email address listed in the Attorney Information System (AIS) on the indicated date.

Dayne C. Phillips
Attorney for Applicant
dayne@pricenowitz.com

Zachary W. Jones
Attorney for Defendant
zacharyjones@scag.gov

Hervey B. O. Young
Hervey B. O. Young

Columbia, SC

November 21, 2025

K. MICHELLE SIMMONS
2025 NOV 21 PM 1:16
LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

DAVID LEE WALKER,)

Applicant)

Vs)

State of South Carolina,)

Defendant)

) IN THE COURT OF COMMON PLEAS FOR
) THE EIGHTH JUDICIAL CIRCUIT

ORDER

) C/A NO. 2019-CP-30-00026

This matter is before the Court pursuant to Rule 59 (e) SCRPC. The Applicant seeks an Order of this Court amending or altering its Order of November 5, 2025.

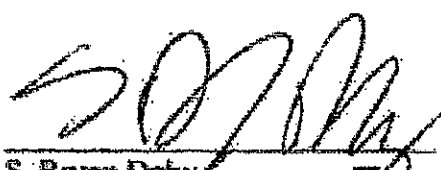
Pursuant to Rule 59 (f) SCRPC, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Applicant, this Court has determined that its original Order dated November 5, 2025, is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Bishopville, South Carolina

Dated: 11/24/25


S. Bryan Doby

Judge, Third Judicial Circuit

MICHELLE SIMMONS
2025 NOV 24 P 3 11
CLERK OF COURT
LAURENS COUNTY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) FOR THE EIGHTH JUDICIAL CIRCUIT

David Lee Walker, #274195,) Case No.: 2019-CP-30-00026

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

K. MICHELLE SIMMONS
2026 JUL 13 P 6:33
LAURENS COUNTY
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by David Lee Walker (“Applicant”), on January 15, 2019, and amended on August 22, 2024. The Court convened an evidentiary hearing into the matter on March 2, 2026, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Dayne C. Phillips, Esquire. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has failed to establish that he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. In February 2014, the Laurens County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2014-GS-30-0228). Elizabeth P. Wiygul, Esquire (“Counsel”) represented Applicant at trial. Assistant Solicitor O. Warren Mowry, Jr., Esquire, and Ruston W. Neely, Esquire, prosecuted the case. On February 23, 2015, Applicant proceeded to trial before

the Honorable Frank R. Addy, Jr. The jury found Applicant guilty of murder but not guilty of the weapons charge. Judge Addy sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. John H. Strom, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on April 19, 2017. *State v. Walker*, Op. No. 2017-UP-169 (S.C. Ct. App. filed April 19, 2017.) Applicant then filed a petition for rehearing that was denied by the South Carolina Court of Appeals on June 23, 2017. On August 14, 2017, John Strom, Esquire, filed a petition for writ of certiorari on behalf of the Applicant. The Supreme Court of South Carolina denied the petition for writ of certiorari on February 1, 2018. The remittitur was returned to the circuit court on February 2, 2018.

Factual Summary

Late at night on October 31, 2013, Johnny Lee Cheeks ("Victim") was shot at his Enoree residence where he lived with Kelly Ball.

Toris Moore, Applicant's niece, testified Applicant stopped by to see her on the night of the shooting. (R.p.75, line 25-p.76, line 4; p.76, line 17-p.77, line 15). Applicant was with two other men—Christopher Wells and Johnny Lee Saxon—and Applicant asked Moore if she had a gun he could borrow. (R.p.77, line 16-p.78, line 8). Moore testified Applicant told her the three men were "going to Enoree to rob an older man at his house" and said they only had one gun and wanted another. (R.p.78, lines 9-11; p.79, lines 10-18). Applicant further told Moore the older man lived with a white woman and sold drugs and liquor out of his home. (R.p.78, lines 12-17). Moore testified she told Applicant her mother pawned the gun because Moore did not want to be involved in the robbery. (R.p.78, line 18-p.79, line 5).

Kelly Ball testified that she was with Victim on the night of the shooting. (R.p.86, lines 9-

24.) The two had just returned to Victim's mobile home when someone knocked on the door, and Victim answered it. (R.p.91, lines 3-12.) Ball testified Victim walked out, carrying keys and money in his pockets and a gun. (R.p.92, lines 2-17; p.103, lines 10-13.) Ball heard arguing and "some cursing," and testified she heard three voices, but only recognized that of Victim. (R.p.92, line 18-p.93, line 1.) Ball stated she also heard "scuffling," a loud thud, and seconds later she heard a gunshot. (R.p.93, lines 2-6.) Ball ran down a short hallway toward the front door and subsequently heard four more gunshots. (R.p.93, lines 9-20; p. 127, lines 12-21.) The door was not closed, so Ball could see out into the yard. (R.p.93, line 21-p.94, line 2.) Ball crouched down in the doorway and yelled, asking Victim if he was okay, and he told her he had been shot and to get help. (R.p.94, lines 2-5.) Ball testified when she looked outside, she saw a man lying on the ground, later identified as Applicant, and a second man standing near him. (R.p.94, lines 6-10; p.124, lines 2-20.) The second man was standing in a well-lit area, and Ball stated she made eye contact with him and got a good look at his face before he ran away from the scene. (R.p.95, line 20-p.96, line 8.) Ball later identified the man under the light as Christopher Wells. (R.p.96, lines 9-19; p. 120, lines 4-14.) Ball testified Wells ran to a waiting vehicle, got in the back seat, and the car drove away; Ball did not get a look at the driver. (R.p.97, lines 4-25.)

Ball dragged Victim inside the house and called 911, leaving Applicant on the ground outside. (R.p.98, lines 1-11.) Ball stated Victim was panicked and said he was "going to lay here and die." (R.p.99, lines 19-24.) A few minutes later, someone banged on the door and Ball asked who was there, and the person replied, "David." (R.p.100, line 5-p.101, line 3.) Ball testified Victim told her, "Do not open that door. That is who shot me." (R.p.101, lines 4-10.) The knocking soon stopped. (R.p.101, lines 17-22.) Victim told Ball the attackers had taken everything he had on him, including his money, keys, and jewelry. (R.p.129, lines 11-14; p.137, lines 13-24).

Law enforcement arrived minutes later. (R.p.101, line 23-p. 102, line 1.) Lieutenant Marty Crain was the first deputy to approach the mobile home, and he testified he saw Applicant collapsed in a chair on the porch and he heard a woman screaming inside. (R.p.140, lines 19-21; p.140, line 25-p.141, line 4; p.141, lines 22-23; p.142, lines 5-13; p. 143, lines 1-3.) Ball opened the door and Crain saw Victim on the floor inside, bleeding, with at least one gunshot wound to his neck. (R.p.143, line 22-p.144, line 17.) Crain testified Victim was conscious and talking; Victim told Crain the man on the porch had shot him. (R.p.144, line 22-p.145, line 5.) Another deputy who arrived shortly after Crain found a gun on the ground in the yard, which was later determined to be a .380 Lorcin handgun. (R.p.167, lines 2-5; p.170, lines 4-13; p.279, lines 6-13.)

Sergeant Robert Timmons remained on the porch with Applicant until medical crews arrived. (R.p.209, lines 20-22; p.213, lines 4-9.) Timmons testified Applicant was not a suspect at the time, and deputies thought he might be a victim even though Applicant said he had not been shot, but had been "jumped." (R.p.214, lines 4-14; p.353, line 21-p.354, line 17.) Specifically, Applicant told Timmons a few people "jumped on [him] and his arm was broken in two places." (R.p.214, lines 15-21.) Applicant said his attackers took off in a tan Ford Bronco before law enforcement arrived. (R.p.214, lines 22-24.)

The lead investigator, Lieutenant Bryant Cheek, testified Victim was still alive and talking when he arrived at the scene. (R.p.352, lines 8-21; p.360, lines 7-17.) Victim told Cheek that "they" came to his home to rob him, that Applicant shot him, that Victim then shot Applicant, and that Applicant subsequently shot him again. (R.p.355, lines 1-5.)

Both Applicant and Victim were taken to the hospital. Cheek testified he did not realize how serious Victim's injuries were until he arrived at the hospital to continue his investigation. (R.p.360, lines 18-24.) The gunshot wound to Victim's neck was not life-threatening. (R.p.250,

lines 1-13; p.251, lines 1-5.) However, the bullet that entered Victim's abdomen caused severe internal bleeding and damage to multiple organs as it passed through his body, eventually leading to his death. (R.p.251, lines 8-24; p.260, line 20 p.261, line 1).

While at the hospital, Applicant consented to a gunshot residue ("GSR") test of his hands. (R.p.361, line 1-p.362, line 7.) The results of the tests revealed the presence of particles associated and consistent with GSR, and a bullet that fell out of the victim's clothes at the scene was later matched to the .380 Lorcin handgun found in the yard. (R.p.148, lines 6-10; p.343, lines 1 1-20; p.368, line 1 1-p.369, line 1).

