THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post Conviction Relief

George C. James, Jr., Circuit Court Judge

Case No.: 2012-CP-26-9094

Michael J. Lackey #340933,..... Appellant,

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Michael J. Lackey #340933 appeals the order of the Honorable George C. James, Jr. dated May 16, 2014 and filed on May 28, 2014, as well as the Order signed by the Honorable George C. James dated June 30, 2014 and filed on July 8, 2014. Appellant filed a timely Motion to Reconsider. This Motion was denied and the final order was received on July 14, 2014.

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Irmo, South Carolina
July 28, 2014

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CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant hereby certify that I placed in the United States Mail, a copy of an Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to Joshua L. Thomas, Esq. of the Attorney General's Office, at:

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July 28, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
		FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	2012-CP-26-9094
Michael J. Lackey, #340933,	)	
Applicant,	)	
vs	)	**ORDER**
State of South Carolina,	)	
Respondent,	)	

The applicant, by way of letter dated June 19, 2014, requests the court to rule upon the issue of whether the grand jury's indictment was defective for not having been filed with the Horry County Clerk of Court.

In this court's order denying the application for post-conviction relief, the court ruled that the indictment was not defective. To ensure that the subject issue has been fully ruled upon, the court now specifically finds the indictment was not defective in any way, and the indictment was in full force and effect, even if it had not been filed with the Clerk of Court.

AND IT IS SO ORDERED.

George C. James, Jr.

Sumter, South Carolina

June 30, 2014

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Michael J. Lackey, #340933, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2012-CP-26-9094 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 27, 2012. Respondent made a timely Return on or about March 15, 2013. The Court convened an evidentiary hearing into the matter on March 20, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing, as did his mother and father. Applicant's trial counsel, Ralph J. Wilson, Sr., Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the appellate records. Both parties also submitted memoranda in support of their respective positions. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In January 2008, the Horry

County Grand Jury indicted Applicant for first degree burglary (2008-GS-26-214), armed robbery (2008-GS-26-215), unlawful carrying of a pistol (2008-GS-26-216), and possession with intent to distribute marijuana (2008-GS-26-217). Ralph J. Wilson, Sr., Esquire ("trial counsel"), represented Applicant. On May 17, 2010, Applicant, along with his co-defendant, proceeded to trial before the Honorable Larry B. Hyman, Jr., and a jury. On May 20, 2010, the jury found Applicant guilty as indicted. On May 21, 2010, Judge Hyman sentenced Applicant to concurrent terms of eighteen (18) years for first degree burglary, ten (10) years for armed robbery, one (1) year for unlawful carrying of a pistol, and five (5) years for possession with intent to distribute marijuana.

Applicant filed a timely notice of appeal and Wanda H. Carter, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an Anders[1] brief. The South Carolina Court of Appeals dismissed Applicant's appeal on May 2, 2012. State v. Lackey, Op. No. 2012-UP-257 (S.C. Ct. App. filed May 2, 2012). The remittitur was returned to the circuit court on May 22, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully because of ineffective assistance of counsel. At the hearing, Applicant alleged trial counsel was ineffective in the following regards:

1. Failure to file a motion to sever the trial from his co-defendant;
2. Failure to further establish an alternate theory of the crime;
3. Failure to advise of the possibility of entering an Alford[2] plea;
4. Failure to advise of the risks of testifying;

[1] Anders v. California, 386 U.S. 738 (1967).

[2] North Carolina v. Alford, 400 U.S. 25 (1970)

1/2

5. Failure to effectively cross-examine the co-defendants regarding their prior statements; and
6. Failure to challenge the sufficiency of the indictment and traffic stop.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified he was 18 years old at the time of the crime. He testified he lived in Georgia at the time, but was in Conway visiting his cousin, the co-defendant at trial, that attended Coastal Carolina University. He recalled retaining trial counsel and having a couple of meetings with him. Applicant also recalled going through the facts and his version of events with trial counsel "a good bit." Applicant testified he always contended he was not guilty of robbing anyone, and that he told trial counsel he was not involved in the crime. He testified he did not know the guns were in the car or that the co-defendants had robbed anyone. Applicant also recalled there were a lot of inconsistencies in statements provided by the co-defendants and witnesses. Applicant recalled the only evidence he was involved in the crime was the statements given by his co-defendants. Applicant also testified trial counsel never hired a private investigator and did not call certain witnesses to testify at trial.

Applicant recalled the State making an initial plea offer for ten (10) and a subsequent offer for twelve (12) years. He testified he did not understand the specifics of the pleas, but was

aware that some charges would be dismissed if he pled. He testified trial counsel attempted to convince him to take the offers, but he ultimately declined to plead guilty. Applicant further testified felt like he did not do anything wrong, so he did not want to plea. Applicant stated trial counsel never advised him of the availability of an Alford plea. He claimed he would have pled guilty if he would not have been required to admit he was involved in the crime. However, Applicant admitted he was present in the courtroom when a co-defendant entered an Alford plea immediately prior to trial.

