THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III

RECEIVED

JUN 0 3 2014

S.C. SUPREME COURT

Case No: 2011-CP-46-2584

Jaleel Page, #309433, Appellant

v.

State of South Carolina, Respondent

NOTICE OF APPEAL

Jaleel Page appeals the decision of the Honorable John C. Hayes, III filed on May 19, 2014. Appellant received written notice of entry of this order on May 21, 2014.

May 30, 2014 By: _____

Brian R. Murphy
PO Box 805
Fort Mill, SC 29716
803-548-0321
brian@brmurphy.com
Attorney for Appellant

Other Counsel of Record:

J. Rutledge Johnson
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III

Case No: 2011-CP-46-2584

Jaleel Page, #309433, Appellant

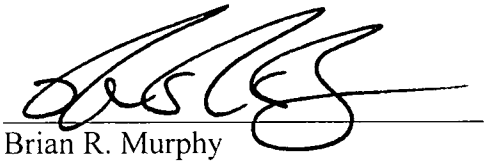
v.

State of South Carolina, Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid on May 30, 2014 addressed as follows:

Mr. J. Rutledge Johnson
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

May 30, 2014 By: 

Brian R. Murphy
PO Box 805
Fort Mill, SC 29716
803-548-0321
brian@brmurphy.com
Attorney for Appellant

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4602584

Jaleel Vaughn Page	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Court	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

ORDER

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

s/ John C. Hayes III	2049	5/19/2014
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **May 19, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **May 19,2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Robert Murphy
PO Box 805
Fort Mill, SC 29716

ATTORNEY(S) FOR THE PLAINTIFF(S)

James Rutledge Johnson
PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2011-CP-46-2584

Jaleel Page, #309433,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER

This is a Post-Conviction Relief case. The Court issued an Order denying and dismissing Applicant's application for Post-Conviction Relief on April 21, 2014. Applicant has timely moved the Court for reconsideration of the April 21, 2014 Order, pursuant to SCRCP Rule 59. Applicant raises two grounds for relief from the April 21, 2014 Order.

Applicant first asserts that trial counsel either knew or should have known about a statement of co-defendant Lamont McCollum. This argument is based on imputed knowledge as the record is silent as to whether or not trial counsel knew of the existence of the statement during Applicant's trial.

I find that trial counsel cannot be found to be ineffective in representation of a client absent counsel having actual knowledge of the existence of evidence. I find imputed knowledge, as alleged by Applicant, should not apply to an attorney in regard to his or her representation of a client. The undersigned finds no South Carolina case law directly on this point but the Court feels that logic and reality support this finding. It stands to reason that an attorney can only present to the Court information or facts which are within the attorney's actual ken.

I find Applicant's ground for relief based on the failure of trial counsel to utilize a statement by co-defendant McCollum to be without merit.

Applicant next asserts the April 21, 2014 Order is incorrect regarding the Court of Appeals Opinion in Applicant's case (State v. Page, 377 S.C. 578, 2008).[1]

Applicant posits that the Court of Appeals did not address prejudice based on the admission of Detective Sara Robbins' testimony and did not find the introduction of co-defendant McKnight's un-redacted statements to have been harmless. To a degree, this position is true, as the Court of Appeals found the trial judge's admission of inadmissible evidence to have been harmless. The Court of Appeals specifically found "nevertheless, we find any error resulting from the admission of the un-redacted statement was harmless." (emphasis added). Therefore, regardless of whether or not trial counsel was ineffective regarding the avenue by way of which the un-redacted statement entered the trial, the Court of Appeals has held the admission of the statement to have been harmless. In essence, any error by trial counsel regarding the admission to the statement, did not work to the prejudice of Applicant as the Court of Appeals has found the impact of the statement to have been harmless. This conclusion is well addressed in the Court's April 21, 2014 Order.

