

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

RECEIVED George C. James, Jr., Circuit Court Judge

JUN 18 2014

Case No. 2012-CP-43-648

S.C. SUPREME COURT

Jermel Anthony Robinson, #334393 Appellant,

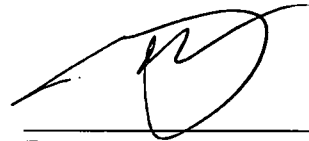
v.

State of South Carolina Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Notice of Appeal on Daniel Gourley, Esquire, Attorney for the Respondent, by depositing in the United States Mail, postage prepaid and addressed to P. O. Box 11549, Columbia, South Carolina, 29211, on June 17, 2014.

June 17, 2014



Richard T. Jones
Jones, Seth, Shuler & Jones, LLP
Post Office Box 1268
Sumter, South Carolina 29151
(803)773-8676
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-43-648

Jermel Anthony Robinson, #334393 Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Jermel Anthony Robinson appeals the Order of Dismissal of the Honorable George C. James, Jr., dated April 16, 2014, and Order of the Honorable George C. James, Jr., dated May 16, 2014 (Order regarding Defendant's Motion To Reconsider). Appellant received written notice of entry of the Order dated April 16, 2014, on April 29, 2014, and notice of entry of the Order dated May 16, 2014, on May 27, 2014.

June 17, 2014



Richard T. Jones
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Attorney for Appellant

Other Counsel of Record:

Daniel Gourley, Esquire
Assistant Attorney General
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Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

Jones, Seth, Shuler & Jones, LLP

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June 17, 2014

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

RE: Jermel Anthony Robinson v. State of South Carolina (2012-CP-43-648)

Dear Mr. Shearouse:

Please find attached for filing in your office the original and three copies of the Notice of Appeal in the above case. Please return the clocked / filed copies of this Notice of Appeal to our office in the self-addressed, stamped envelope provided. Also attached are the following:

1. Proof of Service of the Notice of Appeal on the Respondent;
2. A copy of the Orders which are to be challenged on appeal.

If you should need anything further or have any questions, please advise.

Sincerely,



Richard T. Jones
Attorney at Law

RTJ/vch
Enclosures
cc: Jermel Anthony Robinson
Daniel Gourley, Esquire
Honorable James C. Campbell

RECEIVED

JUN 18 2014

S.C. SUPREME COURT

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

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4300648

2014 APR 25 PM 2:09

Jermel Anthony Robinson

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

South Carolina State of
CERTIFIED TRUE COPY
OF ORIGINAL FILED

Shawn H. Hart
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; 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

2143

Judge Code

4/25/2014

Date

For Clerk of Court Office Use Only

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

~~Jermel Anthony Robinson #334393~~ ,
Richard Thomas Jones PO Box 1268 Sumter, SC 29151

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - 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

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER

RECORDED
2014 APR 25 PM 12:00

CASE NO.: 2012-CP-43-648

JERMEL ANTHONY ROBINSON

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

STATE OF SOUTH CAROLINA

Defendant.

Plaintiff's Attorney: Rick T. Jones, Bar No. _____ Address: PO Box 1268 Sumter, SC 29151 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
--	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

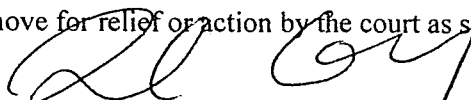
Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

April 14, 2014
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

- Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2014 APR 25 PM 12:10

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Jermel Anthony Robinson, #334393

Case No. 2012-CP-43-648

Applicant,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

v.

ORDER OF DISMISSAL

State of South Carolina,

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Respondent.

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 3, 2012. Respondent made its Return on August 6, 2012. An evidentiary hearing into the matter was convened on February 24, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Richard T. Jones, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the February 2009 term of the Sumter County Grand Jury for Murder, two counts of Armed Robbery, Possession of a Firearm During the Commission of a Crime of Violence, Possession of a Pistol by One Less than Eighteen Years of Age, and Lynching—1st degree. David Sullivan represented him. Applicant proceeded to trial, and on April 22, 2009, he was convicted by jury of Lynching, Attempted Armed Robbery, Possession of a Firearm During the Commission of a Crime of Violence, and Possession of a

Pistol by One Less than Eighteen Years of Age. The Honorable R. Ferrell Cothran, Jr., sentenced thirty-seven years imprisonment for lynching, twenty years imprisonment for attempted armed robbery, and five years for each gun charge. The sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Robinson, Unpublished Op. 2011-UP-435 (S.C. Ct. App. filed October 11, 2011).