Applicant recalled discussing a severance with trial counsel, but trial counsel did not move for a severance. He testified his cousin's attorney took the lead at trial. Applicant also recalled discussing his right to testify with trial counsel. He recalled trial counsel told him it was the only way to present his story to the jury. However, Applicant alleged trial counsel did not lay a foundation for him to tell his story. He also alleged trial counsel did not cross-examine the witnesses enough. Applicant testified trial counsel did not go into enough details with the witnesses about their conflicting stories. Applicant also testified trial counsel should have objected to the indictments because the descriptions of his crimes were vague and should have further challenged the traffic stop that led to his arrest.

Applicant's parents testified the spoke with trial counsel about the plea offers, but trial counsel never advised of the availability of an Alford plea. They testified Applicant was raised to be honest, and did not want to plead guilty and admit to a crime he did not commit. Applicant's father also recalled being in the courtroom when a co-defendant pled guilty.

Trial counsel testified he has been practicing criminal law since 1977. He recalled filing discovery motions and receiving responses from the State. Trial counsel testified he provided a

copy of the State's discovery response to Applicant and met with him four times prior to trial. Trial counsel recalled the State's version of events involved Applicant being present during the robbery and taking some phones and wallets from the victims. However, the phones and wallets were never recovered. Trial counsel recalled making a motion challenging the legality of the traffic stop, which Judge Hyman denied. He did not recall any problems with the sufficiency of the indictments.

Trial counsel testified Applicant took the position he was not guilty of the crimes because he never left the vehicle during the robbery. However, trial counsel admitted he thought there was a good likelihood of a conviction because the other co-defendants named Applicant as a participant in the robbery. He recalled receiving two offers from the State: an initial offer for ten (10) years and a subsequent offer for twelve (12) years, both of which he encouraged applicant to accept. However, trial counsel testified Applicant never asked him to negotiate a plea. Instead, trial counsel recalled always planning on taking the case to trial. He further testified Applicant never asked for an option to enter a plea without admitting guilt. He reiterated this position on cross-examination, admitting the problem in convincing Applicant to plea did not involve his reluctance to admit his guilt in a plea. He further admitted he would have discussed an Alford plea with the State had Applicant ever indicated he was interested in entering a plea but not admitting guilt.

Trial counsel testified the co-defendants' stories were highly inconsistent and that he cross-examined them on these inconsistencies. Trial counsel recalled explaining to Applicant the risks of testifying. He testified he generally advises clients not to take the stand, but ultimately decided that was the best way to present Applicant's version of events to the jury. He further

5/15

testified he discussed Applicant's story about remaining in the car and not participating in the robbery. Trial counsel discussed how the story was believable except for one element. Trial counsel explained he did not believe Applicant's story about his cousin staying in the car was consistent with the other evidence at trial, and the jury would have found Applicant more believable had he not attempted to help his cousin by placing him in the car during the robbery.

Trial counsel testified he saw no grounds for severing Applicant's trial from his cousin's. He could not recall anything he could have claimed created a conflict to justify a severance. He recalled cross-examining the co-defendants on their prior inconsistent statements. Trial counsel testified he does not believe he could have further impeached the witnesses. He also testified he made a strategic decision to not call the witness Applicant mentioned because the witness would have done more harm than good.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir.

1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

1. Failure to file a motion to sever the trial from his co-defendant.

The Court finds Applicant failed to meet his burden of proving trial counsel was ineffective in failing to sever his trial from his cousin's. Applicant argues trial counsel's failure to sever his trial resulted in the jury being prejudiced against Applicant because his testimony was so different from that of the other witnesses. However, the Court finds trial counsel's testimony credible and agrees with his analysis that there was no reason to move for severance. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). "Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." State v. Dennis 337 S.C. 275, 281, 523 SE2d 173, 176 (1999) (citing State v.

897

Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). Instead, a court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." Id. at 282, 523 S.E.2d at 176. There was no indication at trial that Lackey might offer any defenses inconsistent with those of his co-defendants. Instead, Applicant's defense involved his lack of participation in the crime. While this may be inconsistent with the other evidence adduced at trial, it does not give rise to cause for a severance. Therefore, trial counsel was not deficient in determining there was no basis for a severance.

Regardless, Applicant was not prejudiced by the joint trial with his cousin. A cautionary instruction as to multiple defendants is sufficient to protect each co-defendant from prejudice that might result from a joint trial. See State v. Holland, 261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973). Here, Judge Hyman gave a through instruction on the jury's duties regarding multiple defendants. (Trial Tr. 1166:18-1167:16). This instruction negated any prejudice that may have resulted from the joint trial. Accordingly, Applicant has failed to prove either prong of the Strickland test.

