STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Frank R. Addy Jr., Presiding Judge

2006-CP-32-3862

TERRANCE V. SMITH, 292962 Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

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 issued in his Post-Conviction Relief action filed April 2, 2014, and the Order Modifying the original Order of Dismissal filed on May 12, 2014, in response to Applicant's Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which was not received by Counsel for Applicant until June 5, 2014.

Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

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

ATTORNEY FOR APPLICANT

This 10th day of June, 2014.

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

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Frank R. Addy, Jr., Presiding Judge

2006-CP-32-3862

TERRANCE V. SMITH, 292962 Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, David Spencer, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 11th day of June, 2014.

Suzanne Graham
Paralegal to Tara Dawn Shurling, Esquire

SWORN TO BEFORE me this 11th day of June, 2014.

Sharon H. McCollister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Terrance V. Smith, # 292962 Applicant, v. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS 2006-CP-32-3862 ORDER OF DISMISSAL

FILED
2014 APR -2 A 10:50
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

THIS MATTER COMES BEFORE THE COURT by way of an application for post-conviction relief (PCR) filed October 31, 2006. Respondent reports that it did not receive the Application until on or about September 13, 2010. Respondent filed its return on December 14, 2010. A hearing into the matter was convened before this Court at the Lexington County Courthouse on April 15, 2013, and concluded the following day on April 16th.[1] Applicant was present and represented by Tara Dawn Shurling, Esquire. The State was represented by David Spencer of the Office of the South Carolina Attorney General.

Applicant testified on his own behalf at the hearing. Also testifying was his trial attorney, Jonathan Hendrix, Esquire, and Ken Matthews, Esquire, a testifying co-defendant's attorney. Finally, C. Dayton Riddle, III of the Eleventh Circuit Solicitor's Office also testified. This Court also had before it the pleadings of both parties, the transcript of Applicant's trial, the

[1] At the conclusion of the PCR hearing, Counsel for Applicant requested an opportunity to obtain a transcript of the hearing and prepare an order. The court received a draft of Applicant's proposed order on October 7th and Applicant's final proposed order on February 10, 2014. Again, this court has had an opportunity to reflect fully upon the arguments made in the hearing and to consider all proposed orders submitted.

Clerk of Court's records regarding the subject convictions, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently incarcerated for the charges he is now challenging. Applicant was indicted at the May 2002 term of the Lexington County Grand Jury for criminal conspiracy, attempted armed robbery, and murder. During the February 2003 term of the grand jury, Applicant was also indicted for assault and battery with intent to kill (ABWIK). Applicant was also charged with ill treatment of an animal. Applicant was represented by Jonathan R. Hendrix, Esquire. After a trial lasting from April 30th to May 2, 2003, Applicant was convicted by jury and sentenced by the Honorable Marc H. Westbrook to life without parole.

Applicant appealed his conviction and sentence, which was affirmed by the Court of Appeals. The remittitur was issued on December 16, 2005.

ALLEGATIONS

In his application, the Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has fully considered the testimony presented at the post-conviction relief hearing. Furthermore, this Court has further had the opportunity to observe the witnesses presented at the hearing, pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR due to 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. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that, but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Summary of Facts

Applicant and his co-defendant, Collins, were tried jointly for their commission of an armed robbery and burglary of an apartment belonging to Charles Penny, a small-time marijuana dealer. They gained access to the apartment through Wykiesha Williams who Penny had recently met. Williams had previously smoked marijuana at Penny's apartment, and she told Collins that Penny had marijuana. Collins planned to rob Penny by having Williams visit Penny and determine if there was marijuana present in the apartment to steal. Williams then would call

Collins from the apartment to let him know. Collins, Applicant, and Williams drove over to the apartment and Williams entered to find Penny and several others drinking, smoking marijuana, and playing video games. She called Collins after a few minutes from inside the apartment and told Collins she was "going to the club," which was their pre-planned code indicating Penny had marijuana. Collins and Applicant pushed their way into the apartment as Williams left. Collins fired his weapon, killing a visiting neighbor and injuring another, Jonathan Hayward. Penny thought it was strange that the robbers let Williams leave when they entered, and he grew suspicious of her involvement. Law enforcement subsequently focused their attention on her, and after initially denying involvement, Williams admitted her involvement and implicated Collins and Applicant.