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Failure to ask for mercy under lynching statute
 - b. Failure to object to unconstitutional of the lynching statute
 - c. Failure to present an effective directed verdict motion
 - d. Failure to object to jury charges
 - e. Failure to contest conviction for lynching when co-defendant was not convicted of lynching
 - f. Failure to request a limiting instruction on the jury's use of co-defendant's confession
2. Ineffective Assistance of Appellate Counsel
 - a. Failure to brief all properly preserved issues

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, David Sullivan, Esquire (Counsel). This Court also had before it a copy of trial transcript, the appellate records, the Sumter County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

A handwritten signature in black ink, appearing to be 'S/P' or similar, located at the bottom right of the page.

During the evidentiary hearing, Applicant testified he was currently incarcerated in Lee Correctional Department and has served approximately five years of his sentence. Applicant stated he was convicted in 2009 and was represented by David Sullivan (Counsel). Applicant stated he was convicted of Lynching, Attempted Armed Robbery, Possession of a Firearm During the Commission of a Crime of Violence, and Possession of a Pistol by One Less than Eighteen Years of Age. Applicant stated he received thirty-seven years as an aggregate sentence. Applicant stated he met with Counsel two or three times prior to trial. Applicant stated he recalled reviewing discovery material with Counsel. Applicant stated he and Counsel discussed the fact that Applicant felt he did not play a role in the killing and was actually injured as a result of the crime. Applicant stated he did not play a major role in the crime. Applicant stated he did not give Counsel any leads or witnesses to investigate. Applicant recalled that he confessed to being involved in the crime. Applicant stated he admitted to police that he had a forty caliber pistol as he approached the Victim's car. Applicant recalled apologizing multiple times for the death of the Victim.

Additionally, Applicant stated Counsel should have asked the jury for mercy under the Lynching State § 16-3-210. Applicant stated he was prejudiced because the jury was never given the opportunity to consider giving him mercy under the statute. Applicant stated Counsel should have objected to the unconstitutionality of the lynching statute. Applicant claimed that the statute as worded shifts the burden from the State to the Defendant. Applicant explained that he was prejudiced because he was required to present mitigating factors. Applicant further stated, had Counsel done a reasonable investigation he would have recognized the unconstitutionality of the statute. Applicant alleged Counsel failed to present an effective directed verdict motion. Applicant stated Counsel merely argued that the State had not proven "the presumption."

Applicant further stated Counsel did not properly object and preserve the issue for appellate review.

Furthermore, Applicant argued that Counsel was ineffective for failing to object to the faulty jury instructions. Specifically Applicant stated that he felt Counsel should have objected to the trial court charging the jury on both Murder and Lynching. Applicant stated Counsel should have challenged the fact that he was convicted of Lynching when Lynching requires two or more people. Applicant explained that his co-defendant was acquitted of Lynching and found guilty of Murder. Applicant stated because his co-defendant was not found guilty of Lynching he should not have been found guilty of Lynching either. Applicant stated Counsel failed to object to the admission of the confession at trial and argue that the trial should be severed. Applicant argued that it violated his confrontation rights. Applicant further argued that Counsel should have asked that the court instruct the jury that they could not use the co-defendant confession as evidence against him.

Additionally, Applicant stated that his Appellate Counsel was ineffective for failing to raise all meritorious issues. Specifically, Applicant stated Appellate Counsel should have briefed the issue regarding the motion for severance. Applicant stated Appellate Counsel should have briefed the issue regarding the trial court's failure to suppress his confession. Applicant further argued, Appellate Counsel should have briefed the issue regarding the fact that his confession was read to the jury.

Following Applicant's testimony, David Sullivan (Counsel) was called to testify by the State. Counsel testified he has been practicing law for eight years. Counsel stated he was appointed to represent Applicant. Counsel stated he received the file in August 2008. Counsel stated he met with Applicant four or five times. Counsel stated he filed for and received all Rule

5 and Brady material. Counsel stated he reviewed all Rule 5 and Brady material with Applicant prior to trial. Counsel stated he did a lot of investigation into the case. Counsel stated he reviewed Applicant's version of events. Counsel stated Applicant had given a confession. Counsel stated the State's theory was that Applicant and Co-Defendant had done surveillance, both Applicant and Co-Defendant approached the Victim's vehicle and attempted to rob him. Counsel stated Applicant and Co-Defendant were on opposite sides of the vehicle. Counsel stated Applicant was shot during the incident and fled the scene. Counsel stated he was unsuccessful in his motion to suppress Applicant's confession. Counsel could not recall any discussion with Applicant's Appellate attorney.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test 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, 385 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. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Failure to ask for mercy under the lynching statute, 16-3-210.