Applicant's Rule 59 SCRCP Motion for Reconsideration of the Court's Order of April 21, 2014 is denied. This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

John C. Hayes, III
Presiding Judge

May 14, 2014
York, South Carolina

[1] The appeal was a direct appeal and the issue of counsel's representation was not a justiciable issue at the time of the appeal.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4602584

Jaleel Vaughn Page	**South Carolina State Of**
PLAINTIFF(S)	**DEFENDANT(S)**
Submitted by: Court	**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

ORDER

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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s/ John C Hayes III	2049	4/24/2014
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **April 24, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **April 24, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Robert Murphy
PO Box 805
Fort Mill, SC 29716

ATTORNEY(S) FOR THE PLAINTIFF(S)

James Rutledge Johnson
PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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

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

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Jaleel Page, #309433, Applicant, v. State of South Carolina, Respondent.	C.A. No.: 2011-CP-46-2584 ORDER

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 1, 2011. The Respondent made its' Return on October 25, 2011. An evidentiary hearing into the matter was convened on August 16, 2012, at the Moss Justice Center in York, South Carolina. Brian R. Murphy, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, represented the Respondent. At the hearing, the Applicant testified on his own behalf. Derek S. Chiarenza, Esquire, also testified.

Another hearing was held on May 13, 2013 to take the testimony of Lamont McCollum, Applicant's co-defendant, because Applicant believed McCollum would testify that Applicant was not involved in this crime. However, Mr. McCollum exercised his Fifth Amendment right to remain silent. Andrew Staffalino also testified at this hearing.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the December 2004 term of the York County Grand Jury for Attempted Armed Robbery (2004-GS-46-4004), Criminal Conspiracy (2004-GS-46-4005), Possession of a Weapon during the Commission of a Violent Crime (2004-GS-46-4006), and Possession of a Pistol by a Person Under 21 (2004-GS-46-4007). Derek S. Chiarenza, Esquire, represented Applicant. On May 27, 2005, Applicant proceeded to trial and was convicted as indicted. The Honorable Marc H. Westbrook sentenced him to confinement for a period of

twenty (20) years for Attempted Armed Robbery, five (5) years consecutive for Criminal Conspiracy, five (5) years, concurrent, for Possession of a Weapon during the Commission of a Violent Crime, and five (5) years, consecutive, for Possession of a Pistol by a Person under 21.

Applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Page, Op. No. 08-4367 (S.C. Ct. App. Filed April 3, 2008). Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on August 19, 2010. The Remittitur was sent on November 5, 2010.

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

The proper measure of performance is whether the attorney provides representation within the range of competence required in criminal cases. The courts presume that counsel Rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the

Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Additionally, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 449 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Moreover, post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d (1973). Error is harmless where it could not reasonably have affected the trial's outcome. State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008). No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Id. In considering whether error is harmless, a case's particular facts must be considered along with various factors including:

> ... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Id. at 484, 663 S.E.2d at 360.

Further, where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); *See also* Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). As seen below, this rubric here applies.

During Applicant's trial, no defense witnesses were called on Applicant's behalf. Applicant claims trial counsel was deficient for failing to call Lamont McCollum, his co-defendant, on his behalf, at trial. However, it is complete speculation for Applicant to claim McCollum would have exonerated him at trial.

Had trial counsel put a witness on the stand without knowledge of what the witness would testify to, this would not only be foolhardy, but also pretty good evidence of incompetent representation.

At McCollum's guilty plea, which took place on the same day as Applicant's trial began (May 23, 2006), the solicitor recited the following summary of facts:

> On March 16, 2003, McCollum, along with Applicant, A.J. Williams and Terrance McKnight, was (sic) hanging out together early Sunday morning. McCollum had a .25 revolver on his person and Applicant had a .32 revolver on his person, each of which was shown to co-defendants. They had been discussing a robbery. Specifically, co-defendants devised a plan to rob Rashad Simpson, nephew of Victim (Willie Cunningham), whom co-defendants believed to have drugs or money. Earlier that day, Applicant approached Simpson, asking if Simpson had any drugs or knew where Applicant could obtain drugs. Applicant reported back to his co-defendants and all decided to rob the trailer in which Victim and Simpson lived, with Williams and McKnight serving as look-outs. When he heard a knock on the door of his trailer, Victim opened the door. Standing in the doorway was Applicant and McCollum. According to Williams, both Applicant and McCollum had their hands in their pockets on their guns. McCollum pulled his gun out and pointed it at Victim. When Victim grabbed for the gun, McCollum shot him twice, once in the chest and once in the groin. All co-defendants fled the scene. (McCollum TR. p. 14, line 24-p. 18, line 15)