This Court will now address each allegation of ineffective assistance of trial counsel below:

Counsel adequately cross-examined co-defendant Wykiesha Williams

Applicant alleges in Grounds 1-3 that trial counsel should have more adequately cross-examined co-defendant Wykiesha Williams on the benefit she was expecting from her cooperation with the prosecution. At trial, she testified that Penny smoked and sold marijuana and that she drove Applicant and co-defendant Collins to the apartments in order to rob Penny. Collins' plan was for her to determine whether Penny had marijuana in the apartment and then call Collins from the apartment by cell phone to let him know. She testified she walked out of the apartment as Collins and Applicant rushed in armed. She saw Collins fire the gun inside the apartment. Tr. pp. 450-477.

Before trial, Williams pled guilty to armed robbery, burglary in the first degree, and conspiracy, all charges which arose out of Williams' involvement with this incident. The State dismissed the murder charge. Her sentencing was deferred until after trial, and she subsequently received a suspended sentence on the burglary charge. Applicant alleges trial counsel was ineffective for failing to cross-examine Williams with respect to the plea agreement. Similarly, Applicant alleges a *Brady* violation on the basis that Williams received an illegal sentence in that the sentence for Burglary in the First Degree, which carries a minimum sentences of fifteen years imprisonment which may not be suspended, relying upon the holding of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011).

Applicant's allegations are at odds with the understanding of the law and common practice at the time of the trial and sentencing hearing. Until *Jacobs*, many defense attorneys, prosecutors, and judges were under the belief that a sentence for first degree burglary could be suspended. Clearly, *Jacobs* was decided eight years after Applicant's trial. Mr. Riddle confirmed there was no agreement as to the actual sentence Williams could receive; whatever sentence she received was left to the discretion of the sentencing judge. This Court finds that trial counsel was not ineffective for failing to anticipate the holding in *Jacobs*, especially considering that many judges and attorneys took the position that the sentence could be suspended.

Further, this Court finds that trial counsel conducted a vigorous cross-examination of Williams. See Tr. pp. 534-535 (cross-examination on plea agreement). Counsel's cross-examination of Williams was thorough, and counsel properly attacked her credibility in several respects. Counsel clearly did his research on Williams. Counsel cross-examined Williams on

her prior forgery conviction and her purportedly fraudulent marriage to a Chinese drug dealer. Allegedly, she was paid for this marriage of convenience, the purpose of which being so that he could remain in the country. Tr. p. 534, pp. 538-539.

Williams was examined on the fact that, in return for Williams' testimony, the murder charge was being dismissed. Counsel forcefully argued Williams' motive to implicate Applicant and her credibility to the court and jury. Tr. p. 833, line 10 – p. 835, line 3.

Clearly, trial counsel's cross-examination and impeachment of Williams did not fall below that expected of a reasonable attorney. This Court finds that Applicant has not met his burden of showing trial counsel was ineffective, as counsel's performance did not fall below professional norms.

Further, in light of the vigorous cross-examination and the evidence presented at trial, this Court finds that Applicant was not prejudiced by the alleged deficiency. Even if cross-examination was insufficient in some respects, Applicant failed to demonstrate prejudice, and this Court finds that the result of the trial would most likely remain the same. Further, this Court finds Applicant has failed to show any basis to believe that there were negotiations between Williams and the prosecution other than what was presented at trial. Accordingly, this allegation is denied.