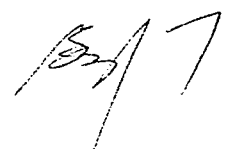
This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to ask for mercy under the lynching statute is without merit. This Court finds the mercy issue was only relevant when the death penalty was available for lynching. The Applicant was not facing the death penalty in this case. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Counsel's failure to object to the unconstitutionality of the lynching statute

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to object to the unconstitutionality of the lynching statute is without merit. The Applicant claims the statute shifts the burden of proof to the defendant to present mitigating factors on the issue of mercy. The Applicant also argues that giving the jury the choice between murder and lynching gave the jury the opportunity to convict the Applicant of offenses that require the same findings for guilty. This Court finds that mercy was not an issue in this case, as Applicant was not facing the death penalty. Furthermore, this Court notes that the elements of murder and lynching are not the same. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Failure to present an effective directed verdict motion.

This Court finds the Applicant failed to meet his burden of proving ^{trial (A)} plea counsel was ineffective in failing to present an effective directed verdict motion is without merit. A review of the transcript reveals that trial counsel stated "we believe that the State has not met its presumption." (Tr. p. 409). While this Court agrees that the motion was not thoroughly stated, this Court finds Applicant would not have been remotely entitled to a directed verdict on any charge, as there was sufficient evidence in the record to send the case to the jury on every charge. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a



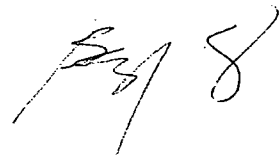
reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Failure to object to the jury charges.

This Court finds Applicant's allegation that he was denied the right to effective assistance of counsel for failing to object to the jury charges is without merit. Applicant appears to argue that Counsel should have objected to both the murder and lynching charges going to the jury. This Court finds that there is no merit to Applicant's argument. The jury can consider both lynching and murder, though the jury could not convict one defendant of both crimes. Furthermore, this Court notes that because Applicant's co-defendant was convicted of murder does not mean that the Applicant could not be convicted of lynching. This Court finds that the jury charges as given were proper. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Failure to contest conviction for lynching when co-defendant was not convicted of lynching.

This Court finds the Applicant failed to meet his burden of proving ^{trial (M)} plea counsel was ineffective in for failing to contest conviction for lynching when co-defendant was not convicted of lynching. Applicant argues that he could not be convicted of lynching as the statute requires that there be two or more people. Simply stated, Applicant argues that he could not be a "Mob



of one.” This argument has no merit as Applicant can be convicted of lynching despite the fact that his co-defendant was convicted of murder and not lynching. The fact that his co-defendant was not convicted of lynching does not mean that there was no “mob.” Plainly stated, one of the mob was guilty of murder, and the Applicant was the second part of the two-man mob. This Court finds Counsel’s actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Trial counsel’s failure to request a limiting instruction on the jury’s use of co-defendant’s confession.

Applicant argues that Counsel should have requested a limiting instruction on the jury’s use of the co-defendant’s confession. This Court agrees that Counsel’s failure to request a limiting instruction on the jury’s use of the co-defendant’s confession was ineffective assistance of counsel. However, this Court finds Applicant has failed to show any resulting prejudice. Applicant was shot during the incident. Furthermore, Applicant freely and voluntarily confessed to being a part of the plan to rob the Victim. After a review of the entire transcript, this Court is convinced that there was clear overwhelming evidence of the Applicant’s guilt on all counts of the indictment for which he was convicted.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Appellate counsel’s failure to brief all properly preserved issue.

This Court finds Applicant’s allegation that he was denied effective assistance of

Appellate Counsel for failing to brief all meritorious issues is without merit. Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). 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, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983) (emphasis supplied). “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, 103 S.Ct. 3308.