McCollum, when asked by the plea court if he agreed with the facts as stated by the solicitor, responded, under oath: "Yes, sir." (McCollum TR. p. 22, line. 1). The plea court then asked, "Are

those facts correct?" and McCollum answered, "Yes, sir." (McCollum TR. p. 22, lines 2-3). The plea court further asked, "Do you dispute any of them at all?" to which McCollum responded, "No, sir." (McCollum TR. p. 22, lines 4-5). When given a chance to speak at the plea, all McCollum said was that he apologized and asked for forgiveness. (McCollum TR. p. 33, lines 18-21). McCollum did not correct the facts or explain to the plea judge that Applicant was not a part of the crime, as Applicant now claims.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

McCollum's guilty plea clearly stated that he and Applicant were the main actors in this crime with both McCollum and Page possessing firearms. Since it is Applicant challenging McCollum's statements under oath during his guilty plea, and not McCollum himself, McCollum's statements stand as truthful and correct absent proof otherwise.

Applicant presented at the PCR hearing a written statement allegedly signed by McCollum. This statement was introduced at the PCR hearing through Mr. Staffalino, although he testified he did not know who asked him to get the statement from McCollum and did not know if McCollum was represented by an attorney at the time. The interplay of the McCollum statement and trial counsel's representation in this case is somewhat of an enigma. The date on the statement is a date during Applicant's trial. At the time the statement was made, Mr. McCollum, a co-defendant of Applicant's, had pled guilty, but had not been sentenced. (May 13, 2013 TR. p. 11, line 19 to p. 1, line 3.)

Therefore, at the time the statement was taken, McCollum was represented by counsel and should not have been interviewed by anyone without his counsel's consent.

The investigator that took the statement, Andrew Joseph Staffalino, who was retained by Applicant's trial counsel in Applicant's case, testified that he kept a complete file on his investigation, kept in contact with trial counsel and provided trial counsel with a complete file. However, Mr. Staffalino equivocates as to whether or not the statement at issue was included in the file he provided trial counsel (May 13, 2013 TR p. 8, line 2 to p. 9, line 4). He also equivocates as to whether or not he discussed the statement with trial counsel (May 13, 2013 TR p. 9, line 18 to p. 10, line 1). He testified he could not recall who asked him to take Mr. McCollum's statement; and that he did not obtain Mr. McCollum's trial counsel's permission to take the statement; and that he could not recall if trial counsel asked him to take Mr. McCollum's statement (May 13, 2013 TR, p. 11 lines 11-15 and p. 12, lines 6-9).

Trial counsel testified that he would have shared with Applicant all discoverable material produced by the State and any report of Mr. Staffalino (August 12, 2012 TR, p. 21, lines 10-17). Trial counsel testified that he was aware that Mr. McCollum had pled prior to Applicant's trial, but was unaware of any exculpatory statements by Mr. McCollum given at the time of his plea (August 12, 2012 TR, p. 24, lines 5-13).

At the Post-Conviction Relief hearing trial counsel was never asked any questions concerning the McCollum statement. Therefore, there is no evidence that trial counsel was aware of the statement during Applicant's trial or at any time for that matter.

Applicant did not testify at his PCR hearing, so the record is silent as to when he claims to have come into knowledge of the McCollum statement. In his brief, Applicant makes no reference (nor could he) as to when trial counsel was aware, if ever aware, of any exonerating statement by Mr. McCollum. Obviously, trial counsel was not going to call a witness without knowing to what the

witness would testify. To do so would be professional error on its face. Also, obviously, trial counsel could not, without counsel's permission, talk to a represented co-defendant, nor could he request a third party investigator to talk to a represented co-defendant.

In sum, Applicant has failed to carry his burden of proof and has failed to prove trial counsel was ineffective by not calling McCollum as a witness on Applicant's behalf.