Impeachment with armed robbery conviction

Applicant alleges as Ground 4 that trial counsel was ineffective for advising Applicant that, if he testified in his own defense, he could be impeached with his armed robbery conviction. Counsel testified that it was his understanding at the time of trial that a defendant could be impeached with an armed robbery conviction. Counsel's understanding of the law and his

advice were reasonable under the law in effect at the time of trial. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003) (armed robbery is a crime of dishonesty).

The trial court, in its colloquy with Applicant, explained that Applicant could be impeached with his armed robbery conviction. Therefore, trial counsel's advice was accurate in this regard.

Further, after observing Applicant's testimony at the PCR hearing, this Court concludes Applicant was not prejudiced by his failure to testify as his testimony would have been more harmful than helpful to the defense at trial had he testified. For instance, Applicant confirmed that he fled to Georgia to meet with his co-defendant, an admission that would have been extremely harmful at trial. This Court concludes that Applicant did not meet his burden of proving either prong of *Strickland* and denies this allegation.

Conviction not final

Applicant alleges that counsel was ineffective for not challenging the use of his prior armed robbery conviction for impeachment because there was a pending motion for reconsideration of the sentence. This Court notes that a different attorney represented Applicant on the robbery charge, so counsel could not be reasonably expected to have known that a motion was pending. This issue is without merit. Regardless of whether the sentence could have subsequently been reduced, the conviction was final. Further, Applicant has presented no authority that a conviction, with a pending post-trial motion, would not be impeachable at a trial for another offense. See generally, Rule 609(e), SCRE (pendency of an appeal does not render admission of a conviction inadmissible). This Court disagrees that moving for reconsideration of a sentence invalidates the underlying plea or renders the plea otherwise "not final" for purposes

of an adjudication of guilt.[2] Accordingly, this Court finds Applicant did not meet his burden of proving counsel ineffective.

Further, to the extent that Applicant is alleging that he should not have received an LWOP conviction, the trial court stated an independent ground for a life sentence, namely that the crime itself was deserving of life imprisonment. Tr. p. 902, line 24 – p. 903, line 9.

Gunshot residue

In Ground 5, Applicant alleged that trial counsel should have moved *in limine* to prohibit the State from introducing testimony concerning a gunshot residue test performed on John Hayward because the officer performing the test was unavailable to testify. However, no testimony was introduced in front of the jury concerning the gunshot residue test. Accordingly, this claim simply lacks merit and is denied.

In Ground 6, Applicant alleges trial counsel was ineffective for neglecting to determine pre-trial whether a gunshot residue test was performed on anyone from the scene of the shooting other than John Hayward. Trial counsel testified that his trial strategy was based on a defense of identity and that he was not overly concerned with this particular crime scene evidence. Applicant's testimony at the PCR hearing claimed that he was merely present, and Applicant failed to offer any evidence to support his claim that such a pre-trial motion would have provided beneficial results.

Shell casings on the sofa

Applicant alleges in Ground 7 that trial counsel was ineffective for failing to pursue on cross-examination an explanation of how shell casings ended up on the sofa inside the apartment.

[2] The result may have been different had the motion been to *withdraw* the plea as opposed to merely reconsidering the sentence imposed.

Counsel testified that he did not consider this question to be important, emphasizing that his trial strategy was to argue that the State did not meet its burden of proving identity. This Court finds that Counsel's trial strategy was reasonable. Certainly, the scene as described by the State's witnesses was chaotic. This Court fails to see any significance to this evidence. This Court finds Applicant has not met his burden of proof regarding these allegations.

Expert testimony on whether weapon was recently fired

In Ground 8, Applicant alleges trial counsel was ineffective for failing to present an expert to determine if the weapon recovered from Charles Penny had recently been fired at the time of the robbery. Applicant believes that such expert testimony would support his co-defendant's version of events where someone fired a gun at him before he fired his own gun. Similarly, in Ground 9, Applicant alleges trial counsel should have cross-examined law enforcement on various methods to determine if a weapon had been recently fired. Ground 10 is similarly themed, alleging trial counsel was ineffective for failing to explore forensic evidence from the scene which Applicant contends would have supported the co-defendant's version of events. This Court finds these contentions are speculative at best. Applicant did not present an expert to provide such testimony or support this theory. Further, counsel testified that his trial strategy was to challenge the identification. Accordingly, testimony relative to whether Penny's weapon had been fired was not relevant to this defense or the defense of mere presence, which was what was left for Applicant once his co-defendant unexpectedly testified.