Applicant argued that Appellate Counsel should have briefed the issue of whether the trial court abused its discretion in denying his motion for severance. The applicant claims his and his co-defendant’s confessions clearly implicated the other, and that redactions did not cure their obvious implications. This Court disagrees. The applicant’s own confession implicated himself, and he cannot complain that the co-defendant’s confession may have done so. Furthermore, Applicant cannot show any prejudice because the applicant’s own confession was found to be voluntary and was introduced into evidence. In light of his confession, the fact that he was shot is corroborating evidence he was at the scene. He again confessed to his actions at the PCR hearing when he freely admitted his involvement in the entire incident. The jury was entitled to use the applicant’s own confession against him if it desired to do so, and this Court’s reading of his co-defendant’s confession implicating “another person”, albeit more likely than not the Applicant, the other evidence of his guilt was overwhelming (again, his confession and



the fact that he was shot during the attempted robbery).

Applicant argued that Appellate Counsel should have briefed the issue of whether the trial court erred in denying his motion to suppress his confession. Applicant argued that his confession was not freely and voluntarily given because police told him that his co-defendant had already confessed. Applicant stated that this information coerced him into confessing. This Court finds the fact that the Applicant did not confess until law enforcement told him that the co-defendant had implicated him does not render the Applicant's statement involuntary.

Applicant argues Appellate Counsel should have briefed the issue of whether the trial court erred in allowing the confession to be admitted at trial. Specifically, Applicant claims that when the confession was read to the jury, it became hearsay and a violation of his right of confrontation because it was clear the co-defendant was talking about the Applicant as the other person. As previously stated above when discussing the motion for severance, this Court finds the argument lacks any merit. The Applicant also complains that Appellate Counsel failed to brief and argue that the jury was improperly given a redacted copy of the co-defendant's confession as it was being read to the jury. This Court disagrees; there was no objection to this at trial. This Court finds Applicant's allegations that Appellate Counsel was ineffective for failing to brief the various issues stated above is without merit. Therefore, this Court finds Applicant's allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all 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.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 (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

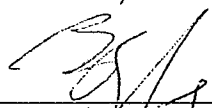


review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16 day of April, 2014.



GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit

Spartan, South Carolina

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

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4300648

Jermel Anthony Robinson

2014 MAY 22

South Carolina State of

CERTIFIED TRUE COPY
OF ORIGINAL FILED

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; 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: **See attached Order.**

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

2143
Judge Code

5/22/2014
Date

For Clerk of Court Office Use Only

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

Jermel Anthony Robinson #334393 ,
Richard Thomas Jones PO Box 1268 Sumter, SC 29151

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

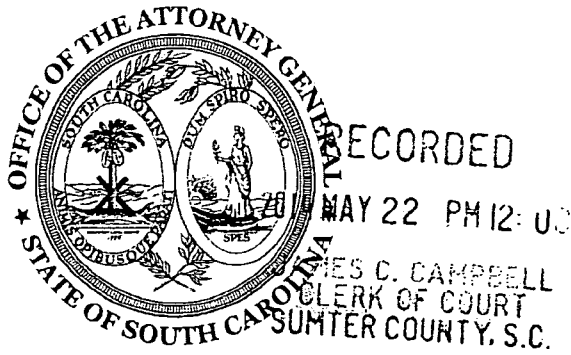
James C. Campbell

James C. Campbell - Clerk of Court

Court Reporter

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.



ALAN WILSON
ATTORNEY GENERAL

May 21, 2014

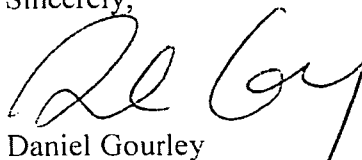
The Honorable James C. Campbell
Clerk of Court, Sumter County
Sumter County Judicial Center
215 N. Harvin Street
Sumter, SC 29150

Re: Jermel Anthony Robinson, #334393 v. State of South Carolina
2012-CP-43-648

Dear Mr. Campbell:

Enclosed please find the original **Order**, signed by The Honorable George C. James, Jr., in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,



Daniel Gourley
Assistant Attorney General

DG/ck
Enclosure(s)

STATE OF SOUTH CAROLINA

RECORDED IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

2014 MAY 22

PM 12

FOR THE THIRD JUDICIAL CIRCUIT

CASE NO: 2010-CP-43-648

Jermel Anthony Robinson,

JAMES C. CAMPBELL

CLERK OF COURT

SUMTER COUNTY, S.C.

ORDER

vs.

Applicant

The State of South Carolina,

Defendant

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

THIS MATTER is before the court on the applicant's Motion Pursuant to Rules 59 & 60, SCRPC. Appearing on behalf of the applicant is Richard T. Jones, Esquire.