Present Application

In his initial PCR application filed January 15, 2019, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel

- a. Failure to properly prepare and investigate the case. (Including the failure to investigate and obtain evidence, surveillance video, police body cam video, cell phone records, cell phone video recordings, etc. that would establish a defense in the case.
- b. Failure to obtain transcripts from court proceedings wherein potential witnesses had given previous testimony or to obtain records relevant to the impeachment of the testimony of any informants or state witnesses.
- c. Failure to follow reasonable instructions or requests of the applicant.
- d. Failure to properly present an adequate defense based on the facts and circumstances of the case.
- e. Failure to properly conduct discovery in the case.
- f. Failure to properly subpoena and call witnesses and present evidence in the defense of the case. Making improper stipulations or giving consent on issues before or during the trial which were adverse to the defense of the case.
- g. Failure to move for appropriate suppression hearings and properly object to the testimony of witnesses and evidence in a timely manner.
- h. Failure to properly and effectively cross-examine the State's witnesses.
- i. Failure to raise and properly argue and preserve record and issues for appeal.

- j. Failure to make a proffer of evidence when warranted by the circumstances of the case and properly present and preserve issues for appeal.
 - k. Failure to make and preserve the record in cases of conferences at the bench and in chambers.
 - l. Failure of counsel to communicate all plea offers to the Applicant and to adequately discuss same in light of the evidence.
 - m. Failure to properly discuss the case and advise the Applicant on the applicable law and procedure and facts known or believed to exist. (Including the failure to meet with the applicant adequately and the failure to, in a timely manner, fully review and discuss the discovery material, evidence, law, and procedure so that the applicant would fully understand the charges, consequences and choices, including plea options.)
 - n. Failure to fully and timely explain the advantages of a guilty plea and the plea offers and the risks of trial. Failure to fully advise as to the right to testify and the associated risks.
- 2. Ineffective Assistance of Appellate Counsel
 - a. Failure to raise and adequately brief the issues preserved at trial or for which there was a good faith argument as to preservation of the issue.
 - 3. Discovery and Due Process Violations
 - a. Failure of the State to produce discoverable material that would have aided in the defense of the case, including information in the possession of the State or not in the possession of the State but that the State could reasonably have expected to exist based on information in the State's possession such that the State should have disclosed the potential for such evidence.

Applicant subsequently amended his application on August 22, 2024, raising the following allegations:

- I. Ineffective Assistance of Trial Counsel
 - 1. Trial Counsel failed to properly prepare for Applicant's trial.
 - a. Trial Counsel met with Applicant twice prior to trial, was admittedly missing material evidence, had not consulted with the appropriate expert witnesses, and failed to adequately communicate with him.
 - b. Trial Counsel failed to obtain and review all evidence with Applicant in preparation for trial.
 - c. Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.

- d. Based on Trial Counsel's comments, Trial Counsel failed to prepare for the State to argue Applicant's guilt based on felony murder doctrine.
2. Trial Counsel failed to timely move for a continuance, resulting in prejudice to Applicant based on the Trial Court's comments and basis for denying the motion.
 - a. Trial Counsel was not prepared to proceed to trial and should have moved for a continuance upon receiving notice for trial.
 - b. Based on the untimely disclosure of the gunshot residue (GSR) evidence, Trial Counsel failed to consult with a qualified GSR expert and should have moved for a continuance upon receiving the GSR evidence.
 - c. Trial Counsel failed to consult with the appropriate medical doctors for removing the bullet from Applicant's body to have it examined by the South Carolina Law Enforcement Division (SLED) and should have moved for a continuance upon receiving notice for trial.
3. Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense.
 - a. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (holding "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.") (quotation citation omitted); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (finding "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Sneed v. Smith*, 670 F.2d 1348, 1353 (4th Cir. 1982) ("To meet this standard, an attorney must at a minimum, 'conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.'") (quoting *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir. 1968)); *Hicks v. State*, 314 S.C. 280, 443 S.E.2d 907 (1994); *Peeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

4. Trial Counsel failed to file a supplemental motion for discovery or motion to compel disclosure of evidence to ensure all material and impeachment evidence had been disclosed by the State.
 - a. Trial Counsel failed to move for disclosure of all the BWC video recordings prior to trial. Prosecutor O. Warren Mowry, Jr., admitted in an affidavit that he did not collect all the BWC video recordings from the officers at the scene.
 - b. Trial Counsel failed move for the entire SLED file (GSR, ballistics, and latent prints) including but not limited to lab records, analyst records (training, proficiency, Disciplinary, hand-written notes), audit records, and communications with the prosecution and/or investigators).
 - c. Trial Counsel failed to personally review the Solicitor's file prior to trial.
 - d. Trial Counsel failed to request whether there were any promises or deals made with witnesses, including but not limited to Toris Moore and Kelly Ball, and whether any charges of these witnesses were dismissed or expunged after Applicant's trial.
 - e. Trial Counsel failed to request the cell phone extraction report.
 - f. *See Giglio v. United States*, 405 U.S. 150, 153-154 (1972) (holding *Brady* encompasses impeachment evidence); *Kyles v. Whitley*, 514 U.S. 419 at 442 n.134, 445-451 (1995) (finding due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks); *see Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999) (holding "a *Brady* violation occurs when: (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.") (citation omitted); *see also Kyles v. Whitley*, 514 U.S. 419 (1995) (finding "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police."); *State v. Gullede*, 326 S.C. 220, 227, 487 S.E.2d 590, 593 (1997).
5. Trial Counsel failed to consult with a qualified GSR expert and call that expert witness to testify at Applicant's trial to rebut the testimony presented by the State's expert witness at trial.
6. Trial Counsel failed to timely move to have the bullet extracted from his body for testing by SLED prior to trial.

7. Trial Counsel failed to interview critical witnesses who could have added to the credibility of Applicant's case and challenge the credibility of the State's witnesses when it was reasonable and necessary to do so in preparation for trial.
8. Trial Counsel failed to consult with a ballistics expert to review the SLED report and records and to determine whether to conduct independent testing on the untested items of evidence.
9. Trial Counsel failed to obtain all the BWC video recordings in preparation for trial.
10. Trial Counsel failed to obtain and conduct an extraction of the cell phone data and text messages in preparation for trial.
11. Trial Counsel failed to visit the incident location to determine the veracity of the witness statements and police investigation, and adequately confront witness testimony during the trial about the crime scene.
12. Trial Counsel failed to obtain witness Kelly Ball's mental health records in preparation for trial for adequate confrontation of this witness.
13. Trial Counsel failed to move for a hearing to challenge the suggestiveness of the identification. *See Neil v. Biggers*, 409 U.S. 188 (1972).
14. Trial Counsel failed to properly raise, argue, and preserve for appellate review whether Applicant voluntarily provided a statement to police. *See Jackson v. Denno*, 378 U.S. 368 (1964).
15. Trial Counsel failed to move for suppression of the hearsay statements made by the Decedent and failed to object to the admission of these statements during the trial. *See* Rules 801 and 802, SCRE.
16. Based on the Trial Court's denial of the request for a continuance due to the GSR issue, Trial Counsel failed to move for a mistrial when the State's GSR expert witness, Jennifer Stoner, testified that the particles found do not meet the scientific definition of GSR, but in her opinion, the evidence constitutes GSR.
17. Trial Counsel failed to adequately cross-examine witness, Kelly Ball, based on her mental health records, inconsistent statements, criminal history, and potential deals with the Government.
18. Trial Counsel failed to adequately cross-examine Toris Moore based on her criminal history and potential promises/deals with the Prosecutor and/or police.
19. Trial Counsel failed to properly object to the untimely disclosure of the photo lineup of his co-defendant Wells, particularly after there had been identification testimony.
20. Trial Counsel failed to move for redactions of the BWC video recordings to comply with the South Carolina Rules of Evidence.

21. Trial Counsel failed to object to the admission of the incident report into evidence when it contained unduly prejudicial, inadmissible hearsay, and any purported trial strategy would have been unreasonable. *See* Rules 403, 801, and 802, SCRE.
22. Trial Counsel failed to properly argue for a mistrial and to preserve that issue for appellate review (e.g., the untimely disclosure of the list of witnesses, undisclosed evidence by the State, untested ballistics evidence, the untested bullet in Applicant's body, not having GSR expert witness to rebut opinion testimony, etc...)
23. Trial Counsel failed to properly object to the Trial Court's jury instruction that malice may be inferred when "one intentionally kills another during the commission of a felony" as an unconstitutional charge on the facts.
24. Trial Counsel denied Applicant his right to present a full and complete defense.
 - a. U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14.
 - b. *Crane v. Kentucky*, 476 U.S. 683 (1986) (finding "[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense"); *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984) (finding "[d]ue process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense."); *Id.* (emphasis added); *see also Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985) (finding opportunity to present a full and complete defense includes "a defendant's privilege to request and obtain material evidence from the state.")).
25. Trial Counsel failed to contemporaneously object to inadmissible evidence and move to strike prejudicial testimony during Applicant's trial.
26. Trial Counsel failed to properly raise and preserve for appellate review the issue of whether the State unconstitutionally called his case for trial. *See State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).
27. Trial Counsel failed to present a reasonable trial strategy in Applicant's defense.
 - a. *See Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *Stacy v. Solem*, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions

as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges.").