While Applicant alleges that counsel was ineffective for failing to call McCollum as a witness on his behalf at trial, McCollum's testimony at trial would be completely speculative as he refused to testify at the PCR hearing. An allegedly signed, unsworn document can hardly be considered probative evidence that McCollum would testify on Applicant's behalf. This is especially true considering that McCollum, under oath, at his plea, testified that he agreed with the facts as presented by the solicitor. These facts include that not only was Applicant involved, but also that Applicant possessed a gun and was in the doorway when McCollum fired the fatal shots. Therefore, because McCollum refused to testify and provide competent evidence to show how the outcome of Applicant's trial would have differed had Mr. McCollum testified, Applicant has failed to prove resulting prejudice from counsel's failure to call McCollum on his behalf at trial pursuant to Underwood, *supra*.

During the trial, two eyewitnesses testified that Applicant was on the porch of the house when the shooting of Victim occurred. While Applicant claims A.J. Williams and Katrina Howard's testimonies were not credible, that was a credibility question for the jury to decide, which apparently the jury believed as Applicant was convicted in this case. Regardless, the trial judge ruled that a statement made by Terrance McKnight, another co-defendant, would be allowed with redactions. After Williams and Howard testified, the State called Detective Sara Robbins to testify. During a vigorous cross-examination, and in response to a question posed by trial counsel, Det. Robbins testified she was able to corroborate Williams's statement with McKnight's statement. (TR. p. 439, line 20- p. 440, line 3).

Admittedly, trial counsel did not object to this testimony. The trial court then ruled that counsel "opened the door" to allow the un-redacted version of McKnight's statement. (TR. pp. 496-498).

Applicant argues counsel was ineffective for failing to object to Det. Robbins' testimony. However, the Court of Appeals has already ruled upon this issue and therefore it is not properly before this Court. *See* Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973) (any issue that was or could have been raised on direct appeal cannot be asserted on PCR). The Court of Appeals, first, held the trial judge erred in allowing McKnight's unredacted statement to be read into evidence in order to rehabilitate Det. Robbins' testimony concerning her investigative techniques. ("While we recognize the discretionary authority of the trial judge in this area, we believe [the trial judge] erred in finding that Page's counsel's zealous representation of his required the admission of this inadmissible evidence in order to rehabilitate Detective's investigative techniques." State v. Page, Op. No. 08-4367 (S.C. Ct. App. Filed April 3, 2008)). The Court of Appeals then held any error resulting from the admission of the unredacted statement was harmless.

The Court of Appeals, in discussing harmless error, stated:

> Error is harmless where it could not reasonably have affected the trial's outcome. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990). In considering whether error is harmless, a case's particular facts must be considered along with various factors including:
>
> > ... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the overall strength of the prosecution's case.
>
> State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 634, 635 (1994) (quoting Delaware v. VanArsdall, 475 U.S. 673, 684 (1986)). Thus, an insubstantial

> error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991).

While Applicant has carried his burden of proof as to trial counsel's error in "opening the door" for Ms. Robbins's testimony, Applicant has failed to prove that he was prejudiced thereby. In fact, an Appellate Court of this State has affirmatively found Applicant was not prejudiced by the introduction of McKnight's unredacted statement.

As Applicant has failed to carry his burden of proof and failed to prove trial counsel rendered ineffective assistance to him in regard to trial counsel's representation of him, Applicant's Post-Conviction Relief application is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

John C. Hayes, III
Presiding Judge #9

April 21st, 2014
York, South Carolina

Brian R. Murphy
brian@brmurphy.com

BRIAN R. MURPHY
LAW FIRM

803.548.0321 | Phone
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Mailing Address: PO Box 805, Fort Mill, SC 29716
Office Address: 1201 Carolina Place Drive, Suite 103, Fort Mill, SC 29708

May 30, 2014

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: Post-Conviction Relief-Page v. South Carolina
Case No.: 2011-CP-46-2584

Dear Mr. Shearouse:

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

1. Proof of Service of the Notice of Appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.
3. No filing fee is required as this is a Post-Conviction Relief case.
4. This appeal is being filed with the Supreme Court pursuant to Rule 243.
5. This is an appointed case for an Indigent Defendant.