Again, this Court notes that Collins' testimony was likely unexpected in that Collins testified against his counsel's advice. By electing to testify, Collins placed himself and Applicant at the scene of the crime and attempted to assert a self-defense justification for the

shooting, which clearly was unsuccessful. Since Collins' testimony was unexpected, trial counsel was not ineffective for failing to explore evidence supporting Collins' version of events, especially considering Applicant's contention at the PCR hearing that he was merely present.

Additionally, Counsel noted no casings matching Penny's gun were found at the crime scene. This Court does not find Applicant's PCR testimony, where Applicant essentially adopts Collins' version of events, to be credible and finds it is contrary to the overwhelming evidence produced at trial. Trial counsel was not deficient, and Applicant was certainly not prejudiced. This Court finds that Applicant has not met his burden of proving either prong of *Strickland*. This allegation is denied.

Foreseeability for accomplice liability

Applicant alleges, in Ground 11, that trial counsel was ineffective for failing to request a more specific charge on accomplice liability. The trial court gave the following instruction on accomplice liability:

> Now, I also will charge you that in South Carolina we have a legal theory called hand of one is the hand of all. In other words, if a crime is committed by two or more persons who are acting together in the commission of a crime then the act of one is the act of both.
>
> Two people can be guilty of the same offense at the same time if both are together, acting together, assisting each other in the commission of the offense, then the law says that under those circumstances, the act of one is the act of all. In other words, the hand of one is the hand of all.
>
> But, however, I will tell you that mere presence at the scene of the crime is not enough to prove someone guilty of a crime. The burden is upon the state to prove every element of the crime charged.

Tr. p. 871, line 24 – p. 872, line 12.

The Supreme Court in State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010), approved of language in the trial court's instruction that "the alleged accomplice must have acted with the intention of encouraging and abetting the commission of the homicide, or, at least that the commission of the murder by the principal must have been a reasonably foreseeable consequence of the defendant's actions." Id., at 586, 697 S.E.2d at 484. *Mattison* came out seven years after Applicant's trial.

In State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), the Supreme Court noted that under the "hand of one, the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Id., at 648, 515 S.E.2d at 101. "To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown." Id.

Based on the evidence and the State's theory of the case, there is no question that a homicide was a foreseeable consequence of the armed robbery committed by both Applicant and his co-defendant when they both went armed to the residence intent on robbing a drug dealer. The jury found Applicant guilty of burglary and armed robbery, thus believing he participated in the robbery. Under *Langley*, Applicant would be guilty under the hand of one, hand of all theory.

Further, the jury indicated its understanding of the hand of one hand of all theory by acquitting Applicant on the ill treatment of animals count. The State's evidence on that charge was that Collins spontaneously shot the dog for no apparent reason as Collins and Applicant fled from the apartment. Unlike the murder and ABWIK counts, the jury likely determined that

Collins' act of shooting the dog was not a foreseeable consequence of the armed robbery and burglary.

This Court therefore finds that counsel's performance was not ineffective where the instruction would not have benefitted Applicant and where he would be guilty under the hand of one, hand of all theory by virtue of his participation in the armed robbery.

Solicitor's statements on the law of accomplice liability

In Ground 13, Applicant alleges that counsel was ineffective for failing to object to the Solicitor's comments on the law of accomplice liability. Trial counsel testified that he did not object because the trial court would have given the law on accomplice liability when instructing the jury. This Court finds the allegation is without merit. While the Solicitor may have given a short-hand version of the law on accomplice liability, the trial court's instruction was adequate. Accordingly, this Court finds that Applicant has failed to meet either prong of *Strickland* and denies this allegation.