2. Failure to further establish an alternate theory of the crime.

The Court finds Applicant failed to meet his burden of proof to establish trial counsel was ineffective in failing to establish an alternate theory of the crime. As to this allegation, the Court finds trial counsel's testimony to be credible. An alternate sequence of events the night of the crime is irrelevant. Applicant never disputed being with the co-defendants on the night of the crime, he just disputed participating in the act itself. Trial counsel decided the only way to prove

38/8

Applicant did not participate was to have Applicant testify. Trial counsel also decided not to pursue Applicant's other witness because it could have done more harm than good. The Court finds trial counsel articulated a valid strategy for all of the steps he took through trial. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. The Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Also, Applicant has not shown what further evidence any other witnesses could have provided. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Accordingly, Applicant has failed to show how trial counsel was ineffective in implementing his trial strategy regarding the theory of the crime.

3. Failure to advise of the possibility of entering an *Alford* plea.

Applicant also has not proven trial counsel was ineffective for failing to advise him of the existence of an Alford plea option. Trial counsel had no duty to advise Applicant of the existence of an Alford plea. The Constitution does not guarantee a criminal defendant the right to plead guilty under Alford. Rivers v. United States, No. 7:04-CR-85-2-F, 2010 WL 3063215, at *8 (E.D.N.C. Aug. 3, 2010) (citing Santobello v. New York, 404 U.S. 257 (1971); Alford, 400 U.S. at 38). When negotiating a plea on behalf of a defendant, counsel is merely required to "fully communicate with the client so that the client can make an informed decision regarding any proposals by the State." Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). In advising a client about a plea offer, trial counsel must:

> "1) notify the client of a plea offer; 2) advise the client of the option to proceed to trial; 3) present the client with the probable outcomes of both the guilty and sentencing phases of each alternative; and 4) permit the client to make the ultimate decision."

Carr v. United States, No. 3:08CV123, 2009 WL 1867672, at *8 (N.D.W. Va. June 29, 2009) (citations omitted). However, trial counsel is not required to discuss an Alford plea with Applicant. See Rivers, 2010 WL 3063215, at *8 ("Furthermore, this court is unaware of any authority for the proposition that an attorney must inform or advise a client to consider entering an Alford plea."); Matthews v. Koppel, No. CCB-08-1389, 2009 WL 3488349, at *9 (D. Md. Oct. 21, 2009) ("The court is unaware, and petitioner's counsel does not provide, case precedent holding that counsel must pursue an Alford plea."); Carr, 2009 WL 1867672, at *8 ("The Court has not found a case that holds that an attorney must inform or advise a client to consider entering an Alford plea."). Thus, "[t]here is no constitutional requirement that the meaning of an Alford plea be explained to a criminal defendant." Johnson v. Comm'r of Correction, 652 A.2d 1050, 1058 (Conn. 1995). Because trial counsel was under no constitutional duty to advise Applicant of the existence of Alford pleas, trial counsel was not deficient.

Trial counsel was also not deficient under the facts of this case because the evidence overwhelmingly indicates Applicant never indicated he was interested in any resolution to his charges other than a trial and acquittal. See Matthews, 2009 WL 3488349, at *9 ("Strickland discourages bright-line rules because the claimed ineffective assistance of counsel must be considered in context with all of the surrounding circumstances."). Trial counsel's testimony indicates he had no reason to believe Applicant would have been interested in an Alford plea. The only evidence supporting Applicant's allegation is his own testimony that he would have accepted the ten (10) or twelve (12) year offers if he could have maintained his innocence.

10

However, both Applicant and trial counsel admitted they always planned on taking the case to trial. Applicant was fully aware of the benefits of accepting one of the State's offers, i.e. a sentence of ten (10) or twelve (12) years, and he would have received the same sentence pleading guilty or pleading under Alford. However, Applicant chose to proceed to trial. In light of these facts, the Court cannot find trial counsel was ineffective for failing to explore an Alford plea with Applicant. See id. (counsel not deficient for not exploring Alford plea where client declined an earlier offer and counsel testified he never had reason to believe client wanted to enter a plea).

4. Failure to advise of the risks of testifying.

The Court further finds Applicant has not shown trial counsel was ineffective in not making him aware of the risk of testifying. Here, the Court finds trial counsel's testimony credible, and Applicant's not credible. Trial counsel testified at the hearing that he always advises clients not to testify because of the risk. It appears Applicant's strategy was initially to not testify, but the strategy changed when it became clear it was the only way to present his version of the night's events. The Court agrees this is sound strategy in light of the other evidence presented at trial. Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

The record also indicates Applicant made the decision to testify with a full understanding of his rights. Trial counsel explained to him the benefits and risks of taking the stand. They even discussed how certain aspects of his testimony would ultimately hurt his case. Furthermore, Judge Hyman thoroughly explained Applicant's right to testify and his right to remain silent. (Trial Tr. 1043:19-1050:18). Therefore, the record supports a finding that

11

Applicant knowingly and voluntarily exercised his right to testify in his own defense and waived his right to remain silent.