This is a motion in which the applicant requests that the Court grant him relief pursuant to Rules 59 and 60, SCRPC, as well as any other relief the Court deems just and proper. The applicant's request for relief is based on this Court's Order of Dismissal, which dismisses the applicant's Application for Post-Conviction Relief. The applicant makes several arguments which he believes entitle him to an altered or amended judgment, or a new hearing.

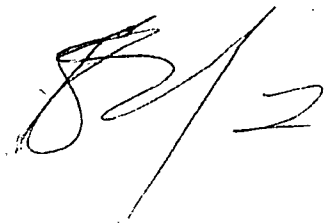
First, the applicant alleges that his trial counsel, David Sullivan, failed to make an effective directed verdict motion at trial. The applicant argues that a more "thorough" and "effective" motion should have been made in order to increase the likelihood of the motion being granted. The applicant asserts that Sullivan failed to make "what would even amount to the most minimal of motions in his motion for directed verdict," and therefore the Court should reconsider its findings to rule that Sullivan's actions fell below professional norms of reasonableness and prejudiced the applicant. The Court denies the applicant's request for relief under Rules 59 and 60, SCRPC, based on this deficient motion for directed verdict argument. In making this argument, the applicant fails to assert what he believes a viable motion for directed verdict would have been based upon. The applicant simply argues that the motion should have been "more effective" and "more thorough" because of the

seriousness of his charges. Without describing the basis of this hypothetically proper motion for directed verdict, this Court cannot determine if the applicant was in fact prejudiced by trial counsel's failure to "thoroughly state" his motion for directed verdict. The applicant's arguments do not provide a specific showing of ineffective assistance and resulting prejudice that would entitle to the applicant to relief under Rule 59 or 60.

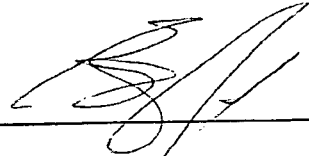
Next, the applicant argues that the Court should alter or amend its judgment and/or reconsider its ruling or findings because of trial counsel's failure to request a limiting instruction on the jury's use of a co-defendant's confession. The applicant also argues that he should be granted a new trial based on this failure to request a limiting instruction pursuant to Rule 60. The Court found that this failure to request a limiting instruction fell below the standard of reasonableness under prevailing professional norms, but that the applicant did not prove resulting prejudice. The applicant argues that the seriousness of his charges combined with the finding that counsel's performance fell below prevailing norms establishes that he was prejudiced and did not receive a fair trial. The Court denies the applicant's request for relief. The "seriousness of the charges" is not a factor that is considered when granting or denying an application for post-conviction relief. There is no "*per se*" prejudice simply because the charges are "serious". The applicant has not established that there is a reasonable probability that the outcome of the trial would have been different if trial counsel had requested a limiting instruction on the jury's use of a co-defendant's confession. The Order of Dismissal discusses this issue in sufficient detail.

Next, the applicant requests that the Court reconsider its ruling pursuant to Rule 59 as well as grant relief from the judgment pursuant to Rule 60 based on trial counsel's failure to contest the conviction for lynching when his co-defendant was not convicted of lynching. The Court denies this request for relief based on the reasoning that is fully discussed in the Order of Dismissal.

Based on the foregoing, the applicant's request for relief is denied.

A handwritten signature in black ink, followed by the number '2' written to the right of the signature.

AND IT IS SO ORDERED.



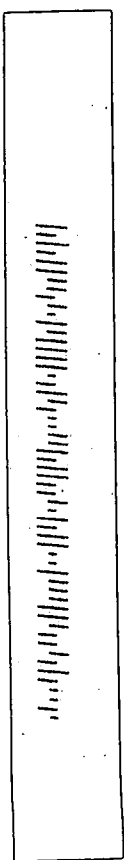
GEORGE C. JAMES, JR.


JUDGE, THIRD JUDICIAL CIRCUIT

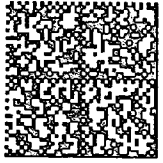
Sumter, South Carolina

May 16, 2014





UNITED STATES POSTAGE

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<p><i>Jones, Seth, Shuler & Jones, LLP</i> <i>Attorneys at Law</i> <i>5 Law Range, P.O. Box 1268</i> <i>Sumter, South Carolina 29151-1268</i></p>	<p>To: Honorable Daniel E. Shearouse Clerk, South Carolina Supreme Court P. O. Box 11330 Columbia, SC 29211</p>
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