Victim's identification

Applicant alleges trial counsel was ineffective in his attempt to suppress John Hayward's identification of Applicant. This allegation was not raised until the morning of the hearing and the State objected. However, at the PCR hearing, Applicant confirmed he was present at the scene. Further, Applicant was separately identified by co-defendant Williams as participating in the robbery. Finally, Collins confirmed Applicant's presence when Collins testified unexpectedly at trial. This Court further finds that Counsel made a vigorous effort to challenge Applicant's identification on the basis that it was suggestive, arguing Hayward may have previously seen Applicant's picture in the newspaper or on a wanted poster before making his

identification. This Court finds that Applicant has failed to meet his burden of proving either prong of *Strickland* and denies this allegation.

Charge on self-defense/defense of others

In Ground 12, Applicant alleges counsel was ineffective for failing to request a jury charge on self-defense or defense of others based on Co-Defendant Collins' testimony at trial. Collins' testimony was as follows: Collins testified that they did not go to the apartments to commit a robbery. Instead, Williams asked to go there and went inside the apartment while Collins and Applicant waited in the car. After about twenty minutes, Applicant went to check on Williams, knocked on the door, and ended up in a struggle with another man. Meanwhile, Collins approached and saw a man in the doorway with a gun who fired at him. He fired back and struck the man.

Counsel testified that he was focused on a defense that Applicant was not there and was misidentified. However, Collins, who testified against his attorney's advice, certainly undermined this defense. Collins' testimony would support self-defense and perhaps defense of others, but that was Collins' defense, not Applicant's. Applicant's defense under those facts would be mere presence. This Court notes that the trial court gave an instruction on mere presence. Accordingly, Applicant was not prejudiced by the failure to instruct the jury on self-defense or defense of others and counsel's performance was not deficient. This allegation is denied.

Bolstering

Applicant alleges that the prosecutor improperly vouched or bolstered Williams' testimony during closing argument when he argued: "Why in the world would anybody plead

guilty to something like that, expose themselves to something like that if they weren't telling the truth about what happened?" Tr. p. 839, lines 12-15. Counsel testified that he did not think it was bolstering. This Court agrees. It is not objectionable, but is merely the prosecutor's argument based on evidence and testimony presented at trial. The solicitor's closing argument is permissible where it stays within the record and addresses reasonable inferences supported by the record. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002). This Court finds the issue particularly lacking in merit, and Applicant has failed to meet his burden of proving counsel ineffective. This allegation is denied.

Leading questions

Applicant alleges in Ground 14 that counsel's performance was deficient for failing to object to leading questions. At times counsel did object to leading questions, and at times such an objection was not made. This Court finds nothing in the record to reflect that counsel's performance was deficient at any point in declining to object to leading. This Court further finds no evidence that Applicant was prejudiced by this alleged deficiency. This allegation is denied.

CONCLUSION

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

In order to secure the appropriate appellate review, this Court advises the parties that notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court

Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;

2. The Applicant is remanded to the custody of Respondent.

AND IT IS SO ORDERED this 28th day of March, 2014.

Frank R. Addy, Jr.
Presiding Judge
11th Judicial Circuit

Greenwood, South Carolina

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

TERRANCE V. SMITH, Applicant,

v.

STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Tara Dawn Shurling
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite A
Columbia, SC 29204

This 10th day of April, 2014.

Troyeshi Brailey, Legal Assistant
For Respondent

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2006CP3203862

Terrance V Smith	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	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

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date 5/28/2014

For Clerk of Court Office Use Only

JUN 5 2014

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **28th of May 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling
3614 Landmark Drive Suite A Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

J Walt Whitmire PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - 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.

FILED

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2014 MAY 12 P) 1: 22 CASE NO. 06-CP-32-3862

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

TERRANCE V. SMITH, 292962)

PPB

vs.)