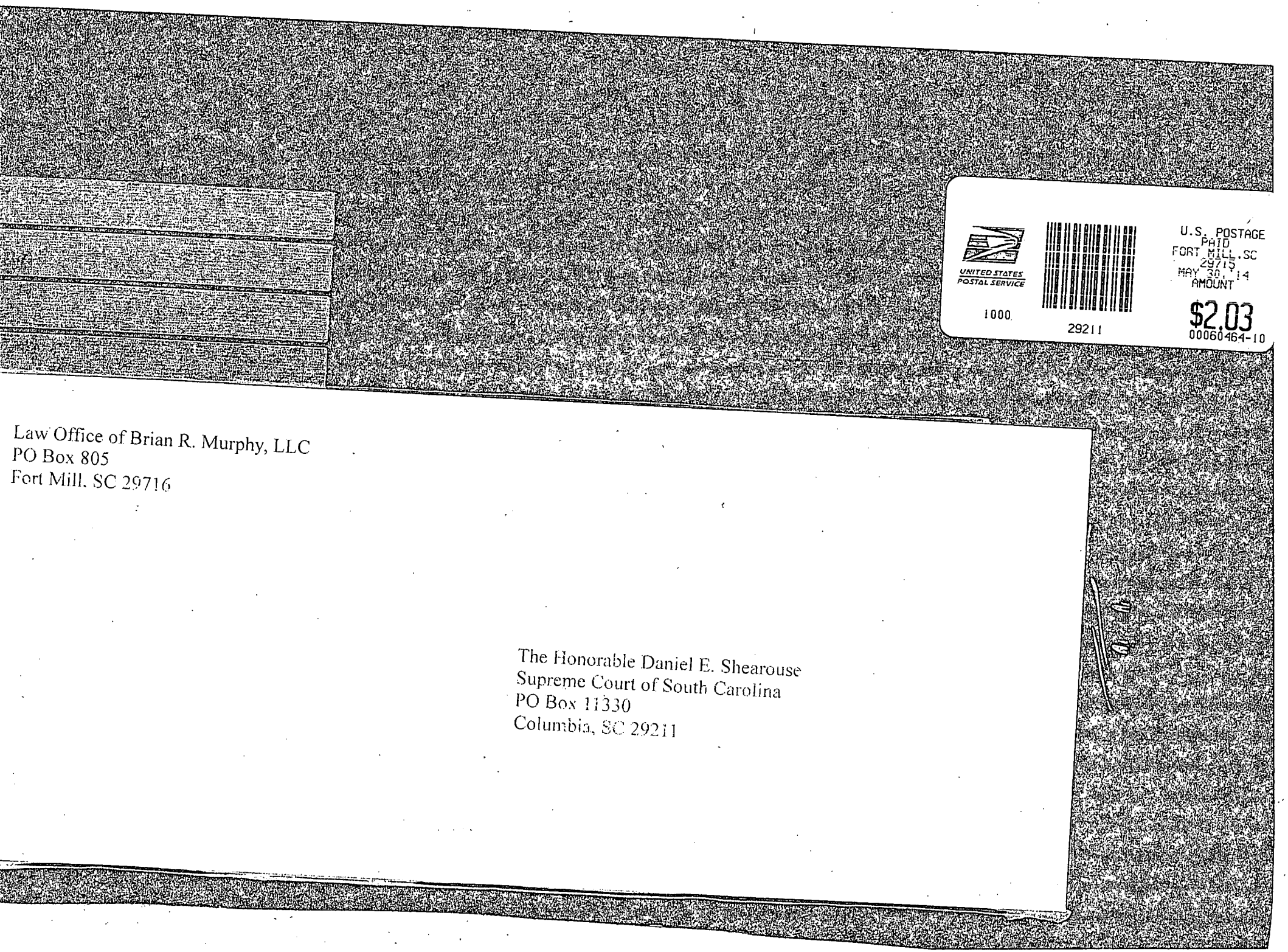
If you should have any questions or concerns, please do not hesitate to contact our office.

With Warmest Regards,

Brian R. Murphy, Esq.
/brm

CC: Jaleel Page

Enclosures



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