

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas  
R. Ferrell Cothran, Jr., Presiding Judge

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2010-CP-13-255

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MICHAEL LAMONT WATTS, 323225

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

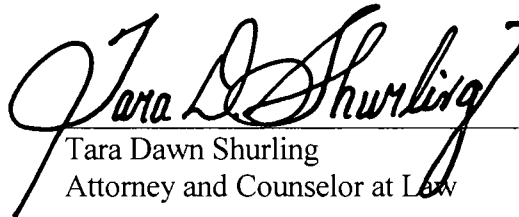
Respondent.

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NOTICE OF APPEAL

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**NOW COMES** the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief filed October 23, 2013 and received by counsel on January 27, 2014.



Tara Dawn Shurling  
Attorney and Counselor at Law

3614 Landmark Drive, Suite A  
Columbia, South Carolina 29204  
(803)738-8622  
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 18<sup>th</sup> day of February, 2014.

Other Counsel of Record:  
Karen Ratigan, Senior Assistant Deputy Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
(803) 734-3737

**RECEIVED**

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas  
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2010-CP-13-255

MICHAEL LAMONT WATTS, 323225

v.

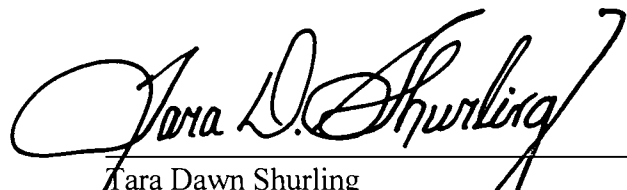
Applicant,

THE STATE OF SOUTH CAROLINA,

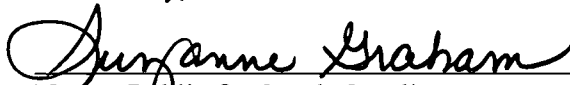
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby attorney certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Karen Ratigan, Senior Assistant Deputy Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 18<sup>th</sup> day of February, 2014.

  
Tara Dawn Shurling  
Attorney and Counselor at Law

SWORN TO BEFORE me this 18<sup>th</sup> day  
of February, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 2/28/2024

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD )

2010-CP-13-0255

Michael Lamont Watts,  
S.C.D.C. No. 323225,

Applicant,

v.

State of South Carolina,

Respondent.

CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

A True Copy Attest  
*Faye L. Sellers*

**ORDER OF DISMISSAL**

FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

2013 OCT 23 AM 11 27

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 2, 2010. The Respondent made its return on September 28, 2010. An evidentiary hearing into the matter was convened on July 16, 2013 at the Darlington County Courthouse. The Applicant was present and represented by Tara D. Shurling, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, James P. Rogers, Esquire. The Court had before it the trial transcript, the Chesterfield County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and the Applicant's Exhibits 1-4.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Chesterfield County Clerk of Court. The Applicant was indicted at the May 2005 term of the Chesterfield County Grand Jury for murder (2005-GS-13-0471), two

counts of assault and battery with intent to kill (ABWIK) (2005-GS-13-0473, -0474), possession of a firearm in a public building (2005-GS-13-0475), discharging a firearm into a building (2005-GS-13-0476), and escape (2005-GS-13-0477) and at the April 2006 term for possession of a weapon during commission of a violent crime (2006-GS-13-0499). He was represented by James P. Rogers, Esquire.

After the State called the case to trial, trial counsel was successful in having two charges dismissed through a directed verdict: one count of ABWIK (2005-GS-13-0474) and possession of a firearm in a public building (2005-GS-13-0475). The Applicant was found guilty of the remaining charges. On August 1, 2007, the Honorable Paul M. Burch levied concurrent sentences of life imprisonment for murder, twenty years for ABWIK, ten years for discharging a firearm into a building, and one year for escape. Judge Burch levied a five-year sentence for possession of a weapon during commission of a violent crime – to be concurrent to the murder sentence but consecutive to the ABWIK sentence.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Court of Appeals dismissed the appeal. State v. Watts, Op. No. 2010-UP-019 (S.C. Ct. App. filed January 25, 2010).

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
  - a. Failed to object to prosecutorial misconduct when solicitor "went outside the record in closing argument."
  - b. Failed to present effective trial strategy:

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

- (1) Failed to “request mistrial after investigating officer gave unprofessional testimony.”
- c. Failed to call defense witness.
- d. Failed to request a curative instruction.
- e. Failed to conduct a pre-trial investigation.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735

(1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had several meetings with trial counsel and that they reviewed his version of events and the State's evidence (including the witness statements). The Applicant stated trial counsel never discussed either voluntary manslaughter or self-defense. The Applicant stated trial counsel should have discussed calling his three friends as witnesses at trial (as they went to the club with him that night and did not make any damaging comments in their statements). The Applicant testified he knew there were contradictory witness statements in his case and that trial counsel would point this out at trial. The Applicant testified he also knew trial counsel would argue that no one actually saw him shoot the victim. The Applicant admitted he testified at trial and was able to explain his version of events.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified they also reviewed the Applicant's version of events, the elements of the charges, and the sentence ranges for those charges. Trial counsel testified there was no forensic evidence in this case and that none of the witnesses actually saw the Applicant shoot the victim. Trial counsel testified he attempted to raise reasonable doubt by highlighting the inconsistencies regarding the various witnesses and their statements. Trial counsel testified he spoke to all of the witnesses from the club but that the Applicant never provided him the names of additional witnesses. Trial counsel testified he did not call Lakesha Raley as a witness – though she gave a statement that another group was ejected from the club with the Applicant – because he did not believe it was a big issue. Trial counsel testified he asked for a curative instruction after a witness commented the Applicant did not give a statement but stated he did not move for a mistrial because he knew the statement would be coming in. Trial counsel testified he did not consider objecting to references to the weapon as an automatic.