Regardless, Applicant was not prejudiced by his ultimate decision to testify. Applicant contends testifying hurt him because his story differed so much from that of the other witnesses. Applicant's story was starkly different from the other co-defendants' stories, which all involved him participating in the robbery. However, Applicant's was the only testimony that did not have him directly involved in the execution of the crime. Brown v. State, 340 S.C. 590, 596, 533 S.E.2d 308, 311 (2000) ("[T]here is no reasonable probability the result of the trial would have been different had he chosen not to testify, because without his testimony, the jury would only have heard uncontroverted evidence of respondent's guilt."). Therefore, Applicant has not satisfied either prong of the Strickland test with regard to his decision to testify.

5. Failure to effectively cross-examine the co-defendants regarding their prior statements.

Applicant has also not shown trial counsel was ineffective in his cross-examination of the other witnesses. Applicant's primary complaint appears to be that trial counsel was not effective in showing discrepancies between co-defendants' and witnesses' statements and was ineffective in impeaching witnesses. The Court does not agree. Trial counsel testified he cross-examined the co-defendants about their inconsistent prior statements to the extent he felt was reasonable under the circumstances. The Court agrees there was little trial counsel could have done to further impeach the witnesses. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. He impeached the co-defendants and witnesses with inconsistencies at different points in the trial; however, there was little he could do when most witnesses admitted to their prior inconsistencies.

5/12

Furthermore, the trial transcript reveals trial counsel subjected the State's case to a "meaningful adversarial testing[.]" United States v. Cronic, 466 U.S. 648, 659 (1984). Trial counsel made timely and articulate objections, thoroughly cross-examined the State's witnesses, and made well-reasoned arguments to the jury.[3] In light of this thorough representation, Applicant has not shown he was prejudiced by the lack of further cross-examination regarding the witnesses' conflicting stories. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("[W]here evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward." (citations omitted)).

6. Failing to challenge the sufficiency of the indictment and traffic stop.

Finally, the Court finds Applicant's allegations regarding the indictment and traffic stop to be wholly without merit. A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Absent evidence to the contrary, the Court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991). Here, there is no evidence the indictments were irregular in any manner whatsoever. The indictments are valid on their face because they state all the necessary elements of the charges, the dates of the offenses, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictments are stamped "True

[3] Applicant's cousin's counsel also cross-examined many witnesses and challenged the State's evidence.

5/13

Billed" and signed by the foreman. Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Therefore, the Court agrees with trial counsel's assessment that the indictments were not defective.

Regarding Applicant's challenge to the traffic stop, such an allegation is not as issue that may be addressed by this Court. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Trial counsel challenged the stop at trial, and thus any review of that challenge would have been properly brought on direct appeal.

C. All Other Allegations

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

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes 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.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

8/14

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 **day of** May **; 2014.**

THE HONORABLE GEORGE C. JAMES, JR.
Presiding Judge

5/16, South Carolina

3/15

Tommy A. Thomas

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July 28, 2014

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

RE: Michael J. Lackey #340933 v. State of South Carolina
Case No.: 2012-CP-26-9094

Dear Sir or Madam:

Enclosed please find an original and a copy of the Notice of Appeal regarding the above matter. Kindly return a clocked copy to me in the enclosed envelope.

Thank you and should you have any questions, please feel free to contact me.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Joshua L. Thomas, Esq.
Michael Lackey

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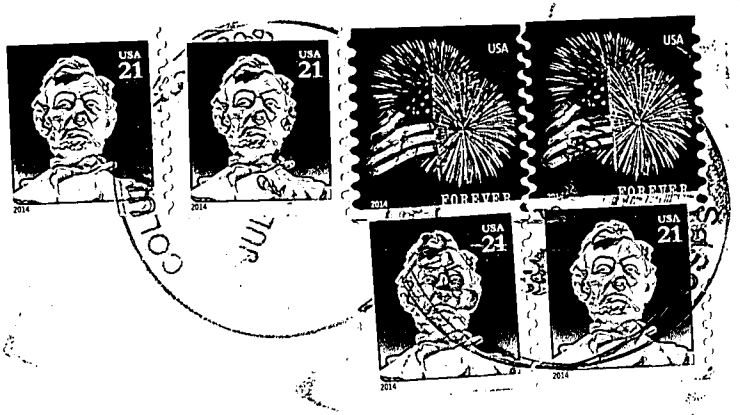

The South Carolina Supreme Court
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