28. All allegations raised by the Applicant in the prior pleadings filed in this action are hereby incorporated by reference as if fully set forth verbatim.
29. Based on the applicable issues, exhibits, and testimony of attorney Aimee Zmroczek (who represented co-defendant Johnny Saxon) referenced in the Order Granting Post-Conviction Relief for Applicant's co-defendant, Christopher J. Wells, the Honorable B. Alex Hyman found that the attorney who represented Wells provided ineffective assistance of counsel for failing to conduct an adequate investigation and failing to properly cross-examine witness, Kelly Ball, regarding her mental health records and inconsistent statements. Specifically, these allegations also apply to Applicant's PCR case and prove Trial Counsel provided ineffective assistance of counsel.
30. Trial Counsel failed to move for a dismissal or other appropriate remedy based on prosecutorial misconduct based on the discovery violations and resulting prejudice to Applicant.
31. Trial Counsel failed to properly move for a mistrial based on the discovery violations.
32. Trial Counsel failed to present evidence of the text messages from the cell phone that was in custody of the police. Specifically, text messages to the Decedent that could be considered threatening in nature.
33. Trial Counsel failed to visit the incident location to determine the potential visibility of the witness who purportedly identified the co-defendant.
34. Trial Counsel failed to adequately challenge the credibility of witness Kelly Ball during cross-examination based on her using drugs the day of the crime, providing multiple inconsistent statements, being on a call with her mother, BWC video recording contradicting her statements.
35. Trial Counsel failed to properly object and preserve for appellate review the State argument to the jury for a felony murder conviction when Applicant was not charged with underlying felony (i.e., not charged with armed robbery).
36. Trial Counsel failed to object to the Solicitor's improper comments regarding felony murder during the Prosecutor's opening statement.
37. Trial Counsel failed to timely and properly argue for a continuance by not consulting with ballistics expert prior to trial.
38. Trial Counsel failed to timely and properly argue for a continuance by not consulting with a digital forensic expert regarding the cell phone evidence prior to trial.
39. In connection with Trial Counsel's failure to timely move for a continuance upon receiving notice for trial, Trial Counsel failed to timely and properly

move for ex parte funding orders to obtain expert witness in the following areas: GSR, Ballistics, and Digital Forensics.

40. Trial Counsel failed to properly cross-examine Investigator Bryant Cheek regarding his investigation, the State's evidence, and his bias/connection with the Decedent.
41. The testimony presented by State's GSR expert was unduly prejudicial because Applicant was shot prior to the GSR test, according to the SLED Forensic Services Laboratory Customer Service Notice 2021-03 dated December 20, 2021, *Regarding Analysis of GSR Kits*, providing, relevant part: "Effective January 1, 2022, the SLED Trace Evidence Department will not longer routinely accept and analyze gunshot primer residue (GSR) kits collected from the following two categories of casework: - Shooting victims, to include suicides - Persons known/found to be in the possession of a firearm (to include police officers)."

II. Ineffective Assistance of Appellate Counsel

1. Appellate Counsel failed to raise on appeal the issue of whether the Trial Court erred in denying Applicant's motion for a mistrial.
2. Appellate Counsel failed to properly raise and argue on appeal the issue of whether the Trial Court erred in denying Applicant's motion for a continuance. Specifically, Appellate Counsel focused on the issue of Applicant being indigent and not having enough time to retain a GSR expert, arguing that it denied his right to equal protection and due process right to present a complete defense.
3. Appellate Counsel provided ineffective assistance in the event Trial Counsel properly preserved other meritorious issues for appellate review.
4. All allegations raised by the Applicant in the prior pleadings filed in this action are hereby incorporated by reference as if fully set forth verbatim.

A hearing was convened before this Court on March 2, 2026, at the Newberry County courthouse. At that hearing, Applicant proceeded only on the allegations of ineffective assistance raised in his most recent amended application, with the exception of issues 13, 14, and 40, which he dropped. Accordingly, the Court deems all other allegations abandoned.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of

Applicant's trial, the records of the Laurens County Clerk of Court regarding the subject conviction and sentence, Applicant's appellate records, and Applicant's initial and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Trial Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of

others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The reviewing court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced 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. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Counsel’s alleged failure to adequately prepare for trial

In his PCR application, Applicant claims Counsel was ineffective for failing to adequately

prepare for trial. At the PCR hearing, Applicant testified that Counsel only met with him twice prior to trial. He moved to have her relieved, but the motion was denied because he had already fired two attorneys before Counsel appointed. He testified that discovery was not completed until two days before the trial began, and he complained that Counsel did not have time to review it with him before trial. He also testified that Counsel never discussed witnesses, trial strategy, whether he should testify, potential defenses, or the elements of the crime.

Counsel testified that she was appointed three weeks before Applicant's trial began. She was the third attorney appointed to represent Applicant after he had fired Chip Howe and Bryan Abel. She got a funding order to hire an investigator, Jimmy Powers, and she recalled going to examine the scene of the crime with him on at least one occasion. She also got a funding order for an expert in gunshot residue ("GSR") analysis, but that expert became ill shortly before trial and Counsel could not get in contact with him. Counsel requested a continuance to allow her to retain a different expert, but the motion was denied. (R.pp.26–32). At the PCR hearing, Counsel could not remember exactly how often she met with Applicant in preparation for trial, but she testified she would be shocked if it was only twice. She also spoke with Applicant multiple times by phone. Counsel testified that she went to the solicitor's office on an almost daily basis to examine the State's evidence; and she reviewed all the discovery she had in her possession with Applicant. Counsel explained that she believed Applicant was going to testify, until the very first day of trial when Applicant unexpectedly moved to have her relieved as counsel and refused to participate in trial. (R.pp.7–8). Counsel was surprised by Applicant's outburst and testified that he refused to meet with her afterwards when she tried to visit him at the jail to discuss the ongoing trial.

Counsel explained that part of her trial strategy was to argue that Applicant had been shot by the same gun that shot the Victim—the Lorcin .380 found in the yard—which, if believed by

the jury, would have refuted the State's argument that Applicant was shot by the Victim in self-defense with the Victim's revolver, a Rossi .38 Special. This argument would have supported the defense's position that Applicant was merely present at the scene when some unrelated assailants showed up to perpetrate the attack on Victim. However, Counsel's motion for a continuance to have the bullet extracted from Applicant's neck so that it could be forensically examined was denied. (R.pp.40-52). In addition, Counsel's strategy relied upon Applicant's apparent willingness to testify, and Applicant's unexpected refusal to participate in trial made that impossible.

The Court finds that Applicant has not met his burden of proof as to these allegations. The record reflects that Counsel had only a few weeks to prepare for trial after she was appointed; however, this largely appears to have been the result of Applicant's own dilatory conduct and repeated demands to replace his appointed counsel. The trial court specifically noted that Applicant's "discussions at requesting a new attorney or hiring a new attorney is nothing more than an effort at delay on behalf of Mr. Walker. . . . Mr. Walker is attempting, as I said a moment ago, to game the system." (R.p.10, line 24-p.11, line 18). Furthermore, the Court finds credible Counsel's testimony that she met with Applicant multiple times before trial, spoke to him on the phone several times, and attempted to meet with him during trial, but Applicant refused to attend his trial and then refused to meet with Counsel when she came to visit him in the jail. Applicant cannot blame Counsel for any lack of preparation attributable to his own obstreperous conduct.

Furthermore, the brevity of time spent by counsel in consultation with a defendant is not, by itself, indicative of inadequate preparation. *Collins v. State*, 422 S.C. 250, 258, 810 S.E.2d 871, 875 (2018) (holding counsel's performance was not deficient, even though he represented his client for only six weeks and met with him only twice prior to trial); *Smith v. State*, 404 S.C. 493, 500,

745 S.E.2d 378, 382 (Ct. App. 2012) (holding counsel was not deficient, despite only meeting with applicant twice prior to his trial); *see also Harris v. State*, 377 S.C. 66, 74–75, 659 S.E.2d 140, 144–45 (2008) (holding PCR court’s finding that counsel’s meetings with applicant were “limited in number and duration” did not justify grant of post-conviction relief), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). In this case, despite the brevity of Counsel’s representation, she credibly testified that she was able to review with Applicant all the discovery she had received. She also testified that she was able to hire an investigator and attempted to hire a GSR expert. Counsel formulated a reasonable theory of the defense and attempted to prove it by moving to have the bullet extracted from Applicant’s neck for forensic analysis, but her requests for a continuance for that purpose were denied—again, largely due to the prior delays caused by Applicant’s own dilatory conduct. The Court finds Counsel’s performance in preparing for trial was not deficient; on the contrary, it was commendably diligent despite the limited time available.