Trial counsel testified a self-defense charge was not appropriate because it was not appropriate because he could not argue the Applicant was without fault in bringing on the difficulty. Trial counsel testified he did not recall why he did not request a voluntary manslaughter charge.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective in failing to call Lakesha Raley as a witness at trial. As this alleged witness did not testify at the evidentiary hearing, any discussion regarding what she would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved for a mistrial. At trial, a witness stated the Applicant said he did not want to give a statement. (Trial transcript, p.195). Though trial counsel asked for a curative instruction, he did not move for a mistrial after the trial judge so instructed the jury. (Trial transcript, p.228). Trial counsel testified there was no reason to move for a mistrial because the testimony was going to be admitted. This Court agrees. Furthermore, "[i]n order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). This Court finds the Applicant has failed to demonstrate either that trial counsel erred in

not requesting a mistrial and that his case was prejudiced as a result. This finding is corroborated by the fact that the State presented overwhelming evidence of the Applicant's guilt. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to hearsay. At trial, a witness (an off-duty law enforcement officer on the premises who initially took charge of the investigation) was asked who fired gunshots inside the club while the Applicant was handcuffed outside and he replied, "I think nobody did because I went inside the club and checked on that. It was only like five or six people in the club and they said that they didn't hear any shots." (Trial transcript, p.213, lines 13-16). Trial counsel confirmed he did not object to this statement, as it must have "slipped past" him, but that it was undisputed that people heard gunshots. This Court finds the Applicant has failed to prove error. This comment, however, was not hearsay and not offered for the truth of the matter asserted. Rather, it was a statement regarding the investigation of the crime. See Rule 801(c), SCRE; Caprood v. State, 525 S.E.2d 514, 518, 338 S.C. 103, 111 (2000); State v. Brown, 317 S.C. 55, 62, 451 S.E.2d 888, 894 (1994). This Court also finds the Applicant also failed to prove this statement prejudiced his case, as the State presented overwhelming evidence of his guilt. See Geter v. State, 305 S.C. at 367, 409 S.E.2d at 346.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to references during the trial that the weapon used was an automatic. The Applicant alleges this was harmful to his case because automatic weapons are illegal. This Court finds the references to an automatic weapon in this case were limited and not calculated to inflame the jury. This Court finds the Applicant has failed to demonstrate he was prejudiced

from the references to the weapon as being an automatic. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during the State's closing argument. During closing argument, the assistant solicitor attacked the credibility of a defense witness by implying two individuals looked similar. (Trial transcript, p.372, lines 10-14; p.372, line 23 – p.373, line 2). Trial counsel stated he objected because comments about one of these individual's clothing was not in the record. This Court finds the lack of an objection on this point was not deficient and did not prejudice the Applicant's case. See State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) (noting a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony). This Court finds it is clear the assistant solicitor was merely summarizing the defense witness's testimony and explaining why the jury should not consider it because it was implausible. This Court finds the Applicant failed to demonstrate either error or prejudice by the lack of an objection.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested jury charges for voluntary manslaughter and self-defense. This Court finds neither charge would have been supported by the facts of this case. The law to be charged must be determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). The Applicant provided his version of events at the PCR hearing. The Applicant stated he left the club, got a weapon, and went back into the club while holding this weapon. The Applicant said he believed someone pointed a gun at him, so he fired into a crowd of people in order to protect himself. This Court notes these were largely the facts presented at

trial. This Court concludes neither a voluntary manslaughter nor self-defense charge would have been warranted under these facts. See State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000) (listing elements of voluntary manslaughter); State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) (listing elements of self-defense).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

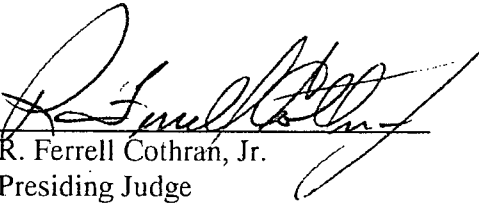
This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18 day of Oct., 2013.

  
R. Ferrell Cothran, Jr.  
Presiding Judge

Manning, South Carolina.

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

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Columbia, South Carolina 29204

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E-Mail: [tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

February 11, 2014

Karen Ratigan, Senior Assistant Deputy Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-

RE: Michael Lamont Watts, #323225 v. State of South Carolina; 2010-CP-13-255.

Dear Ms. Ratigan:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was court-appointed in this matter and will now forward this file to the Appellate Division of the South Carolina Commission on Indigent Defense in the next few days. Therefore, please direct any further questions to that office after this date. It was a pleasure working with you on this case. Thank you. I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/

Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

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**RECEIVED**

February 11, 2014

FEB 20 2014

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
Post Office Box 11330  
Columbia, South Carolina 29211-1330

**S.C. SUPREME COURT**

Re: Michael Lamont Watts, 323225 v. State of South Carolina; 2010-CP-13-255.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the envelope provided. Inasmuch as I was court-appointed in this matter, I will now be turning this file over to the South Carolina Commission on Indigent Defense, Office of Appellate Defense for perfection of this appeal. I would note that Judge Cothran issued a written Order of Dismissal on this case which was filed with the Chesterfield County Clerk of Court's Office on October 23, 2013 but was not served on my office until January 27, 2014. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

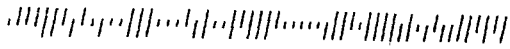
A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Tara Dawn Shurling  
Attorney and Counselor at Law

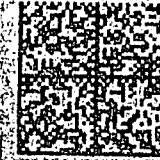
TDS/sg

Enclosures

cc: Karen Ratigan, Senior Assistant Deputy Attorney General  
Kimberly McCall, South Carolina Office of Appellate Defense



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