THE STATE OF SOUTH CAROLINA) ORDER MODIFYING COURT'S ORDER OF DISMISSAL DATED MARCH 28, 2014

HAVING CONSIDERED THE ARGUMENT OF COUNEL for Applicant in the motion for reconsideration dated April 21, 2014, and having fully reconsidered the court's findings, I find that the Court's previous order of March 28, 2014 shall stand except as modified by this order.

1. The order shall be amended to reflect that Applicant sought relief from the judgment and sentence imposed for Burglary, First Degree. All findings as contained in the court's order of March 28, 2014 and this order shall be amended to pertain to the burglary charge as well as all other charges arising out of the trial which took began on April 30, 2003.

2. Applicant's counsel maintains that the court did not address in its order the grounds for relief alleged in paragraphs 20, 21, and 22. Grounds 21 and 22 concern Applicant's co-defendant's counsel's questioning of co-defendant and eliciting that co-defendant was testifying against the advice of counsel. Although this court is uncertain whether this matter was addressed at the hearing, the court finds that Applicant's counsel was not deficient for failing to object, move for mistrial, or request a curative instruction. Furthermore, Applicant has not shown any prejudice, and the trial court clearly instructed the jury that the guilt or innocence of each defendant would have to be decided separately based upon the evidence against each individual defendant. (Tr. p. 859, line 17 – p. 860, line 5). Ground 20 concerns counsel's failure to introduce a newspaper article containing a photo and adequately cross the victim on the lineup shown to him weeks after the shooting. The court finds this ground without merit as Applicant's

counsel clearly conducted a very thorough cross of the identification of the victim on this point. Accordingly, any failure to introduce the photo or otherwise go to greater lengths to impeach the victim was not deficient and certainly resulted in no prejudice to the Applicant.

WHEREFORE, the order of March 28, 2014 is modified in the above respects.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

May 8, 2014
Greenwood, South Carolina

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

TERRANCE V. SMITH, Applicant,

v.

STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Tara Dawn Shurling
Law office of Tara Dawn Shurling, PA
3614 Landmark Drive; Suite A
Columbia, SC 29204

This 4th day of June, 2014.

Troyeshi Brailey, Legal Assistant
For Respondent

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622
(Fax) (803) 738-1600

June 10, 2014

David Spencer, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-

RE: Terrance V. Smith, #292962 v. State of South Carolina; 2006-CP-32-3862.

Dear Mr. Spencer:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was retained to represent this client in the circuit court only. The client has now advised me that his family is not able to hire me to represent him on his PCR appeal, and therefore that his family has retained the services of Jeremy A. Thompson to represent him in this matter. It was a pleasure working with you on this case. Thank you. I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure
cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina
Jeremy A. Thompson, Esquire

LAW OFFICE OF

TARA DAWN SHURLING, PA
Attorney and Counselor at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622
(Fax) (803) 738-1600

June 10, 2014

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

RE: Terrance V. Smith, #292962 v. State of South Carolina; 2006-CP-32-3862.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal in the above captioned Post-Conviction Relief matter along with proof of service on opposing counsel. This Notice addresses the client's intent to appeal both Orders issued by Judge Frank R. Addy, Jr., in this matter; the original Order of Dismissal and the Order Modifying the original Order of Dismissal in response to the Rule 59(e) Motion I filed in this case. I was retained to represent this client in the circuit court only. The client has now advised me that his family is not able to hire me to represent him on his PCR appeal, and therefore that his family has retained the services of Jeremy A. Thompson to represent him in this matter. For now, I would appreciate having the two additional copies of this notice enclosed with this correspondence clocked and returned to me in the self-addressed, stamped envelope provided. With my thanks for your kind assistance always, I am,

Sincerely yours,

Tara Dawn Shurling

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

cc: David Spencer, Assistant Attorney General
Jeremy A. Thompson, Esquire
Terrance V. Smith, #292962

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Law Office of
TARA DAWN SHURLING, PA
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COLUMBIA, SOUTH CAROLINA 29204

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