In addition, to prove prejudice, the applicant must show a reasonable probability that additional time spent in preparation would have changed the outcome of his case. *Id.* at 259–60, 810 S.E.2d at 876 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998); *Skeen v. State*, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997)). Apart from the additional evidence obtained by Aimee Zmroczek—discussed in further detail below—Applicant has failed to introduce any additional evidence that could have been discovered or developed by more thorough pre-trial preparation. Applicant complains that Counsel did not obtain a qualified GSR expert in time for trial; however, he failed to produce such an expert at the PCR hearing¹ to show

¹ Applicant informed the Court that he had moved for funding in order to retain a GSR expert in preparation for the PCR hearing; however, his motion was ultimately denied.

how additional expert testimony might have benefited his defense. Applicant also complains that Counsel did not succeed in moving to have the bullet extracted from his neck and examined; however, although the bullet has now been removed and examined by SLED, Applicant did not introduce the results of that examination at the PCR hearing. Applicant's claim that such additional investigation would likely have changed the outcome of his case is purely speculative. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation).

Counsel's alleged failure to move for a continuance

Applicant's claim that Counsel failed to move for a continuance in order to retain a qualified GSR expert and to have the bullet in Applicant's neck extracted and analyzed is conclusively refuted by the record. As explained above, Counsel sought a continuance on both of those grounds, and the trial court denied her request. Furthermore, in the absence of any evidence showing that the GSR expert and forensic analysis of the bullet would have been helpful to Applicant's defense, Applicant has not met his burden of proving prejudice.

Allegations related to Aimee Zmroczeks' representation of Johnny Saxon

At the PCR hearing, Applicant relied extensively on the testimony of Aimee Zmroczek, the attorney who represented Applicant's co-defendant Johnny Saxon. Ms. Zmroczek explained the actions she took in preparation for Saxon's trial. Applicant argues that Counsel performed deficiently by failing to take the same actions in preparation for his trial. He further argues that he

was prejudiced by Counsel's performance because Saxon was ultimately acquitted of murder, while he was convicted.

There are several serious flaws with this argument. As an initial matter, Applicant and Saxon were not similarly situated defendants. The evidence against Applicant was far stronger than the evidence against Saxon: Applicant was found by law enforcement sitting wounded on Victim's front porch, whereas there was no direct evidence of Saxon ever being on the scene at all. Victim expressly told responding officers that Applicant was the person who had shot him; however, Victim did not say anything that would implicate Saxon. Ball also testified that the person on the porch after the shooting identified himself as "David" and that Victim told her, "Don't let him in. That is who shot me." However, nothing in Ball's testimony implied that Saxon was at the scene. The only evidence connecting Saxon to the crime in any way came from Toris Moore, and all she said was that Saxon was with Applicant and Christopher Wells *prior to* the shooting, when Applicant came to her house to ask her for a gun. (R.p.77, line 9-p.78, line 6). Although Moore said Saxon was with Applicant and Wells, she did not testify to Saxon saying or doing anything during this interaction.

Clearly, the evidence against Applicant was far stronger than the evidence against Saxon. In light of all this evidence, Counsel faced a different and much more difficult task in defending Applicant than Ms. Zmroczek faced in defending Saxon. The mere fact that Ms. Zmroczek took different actions or pursued different lines of investigation than Counsel did is not, by itself, probative of whether Counsel provided constitutionally adequate representation for Applicant. Ms. Zmroczek's actions do not constitute a "checklist for judicial evaluation of attorney performance." *Strickland* 466 U.S. at 688. As the United States Supreme Court recognized in *Strickland*:

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. . . . There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.

Id. at 689. Much less, therefore, should different attorneys be expected to defend *different* clients, with materially *different* cases, in the same way.

In addition, Saxon was the last of the three co-defendants to be tried, *after* Applicant and Wells. Ms. Zmroczek testified at the PCR hearing that she had the advantage of already knowing the result of Applicant's trial at the time she was preparing her strategy for Saxon's defense—an advantage which obviously was not available to Counsel. "A fair assessment of attorney performance requires that every effort be made to eliminate the *distorting effects of hindsight*, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from *counsel's perspective at the time.*" *Id.* at 689 (emphasis added).

Furthermore, the Court finds Applicant has not met his burden of proving prejudice as to any of these allegations. Even if Counsel *had* done the same things Ms. Zmroczek did, Applicant has failed to prove that those actions would likely have resulted in a different verdict.

First, Applicant criticizes Counsel for not obtaining body-worn camera ("BWC") footage from additional officers who responded to the crime scene. However, the Court has reviewed the additional footage and finds it was mostly duplicative of the testimony given by the responding officers and by Kelly Ball. Counsel cannot have been deficient, nor can Applicant have been prejudiced, merely by the failure to present totally cumulative evidence at trial.

The only issue Applicant identifies as being uniquely depicted on the additional BWC footage is an incident from Officer Sweat's BWC video, in which Sweat and another officer locate

the Lorcin .380 handgun in the grass and collect it as evidence. Ms. Zmroczek testified that, in her opinion, the video depicts the officer picking up the gun and wiping it down, potentially destroying fingerprints or other evidence. However, she admitted that, when she cross-examined the officer about it, he testified that he was simply racking the slide to make sure there were no bullets in the gun. Ms. Zmroczek admitted that the video does not clearly show that the officer was wiping down the gun, but she claimed that she could not hear the sound of the gun being racked and that, in her opinion, the officer's hands were moving too fast to be racking the gun.

The video in question was introduced as part of Applicant's Exhibit 17, a flash drive. There are three versions of the video, apparently one original and two so-called "enhanced" versions. The original is entitled "Sweat - lorcin 380 (no enhancements)" and the others are entitled "Sweat - lorcin 380 (audio enhanced only)" and "Sweat - lorcin 380 (audio and video enhanced)."

The Court has viewed all three versions of the video and finds that Ms. Zmroczek's characterization of the events it depicts is dubious, to say the least. The gun itself is almost entirely out of frame, but the officers' actions and statements while handling the gun are most consistent with racking the gun to make it safe for collection as evidence. The video begins with Officer Sweat walking toward another group of officers who are looking at something on the ground with a flashlight. Officer Sweat appears to crouch down to look at something in the grass, then he stands back up. At approximately 1:32, one officer asks, "Is it empty?" and another replies, "Yeah, it's empty," followed by a few words that are obscured by radio noises. The first officer then asks, "Is it locked out?" and the other replies, "No." Two officers can then be heard talking over each other for a few seconds, then one says, "Pull it all the way back; now push it up," at approximately 1:42. One officer can be seen leaning over, apparently examining something below the bottom of the frame. At approximately 1:47, one officer says, "It's hard to get it to work," and another says,

"Let's fire it and see." At approximately 1:52, another officer says, "Hey, set it down; *don't handle it too much*," and another immediately says, "*rack it back a couple times just to make sure*." At this point, the camera points at an officer who appears to be holding an object in his hands just below the bottom of the frame. The officer moves his left arm three times in a short, back-and-forth motion; each time a mechanical sound consistent with racking the slide of a pistol can be distinctly heard. At approximately 2:05, an officer distinctly says, "Put it on safe for right now."

Although the video is far from clear, the portions that can be seen and heard do not tend to support Ms. Zmroczek's claim that the officers inexplicably decided to wipe the gun down. The video is far more supportive of the officer's testimony at Saxon's trial that they were merely racking the slide to make the gun safe.

The mere possibility of pursuing additional cross-examination based on the BWC videos is not sufficient to establish prejudice. *See Strickland*, 466 U.S. at 693 (The prejudice standard is *not* whether counsel's alleged error "impaired the presentation of the defense"; such a standard would be "inadequate because it provides no way of deciding what impairments are sufficiently serious to warrant setting aside the outcome of the proceeding."). Rather, the question is whether Applicant has shown a "reasonable probability" that additional cross-examination would have changed the result of his trial—and the answer is, he has not. Had Counsel pursued this line of cross-examination, the officer would likely have given the same innocuous response he gave to Ms. Zmroczek: he was not "wiping" the gun but simply racking the slide to ensure it was safe, in accordance with department policy.

This Court cannot see how Applicant could have been prejudiced by Counsel's failure to obtain and present this footage. Moreover, even if the video had clearly shown that the officers mishandled the gun, that would not tend to exculpate Applicant. *Strickland* requires this Court to

“consider the totality of the evidence before the judge or jury,” and specifically to consider all the facts that were “unaffected by the errors.” *Strickland*, 466 U.S. at 695. In Applicant’s trial, the State did not rely on any fingerprints from the gun; rather, the State’s case was based primarily on Applicant’s undisputed presence at the scene of the crime, Moore’s testimony that Applicant had a gun and was planning to rob Victim earlier that evening, and Victim’s identification of Applicant as his assailant. Even if the BWC video contained clear and unambiguous proof that the officers mishandled the pistol, it would not have affected any of the damning evidence the State actually relied on at trial.

Next, Applicant argues he was prejudiced by Counsel’s failure to obtain “threatening” text messages from the victim’s phone. Ms. Zmroczek testified that she arranged for an expert to extract text messages from the victim’s cell phone. She pointed to three texts from the night of the murder, which she characterized as threatening. The three texts at issue state:

9:22 PM: Hey this is teresa you dont have to lie if you with your lil
ho kelly just be a man about it and tell me so dont be sacred love
you

9:38 PM: You going down

10:07 PM: The trueth will set you free love you and sick of the
games your playing with me

Applicant’s Exhibit #20 [errors in original]. The Court notes that none of these texts includes any express or even implied threats of violence. Two of them even include the words “love you,” which are not words typically included in a death threat. The most that can be said about them is that they convey a tone of annoyance, but that falls far short of threatening violence. Nevertheless, Ms. Zmroczek argued that the person who sent these messages—an individual she identified as “Teresa”—was threatening the victim.

Even in the unlikely event that a jury might have interpreted these messages as containing

veiled threats of violence, the Court finds Applicant has not proven the result of his trial would have been different. Applicant argues that the texts could have supported an inference of third-party guilt. But the test for admissibility of "third-party guilt" evidence is strict:

[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have [no] other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. . . . [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party.

State v. Gregory, 198 S.C. 98, 16 S.E.2d 532, 534-35 (1941). Under South Carolina law, evidence which merely permits a "conjectural inference as to the commission of the crime by another" is not admissible. *Id.* The text messages in question do not even come close to establishing "such a train of facts and circumstances" as to clearly point out Teresa "as the guilty party." Other than the questionable characterization of the three text messages above as "threats," there is no evidence whatsoever that Teresa was the person who robbed and murdered the victim. Even if Counsel had obtained those text messages, they would have been inadmissible as a matter of law.

Furthermore, even if Counsel had managed to introduce the text messages at Applicant's trial, their effect on the outcome of the trial would have been nil. Applicant's proposed theory of third-party guilt is impossible to reconcile with the facts of this case. Applicant was indisputably found at the scene of the crime by police, clearly having been wounded in a gunfight. The victim himself lived long enough to tell the police that Applicant was the man who shot him and that the motive for the shooting was a robbery. Toris Moore testified that Applicant was planning to rob the victim earlier that day. The idea that the shooting was actually perpetrated by this "Teresa," and that the motive was something other than armed robbery, is totally unbelievable, especially

when the only evidence in support of that theory are three vaguely worded text messages.

Again, this Court must “consider the totality of the evidence before the judge or jury.” *Strickland*, 466 U.S. at 695. Applicant has not explained how his third-party guilt theory could possibly be reconciled with the rest of the evidence presented at trial.

Next, Applicant argues Counsel should have gone to the crime scene at night to examine for herself the lack of visibility, in order to impeach Ball’s testimony that she could see well enough to identify Applicant’s co-defendant, Christopher Wells, and his car. At the PCR hearing, Ms. Zmroczek testified that she went to crime scene around 1:00 in the morning and, in her opinion, it was too dark for Ball to have seen what she claimed to see.

Again, this Court finds Christopher Wells and Applicant are not similarly situated co-defendants. Unlike Applicant, Wells was *not* apprehended at the scene of the crime; the only direct evidence of Wells’s presence at the crime scene was the testimony of Kelly Ball identifying him as the person she saw standing in the driveway shortly after the shooting. Applicant, on the other hand, was undeniably present at the crime scene; law enforcement found him sitting on Victim’s porch, exactly as Ball claimed. It would have been pointless to claim that Ball’s identification of Applicant was unreliable, since there was no dispute that Applicant was present.

In addition, Counsel testified that she *did* go to the crime scene with her investigator to examine it for herself. And the Court’s own review of the BWC videos suggests that, although the night was dark, there was sufficient light from nearby floodlights to illuminate the porch and the area immediately in front of the house, such that it was not implausible that Ball could have seen both Wells and Applicant in the yard as she testified.

Next, Applicant criticizes Counsel for not using the recording of Ball’s 911 call to impeach Ball’s trial testimony. Ms. Zmroczek testified that she used the 911 call to expose inconsistencies

in Ball's statements during Saxon's trial. Specifically, Ms. Zmroczek referred to a portion of Ball's testimony during Saxon's trial where Ball stated that, after taking Victim inside and calling 911 following the shooting, she heard Applicant beat on the door of the trailer and threaten to kill her and Victim. Ms. Zmroczek claimed this was refuted by the 911 recording.

The Court notes that Ball never claimed Applicant made those threats *during Applicant's trial*. Obviously, it would have been impossible for Counsel to impeach testimony that Ball never even gave until *Saxon's* trial more than a year later.² Applicant has not pointed out any other alleged inconsistencies between Ball's testimony and the recording of the 911 call. The Court cannot perceive any way in which Counsel could have used the 911 recording to impeach Kelly Ball or otherwise weaken the State's case.

Next, Applicant criticizes Counsel for not obtaining mental health records for Kelly Ball to use for impeachment purposes. Ms. Zmroczek claimed she obtained copies of Ball's mental health records, which revealed that she had bipolar disorder. She also claimed Ball's mental health records included statements she made during her mental health treatment that were inconsistent with her testimony at trial. Applicant, however, did not introduce those records at the PCR hearing. Therefore, the Court finds he has failed to prove prejudice. To prove prejudice from counsel's alleged failure to procure or present evidence, a PCR applicant must present the omitted evidence

² In addition, the complete 911 recording was not provided to this Court to substantiate Ms. Zmroczek's claim that it is inconsistent with Ball's testimony. The flash drive presented to this Court contains only brief excerpts from the 911 call. In most of these excerpts, Ball's statements are difficult to understand; she is clearly experiencing extreme terror and appears to be trying to talk to the 911 operator, Victim, and her mother on another cell phone at the same time. However, there is one excerpt in which Ball appears to have heard a sound from the front door and yells, "Who is that? Who is it?" In another excerpt, Ball fearfully tells the 911 operator that someone is trying to get in the house. Although Walker's voice cannot be clearly heard in the excerpts provided to this Court, the Court is unable to perceive any obvious inconsistencies between the 911 recording and Ball's testimony. On the contrary, the provided excerpts from the 911 recording tend overall to corroborate Ball's account.

at the PCR hearing; mere speculation and conjecture by the applicant is insufficient to support a finding of prejudice. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018); *see, e.g., Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding PCR applicant failed to present any probative evidence of prejudice from counsel’s failure to obtain certain documents, where “the contents of these documents were never revealed at the PCR hearing.”).

In addition, the mere fact that Ball had been diagnosed with a mental health disorder would not be relevant for impeachment purposes absent some proof that her disorder actually affected her credibility. *C.f. State v. Galloway*, 443 S.C. 229, 240, 904 S.E.2d 866, 872 (2024) (holding testimony about a victim’s schizoaffective disorder “gives the jury nothing it can use to determine this victim’s credibility other than to guess”). Applicant has not offered any such proof. Nor has Applicant connected Ball’s bipolar disorder with any of the material facts to which she testified. *C.f. id.* (Unless victim’s schizoaffective disorder diagnosis is connected “to the facts of a particular case, the jury has no basis on which to use the knowledge except to speculate whether it could have played a role in the case.”).

Counsel’s failure to investigate whether prosecutors made deals with witnesses

Applicant claims that Counsel failed to investigate whether the prosecution made any deals or promises with Kelly Ball and Toris Moore in exchange for their testimony. However, Applicant provided no evidence of any alleged deals or promises at the PCR hearing. Accordingly, Applicant has failed to meet his burden of proof as to this allegation.

Counsel’s failure to request the “cell phone extraction report”

Applicant claims Counsel should have requested the “cell phone extraction report.” However, Ms. Zmroczek testified that the State had not performed a cell phone extraction by the time she took over representation of Johnny Saxon, which was after Applicant’s trial. Ms.

Zmroczek had to hire her own expert to extract the information from the victim's cell phone. Therefore, there was no cell phone extraction report at the time Counsel was preparing for Applicant's trial. Moreover, apart from the three test messages obtained from the victim's cell phone discussed above, no other information obtained from the cell phone was presented to this Court at the PCR hearing. Accordingly, the Court finds Applicant has not met his burden of proving prejudice as to this allegation.

Counsel's failure to object to the victim's "hearsay" statements

Applicant claims Counsel should have objected on hearsay grounds whenever witnesses at his trial repeated statements made by the victim. The Court finds, however, that Counsel was not deficient for failing to make any such objection. The victim's statements—which were given almost immediately after the shooting and shortly before the victim bled to death as a result of his wounds—were obviously admissible under the "dying declaration" or "excited utterance" exceptions to the hearsay rule. *See* Rule 803(2), SCRE; Rule 804(b)(2), SCRE. Any objection would have been futile.

Counsel's handling of the State's GSR expert

Applicant claims Counsel was ineffective for not seeking a mistrial after the State's GSR expert testified that, in her opinion, Applicant had particles consistent with GSR on his person even though her analysis did not detect all three particle components of GSR. (Trial Tr.p.379, lines 2–23). Applicant also claims the State's expert testimony on this point was unduly prejudicial because Applicant had been shot, and SLED has recently changed its policies so that it no longer performs GSR tests on shooting victims.

SLED's change of policy appears to be based on the fact that being shot with a firearm is highly likely to leave GSR on the person of the shooting victim, regardless of whether that victim

actually handled or fired a gun. However, the State's own GSR expert explicitly made this same point during Applicant's trial, stating "I cannot tell you if this is on his hand from him firing a weapon or from him being shot. Because if the gun was pointed at him and he has a bullet passing through him, that can put residue on your hands." (Trial Tr. p.380, lines 1-6). She further explained that she did not analyze Applicant's clothing because, "As I explained before, if someone is shot we expect to find gunshot residue on them. . . . I can't answer the question of whether or not they fired a weapon or were near a weapon when it was fired . . . So therefore, we do not analyze clothing of a shooting victim." (Trial Tr.p.380, line 24-p.381, line 7). In other words, the State's own expert made substantially the same point Applicant is now making on PCR: first, the particles found on Applicant's person were consistent with GSR but did not have all three components necessary to meet the technical definition of GSR; and second, the GSR found on Applicant could have come from his being shot with a firearm, rather than from his own use of a firearm on the night in question. As Applicant was indisputably shot during the incident, the presence of particles consistent with GSR on his person would have been expected. The State's own expert acknowledged that the presence of those particles alone could not establish whether Applicant used a gun that night. Based on the record, the Court is unable to discern any possible prejudice to Applicant resulting from Counsel's failure to more thoroughly challenge the conclusions of the State's GSR expert during trial.

Counsel's failure to object to the incident report

Applicant claims Counsel was ineffective for failing to object to the admission of the incident report into evidence, when the incident report contained hearsay and other prejudicial material. However, the transcript reflects that only one page of the incident report was admitted into evidence: the page containing a numbered list of the items collected from the crime scene by

Officer Taylor. (Trial Tr.p.227, lines 19–23). Counsel, who had already referred to that page of the incident report numerous times during her cross-examination of Officer Taylor, stated she had no objection. (Trial Tr.p.227, line 24). The Court finds Counsel had no ground to object to the single page of the incident report that was admitted into evidence, since she herself had opened the door by questioning Officer Taylor about it. Furthermore, since that page did not contain any hearsay or other prejudicial information, the Court finds Applicant was not prejudiced.

Counsel's failure to object to "inferred malice" instruction

Applicant claims Counsel was ineffective for failing to object to the trial court's instruction that "if one intentionally kills another during the commission of a felony, the inference of malice may arise." (Trial Tr.p.514, line 25–p.515, line 2). Applicant argues this instruction was an unconstitutional charge on the facts.

The Supreme Court has recently held this charge improper. *See State v. Brown*, 443 S.C. 196, 199, 904 S.E.2d 448, 449 (2024) ("We hold the trial court erred in giving the inferred malice instruction, for, in doing so, the trial court improperly elevated and commented to the jury upon a particular fact—the commission of a felony."). However, *Brown* was not decided until 2024—nine years after the conclusion of Applicant's trial. At the time of Applicant's trial, there was no precedent supporting an objection to the trial court's jury instruction. Counsel is not required to be clairvoyant and cannot be deemed deficient merely for failing to anticipate a future change in the law. *See, e.g. Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (holding trial counsel cannot be found ineffective for failing to object to a jury instruction at a time when no case law rendered the instruction improper per se); *Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law. . . ." (citing *Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))),

overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

In addition, *Brown* itself held that the trial court's error was harmless because the defendant in that case did not "dispute that the armed robbery and murder of the victim occurred or that the victim's death was the result of malice." *Brown*, 443 S.C. at 200, 904 S.E.2d at 450. Likewise, in this case, Applicant does not dispute that the victim was killed with malice; he merely claims that he had nothing to do with the killing and was simply an innocent bystander. Even under the rule of *Brown*, therefore, the Court finds Applicant has failed to prove prejudice.

Counsel's failure to raise *Langford* issue

Applicant next claims Counsel was ineffective for failing to raise the issue of whether his case was unconstitutionally called for trial in violation of *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).

In *Langford*, our Supreme Court found that control of the docket by the solicitor is unconstitutional as a violation of the separation of powers. *Id.* at 446, 735 S.E.2d at 484. However, the constitutional error committed by the executive branch in usurping the proper role of the judicial branch in the calling of cases to trial does not, on its own, violate any rights of the criminal defendants whose cases are so called. The Supreme Court therefore held that a defendant who alleges his case was unconstitutionally called for trial must demonstrate particularized prejudice resulting from the solicitor's control of the trial docket. *Id.* at 436, 735 S.E.2d at 479.

In this case, Applicant has presented no argument that he suffered any particularized prejudice caused by the control of the trial docket by the solicitor as opposed to the court. Accordingly, the Court finds there was no meritorious objection Counsel could have made, and Applicant suffered no prejudice.

Counsel's alleged failure to object to the trial court's charge on "felony murder"

Applicant next claims Counsel was ineffective for failing to object to the trial court's jury charge on the felony murder doctrine, on the ground that felony murder should not be charged where the defendant is not also charged with the underlying felony (in this case, armed robbery). Applicant cites no authority for this position, and the Court is not aware of any. Moreover, the transcript reflects that Counsel *did* raise this very issue, twice, during the trial, prior to the jury charge. (Trial Tr.p.463, lines 6–12; p.465, line 15–p.466, line 9). The trial court overruled the objection and proceeded to charge the jury on the felony murder doctrine. (Trial Tr.p.467, lines 10–14). *See State v. McDaniel*, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995) (quoting *Dunn v. Coca-Cola Bottling Co.*, 311 S.C. 43, 46, 426 S.E.2d 756, 758 (1993)) (“So long as the judge had an opportunity to rule on an issue, and did so, it was ‘not incumbent upon defense counsel to harass the judge by parading the issue before him again.’”).

For all these reasons, the Court finds Applicant has not met his burden of proving either that Counsel’s performance was deficient or that there is a reasonable probability the result of his trial would have been different but for Counsel’s conduct.

Ineffective Assistance of Appellate Counsel

Finally, Applicant claims Appellate Counsel was ineffective for failing to raise certain arguments on appeal.

In applying *Strickland* to claims of ineffective assistance of appellate counsel, reviewing courts must accord appellate counsel the “presumption that he decided which issues were most likely to afford relief on appeal. A decision with respect to appeal is entitled to the same presumption that protects sound trial strategy.” *Pruett v. Thompson*, 996 F.2d 1560, 1568 (4th Cir. 1993).

Although appellate counsel is required to provide effective assistance of counsel,

“appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). Indeed, “[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.” *Smith v. Murray*, 477 U.S. 527, 536 (1986). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” *Jones*, 463 U.S. at 754.

“Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” *Smith v. Robbins*, 528 U.S. 259, 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). To prove prejudice, the applicant must show that, but for counsel’s errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

In this case, Appellate Counsel raised two issues on direct appeal: first, whether the trial court erred in charging the “hand of one, hand of all” doctrine to the jury based on the facts of the case; and second, whether the trial court erred in denying Applicant’s motion for a continuance to obtain a GSR expert. While Appellate Counsel’s arguments on those two issues were ultimately unsuccessful in obtaining a reversal of his client’s conviction, the issues themselves were not frivolous and were diligently briefed. The question of which issues to pursue on appeal is a quintessentially strategic decision, and Appellate Counsel’s choice of issues will not be deemed unreasonable unless Applicant can point to “clearly stronger issues” that were inexplicably ignored. *Robbins*, 528 U.S. at 288 (quoting *Gray*, 800 F.2d at 646).

First, Applicant claims Appellate Counsel should have argued that the trial court erred in

denying Counsel's motion for a mistrial. During the trial, Counsel moved for a mistrial when the solicitor revealed there was a handwritten list of individuals at the scene that was inadvertently not turned over to Counsel in pre-trial discovery. (Trial Tr.p.232, line 17–p.233, line 5). The trial court denied the motion. (Trial Tr.p.233, line 21–p.234, line 25). Counsel renewed her objection the following day, with the same result. (Trial Tr.p.273, lines 15–18).

This Court finds that the mistrial issue was not “clearly stronger” than the issues actually raised by Appellate Counsel. The trial court's denial of a motion for mistrial is reviewed for abuse of discretion. *State v. Benton*, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024). “A mistrial should be declared cautiously and only in the most urgent circumstances for plain and obvious reasons.” *Id.* In this case, the trial court found that a mistrial would not be appropriate because the document was merely a list of individuals who responded to the scene of the crime and was not probative of any disputed issues. The State's inadvertent failure to discover this handwritten document prior to trial when reviewing law enforcement's files does not constitute “most urgent circumstances” justifying the drastic remedy of a mistrial.

Second, Applicant claims Appellate Counsel should have raised different grounds in support of his argument that the trial court erred in denying the motion for a continuance to obtain a GSR expert. However, Applicant has not explained what different grounds Appellate Counsel should have raised as to this issue. Accordingly, the Court finds Applicant has not met his burden of proving that Appellate Counsel's choice of arguments was deficient.

[conclusion and signature on following page]

III. CONCLUSION

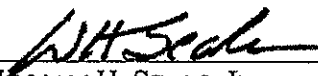
Based on all the foregoing, this Court finds and concludes that Applicant has not met his burden of proof as to any of his allegations. Accordingly, his application for PCR must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), 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 if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That Applicant's Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 23 day of June, 2026.


WILLIAM H. SEALS, JR.
Presiding Judge
Eighth Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

DAVID LEE WALKER,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2019-CP-30-00026

MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO
RULE 59(E), SCRCP

The Applicant, by and through the undersigned Counsel, moves this Court to alter or amend the denial of the PCR Application in the above-captioned case pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. See U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14. Specifically, Applicant renews (and does not abandon or waive) all issues and arguments raised in the amended applications, arguments by PCR Counsel, and testimony presented at the evidentiary hearing. Applicant also renews the following issues:

(1) Respectfully, the procedure followed by this Court denied Applicant an opportunity to have his PCR allegations adjudicated by an independent judicial officer in violation of the separation of powers doctrine. See S.C. Art. I, § 8. Specifically, the Court did not provide the State with any basis for denying Applicant's claims other than delegating the responsibility of drafting a proposed order of dismissal to the parties. The Court adopted the State's adversarial proposed Order of Dismissal despite that this independent judicial function cannot be delegated to an executive agency without providing specific instructions and rationale for omitting findings of fact and/or denying each claim. See generally *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007).

(holding, "Pursuant to S.C. Code Ann. § 17-27-80 the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented.").

(2) The Order of Dismissal failed to adequately address the Honorable S. Bryan Doby's original Order granting PCR Counsel's motion on May 22, 2025, for funding to obtain an expert services in Ballistics and Gun Shot Residue (GSR), and subsequent Order on November 5, 2025, reversing the prior order after a hearing based on the South Carolina Commission on Indigent Defense's motion to reconsider and alter or amend judgment. Judge Doby also denied PCR Counsel's motion to alter or amend judgment on November 24, 2025.

(3) The Order of Dismissal failed to adequately address the issues raised by PCR Counsel that Judge Doby's subsequent Order denying funding for expert services in Ballistics and GSR denied Applicant the ability to prove Trial Counsel's ineffective assistance.

(4) The Order of Dismissal misrepresented PCR Counsel's argument regarding Trial Counsel's failure to move for a continuance in a *timely* manner. The Trial Court based the denial of the motion for continuance mostly on Trial Counsel's failure to *timely* move for a continuance. Trial Counsel also failed *adequately* preserve the prejudice created by the denial of the continuance for appellate review. Specifically, the prejudice of not presenting the documented efforts taken on behalf of counsel to obtain independent expert testimony to rebut the State's ballistics and GSR evidence presented at trial.

(5) The Order of Dismissal failed to adequately address the issues raised regarding Trial Counsel's failure to adequately examine the State's key witness, Kell Ball,

regarding her credibility based on the inconsistencies of her statements to police and testimony when compared to the evidence.

CONCLUSION

Based on the foregoing reasons, the undersigned Counsel respectfully moves for this Court to reconsider the Order of Dismissal, withdraw that Order, and enter an Order Granting Applicant Post-Conviction Relief reversing and remanding Applicant's convictions and sentences for a new trial.

IT IS SO MOVED.

Respectfully submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.

Price Benowitz LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

ATTORNEY FOR THE APPLICANT

July 13, 2026

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

DAVID LEE WALKER,

v.

State of South Carolina,

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2019-CP-30-00026

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRPC, by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Zachary Jones, Esq.
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

The Honorable William H. Seals, Jr.
P.O. Box 235
Marion, SC 29571

The Honorable Michelle Simmons
Laurens County Clerk of Court
PO Box 287
Laurens, SC 29360-0287

Courtney Powers

Courtney Powers
Paralegal
1614 Taylor Street, Suite D,
Columbia, SC 29201
G: (803) 216-5561
F: (803) 380-8035
courtney@pricebenowitz.com

July 14, 2026

DAVID BENOWITZ
ADMITTED DC, MD & VA
DAYNE PHILLIPS
ADMITTED SC
JOHN YANNONE
ADMITTED MD & DC
KUSH ARORA
ADMITTED MD & DC
SEAN O'BRIEN
ADMITTED IT

PRICE BENOWITZ LLP

1614 TAYLOR STREET
SUITE D
COLUMBIA, SC 29201

OFFICE: (803) 272-4503
DIRECT: (803) 807-0234
FAX: (803) 380-8035

SETH PRICE
ADMITTED DC & NY
KARIN RILEY PORTER
ADMITTED VA
JESSICA BALDWIN
ADMITTED VA & SC
SUKHPREET "VICK" SINGH
ADMITTED SC
CHAD PROBST
ADMITTED SC

*OF COUNSEL

409 7TH STREET NW, SUITE 200
WASHINGTON, DC 20004

10505 JUDICIAL DRIVE, SUITE 203
FAIRFAX, VA 22030

July 14, 2026

The Hon. Michelle Simmons
Laurens County Clerk of Court
PO Box 287
Laurens, SC 29360-0287

Re: David Lee Walker v. State
MOTION TO ALTER OR AMEND JUDGMENT PURSUANT
TO RULE 59(E), SCRPC
Case No.: 2019CP3000026

Dear Ms. Simmons:

I have enclosed an original and one copy of the Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRPC for filing.

I would greatly appreciate filing the enclosed motions and returning the clocked-in copy to me in the enclosed self-addressed, stamped envelope. Thank you for your assistance with filing these documents.

Sincerely,

s/ Dayne C. Phillips
Dayne C. Phillips, Esq.

PRICE BENOWITZ LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

Enclosures (noted)

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CLERK OF COURT

WWW.SCCRIMINALLAWS.COM

WWW.PRICEBENOWITZ.COM

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2019-CP-30-00026

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Page 1 of 3

the Court has the power to adopt some, all, or none of the language appearing in the proposed order. Of course, in cases where the Court has already ruled in favor of one party, there will rarely be any reason for the Court to depart from the language of the proposed order; in such cases there will be no meaningful difference between the Court's own findings and those proposed by the prevailing party. This is such a case. Accordingly, there is nothing constitutionally improper about the Court's decision to adopt the State's proposed order in this matter.

(2) Applicant next argues that this Court improperly failed to address Judge Doby's denial of Applicant's motion for funding to obtain an expert in ballistics and gunshot residue. However, this Court cannot revisit a motion that another judge has already denied in the same action. See Rule 43(l), SCRPC ("If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action."). Judge Doby heard Applicant's motion for funding and considered it carefully. Indeed, he initially decided to grant it, but he reversed his decision upon the filing of a motion to reconsider by the South Carolina Commission on Indigent Defense. Applicant then filed a motion to alter or amend Judge Doby's order, which he denied on November 24, 2025. It would be absurd—and contrary to the Rules of Civil Procedure—for Applicant to be allowed to revisit his previously denied funding motion every time there is a change in the presiding judge during the pendency of this PCR action.

(3) Applicant next argues that this Court's Order of Dismissal failed to take into account the fact that Judge Doby's denial of his motion for expert funding prevented Applicant from being able to prove his allegations that Trial Counsel was ineffective for failing to present expert testimony during Applicant's trial. The burden of proof is on Applicant to show that he was actually prejudiced by Counsel's conduct, and this burden does not shift to the State merely

because Applicant alleges that—despite being able to retain a private attorney to prosecute his PCR action—he cannot now afford to hire an expert witness to substantiate his claims. The general rule is that “[a]n indigent petitioner is not entitled to funds to hire experts to assist his investigation and presentation of claims in postconviction proceedings.” 21A Am. Jur. 2d *Criminal Law* § 1165. Much less is Applicant entitled to flip the burden of proof on its head, merely because the South Carolina Commission on Indigent Defense has declined to pay for an expert witness for him.

(4) Applicant next argues that the Court misunderstood his allegations regarding Counsel’s motion for a continuance prior to trial. Applicant clarifies that his allegation concerned the *timeliness* of Counsel’s motion, rather than the *grounds* for the motion. This Court, however, specifically found that Applicant had failed to prove he was prejudiced by Counsel’s alleged “failure to adequately prepare for trial” because Applicant failed to present any evidence that could have been discovered with additional time for preparation; the Court found that Applicant did not present any GSR evidence or ballistic evidence at the PCR hearing to show that additional preparation before trial would have been beneficial to his case. This finding necessarily also defeats Applicant’s claim that he was prejudiced by Counsel’s alleged failure to make a timely motion for a continuance. Even if a more timely motion would have been granted, Applicant has still failed to prove that it would have materially helped his defense.

Applicant also complains that Counsel failed to preserve for appellate review the prejudice resulting from the trial court’s denial of the continuance motion, by failing to make an adequate record of her efforts to obtain expert testimony to rebut the State’s GSR and ballistics evidence. This complaint is meritless.

Reversals of the refusal of a continuance are about as “rare as the proverbial hens’ teeth.” *State v. Litchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957). Where there is no showing that any other evidence on behalf of the appellant could have been produced, or

that any other points could have been raised had more time been granted for the purpose of preparing the case for trial, the denial of a motion for continuance is not an abuse of discretion.

State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51-52 (1996). To her credit, in the proceedings before the trial court, Counsel clearly and extensively detailed her efforts to obtain expert testimony and to rebut the State's GSR and ballistic evidence. However, these details did not suffice to show that the trial court abused its discretion in denying her continuance motion, because there was "no showing that any other evidence on behalf of the appellant could have been produced, or that any other points could have been raised had more time been granted." *Id.* In fact, there has *still* been no such showing, despite the passage of over ten years since the conclusion of Applicant's trial. Again, Applicant's purported inability to pay for his own expert witnesses in this PCR action does not exempt him from the burden of proving that, but for Counsel's allegedly deficient conduct, there is a reasonable likelihood that he would have been acquitted at trial.

(5) Finally, Applicant makes a purely conclusory assertion that this Court's Order of Dismissal failed to adequately address the cross-examination of Kelly Ball regarding inconsistencies in her testimony. Applicant does not even attempt to articulate what these supposed inconsistencies were, nor does he offer any argument that further efforts by Trial Counsel to attack the credibility of Kelly Ball would have had any effect on the jury's verdict, where Applicant was indisputably found at the scene of the crime and where responding officers themselves heard the victim identify Applicant as the shooter.

The Court devoted several pages of its Order to discussing Counsel's cross-examination of Ball, including discussing the purported "inconsistencies" mentioned by Ms. Zmroczek at the PCR hearing. There is no ground for this Court to alter or amend its order in this respect, especially where Applicant himself cannot be bothered to specify which other "inconsistencies" he believes

this Court should have addressed.

CONCLUSION

For these reasons, Respondent submits that Applicant has not articulated any grounds that would justify altering or amending this Court's Order of Dismissal. Therefore, Respondent respectfully asks this Court to deny Applicant's Rule 59(e), SCRPC, motion.

Respectfully submitted,

ALAN WILSON
Attorney General

ZACHARY W. JONES
Assistant Attorney General

By: s/Zachary W. Jones
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 22, 2026

K. MICHELLE SIMMONS
2026 AUG -5 A 9 19
LAURENS COUNTY
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

) Case No.: 2019-CP-30-00026

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**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(e), SCRPC**

On July 17, 2026, Applicant filed a motion to alter or amend the Court's order pursuant to SCRCP 59(e). After careful consideration of the record and evidence presented before the Court, this motion is denied.

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the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions."'). This practice does not violate the constitutional separation of powers doctrine because the Court is not "delegating" its judicial function. On the contrary, the Court retains the ultimate authority over the final order; depending on the congruence between the Court's own findings and those presented in the proposed order, the Court has the power to adopt some, all, or none of the language appearing in the proposed order. Of course, in cases where the Court has already ruled in favor of one party, there will rarely be any reason for the Court to depart from the language of the proposed order; in such cases there will be no meaningful difference between the Court's own findings and those proposed by the prevailing party. This is such a case. Accordingly, there is nothing constitutionally improper about the Court's decision to adopt the State's proposed order in this matter.

(2) Applicant next argues that this Court improperly failed to address Judge Doby's denial of Applicant's motion for funding to obtain an expert in ballistics and gunshot residue. However, this Court cannot revisit a motion that another judge has already denied in the same action. *See* Rule 43(1), SCRPC ("If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action.'). Judge Doby heard Applicant's motion for funding and considered it carefully. Indeed, he initially decided to grant it, but he reversed his decision upon the filing of a motion to reconsider by the South Carolina Commission on Indigent Defense. Applicant then filed a motion to alter or amend Judge Doby's order, which he denied on November 24, 2025. It would be absurd—and contrary to the Rules of Civil Procedure—for Applicant to be allowed to revisit his previously denied funding motion every time there is a change in the presiding judge during the pendency of this PCR action.

(3) Applicant next argues that this Court's Order of Dismissal failed to take into account the fact that Judge Doby's denial of his motion for expert funding prevented Applicant from being able to prove his allegations that Trial Counsel was ineffective for failing to present expert testimony during Applicant's trial. The burden of proof is on Applicant to show that he was actually prejudiced by Counsel's conduct, and this burden does not shift to the State merely because Applicant alleges that he cannot afford to hire an expert witness to substantiate his claims. The general rule is that "[a]n indigent petitioner is not entitled to funds to hire experts to assist his investigation and presentation of claims in postconviction proceedings." 21A Am. Jur. 2d *Criminal Law* § 1165. Much less is Applicant entitled to flip the burden of proof on its head, merely because the South Carolina Commission on Indigent Defense has declined to pay for an expert witness for him.

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resulting from the trial court's denial of the continuance motion, by failing to make an adequate record of her efforts to obtain expert testimony to rebut the State's GSR and ballistics evidence. This complaint is meritless.

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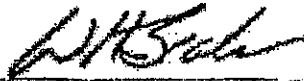
themselves heard the victim identify Applicant as the shooter.

The Court devoted several pages of its Order to discussing Counsel's cross-examination of Ball, including discussing the purported "inconsistencies" mentioned by Ms. Zmroczek at the PCR hearing. There is no ground for this Court to alter or amend its order in this respect, especially where Applicant himself has failed to specify which other "inconsistencies" he believes this Court should have addressed.

CONCLUSION

For these reasons, the Court finds Applicant has not articulated any grounds that would justify altering or amending this Court's Order of Dismissal. Accordingly, the motion is denied.

AND IT IS SO ORDERED this 14 day of August, 2026.



WILLIAM H. SEALS, JR.
Presiding Judge
Eighth Judicial Circuit

Mission, South Carolina

RECEIVED

Sep 17 2026

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable William H. Seals Jr.

Appellate Case No. 2026-001636

David Lee Walker,

Petitioner,

v.

State of South Carolina,

Respondent.

MOTION TO WITHDRAW AS COUNSEL

This matter is before the Court on the undersigned Counsel's Motion to Withdraw as Counsel in the above-captioned case.

On September 7, 2023, Counsel was retained to represent Petitioner Mr. David Lee Walker for post-conviction relief in the Laurens County Court of Common Pleas.

On July 13, 2026, the Honorable William H. Seals Jr. issued an Order Denying Petitioner's Application for Post-Conviction Relief. Petitioner filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, and the Court denied that motion via email on July 24, 2026. A formal Order denying the Motion to Alter or Amend Judgment was filed on August 18, 2026. To comply with the appropriate procedure, Counsel filed a Notice of Appeal with this Court to protect Petitioner's rights under the South Carolina Appellate Court Rules and applicable case law.

On August 5, 2026, Counsel received the Affidavit of Indigency from Petitioner and emailed a copy to Appellate Defense that same day.

On August 6, 2026, Counsel requested an extension to request the transcript pending a decision from the Office of Appellate Defense on Petitioner's affidavit.

On September 15, 2026, the Office of Appellate Defense informed Counsel they were taking over Petitioner's appeal and have ordered the transcript.

THEREFORE, Counsel respectfully moves to **withdraw** as Counsel in the above-caption case.

Respectfully Submitted,

s/ Dayne C. Phillips 
Dayne C. Phillips, Esq.
PRICE BENOWITZ LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
803-272-4503

September 17, 2026

The Supreme Court of South Carolina

David Lee Walker, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2026-001636

ORDER

Counsel Dayne C. Phillip's motion to withdraw as counsel for Petitioner is granted. The Court's records now reflect that Petitioner is represented by Wanda H. Carter.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
September 18, 2026

cc: Dayne C. Phillips
Zachary William Jones
Wanda H. Carter