

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas
Doyet A. Early, Presiding Judge

2006-CP-06-106

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SEP 18 2014

S.C. SUPREME COURT

TUNZY A. SANDERS, 255493

Applicant,

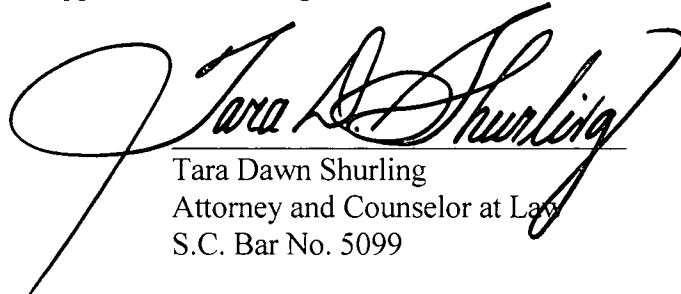
v.

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 denying his Post-Conviction Relief Application filed August 19, 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 16th day of September, 2014.

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

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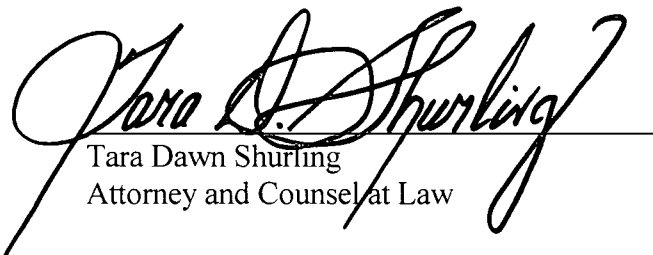
v.

THE STATE OF SOUTH CAROLINA,

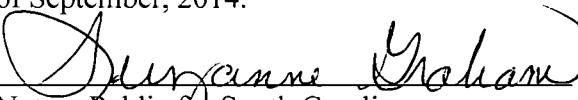
Respondent.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Daniel Gourley, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 16th day of September, 2014.


Tara Dawn Shurling
Attorney and Counsel at Law

SWORN TO BEFORE me this 16th day
of September, 2014.


Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
 COUNTY OF BARNWELL)
)
 Tunzy Sanders, #255493,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2006-CP-06-0106

ORDER OF DISMISSAL

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 BARNWELL COUNTY, S.C.
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This matter comes before the Court by way of an application for post-conviction relief filed May 11, 2006, and amended on August 19, 2013 and filed August 22, 2013. Respondent made its Return on June 13, 2007. An evidentiary hearing into the matter was convened on August 20, 2013, at the Bamberg County Courthouse. Applicant was present at the hearing and was represented Tara D. Shurling, Esquire. Respondent was represented by Senior Assistant Attorney General David Spencer and Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. Applicant was indicted at the July 20, 1998 term of the Barnwell County Grand Jury for Murder (98-GS-06-180). Applicant was subsequently indicted at the January 11, 1999 term of the Barnwell County Grand Jury for Attempted Armed or Alleged Robbery (99-GS-06-078) and Criminal Conspiracy (99-GS-06-079). Applicant was represented by Daniel Williams, Esquire. On January 11, 1999, Applicant proceeded to trial and found guilty as indicted. He was sentenced by the Honorable Gary E. Clary to confinement for a period of life for Murder, twenty

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years for Attempted Armed Robbery, and five years for Criminal Conspiracy. All sentences were to be served concurrently.

A timely notice of appeal was filed and an appeal was perfected on Applicant's behalf. The South Carolina Supreme Court reversed and remanded the conviction due to Honorable Brenda Sanders (Applicants sister and a licensed Michigan Attorney) not being allowed to represent Applicant during his trial. State v. Sanders, Op. No. 25613 (filed July 3, 2000).

The case proceeded to re-trial on February 5-8, 2001. Applicant was represented by Brenda K. Sanders, Esquire and Daniel Williams Esquire.¹ Applicant was found guilty of the charges. The Honorable James R. Barber, III sentenced Applicant to confinement for a period of thirty-five years for Murder, twenty-five years for Armed Robbery, and five years for Criminal Conspiracy.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed. State v. Sanders, 356 S.C. 214, 588 S.E.2d 142 (Ct. App. 2003). The Court of Appeals denied Applicant's Petition for Rehearing on February 19, 2004. Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. The Petition was denied by order dated May 18, 2005. The remittitur was sent on May 19, 2005.

Applicant filed an application for post-conviction relief (PCR) on May 11, 2006 (C.A. No. 2006-CP-06-0106). In his application, Applicant asserted the following grounds for relief:

1. "Did the trial court err when it allowed the admission of Aurelein Vigier's prior testimony which violated applicant's Confrontation Clause rights because he was not afforded an opportunity to cross-examine the witness regarding 'subsequent revelations' pertaining to the State's alleged 'deal' with the witness?"
2. "Did the trial judge err in ruling appellant's cellmates were not government agents at the time applicant allegedly made incriminating statements to them?"

¹ Brenda K. Sanders is a member of the Michigan Bar and currently a summary court judge in Wayne County, Michigan. She was allowed to participate in Tunzy Sander's trial via pro hac vice.

3. "Did the trial judge err in admitting testimony of David Staley and Aurelien Vigier who were jailhouse informants who had initiated contact with the applicant and who were acting as government agents at the time the alleged statements were made by the applicant?"
4. "Did the trial court err when it denied the Appellant's Motion to Quash Maurice Benning's testimony?"
5. "Did the Appellant's appeal counsel provide ineffective assistance of counsel by failing to address all of the issues in his Appeal to the Court of Appeals and the Supreme Court despite the fact that the Appellant specifically requested that he do so and Appellant's counsel failed to address said issues despite the fact that he addressed multi issues in the co-defendants case and prevailed on those issues in the Court of Appeals?"
6. "Did the trial court commit error by convicting the Appellant despite insufficiency of the evidence?"
7. "Did the Appellant's appointed appellate counsel provide ineffective assistance of counsel by failing to address the issue of the trial court's denial of the directed verdict in Appellant's case?"
8. "Did the trial court err in its admission of the ballistics evidence where it was unclear as to the type of bullet and the fact that the ballistics expert clearly indicated that he could not be sure that it came from the same gun?"
9. "Did the trial court err when it admitted testimony of jailhouse informants who were not trustworthy, had a history of testifying against other defendants and received great consideration for their testimony against the appellant in this case as well as for their testimony against the co-defendants in their own cases? Should the appellant's conviction for murder, armed robbery, and criminal conspiracy be allowed to stand such unreliable evidence without corroboration from the physical evidence in the case?"
10. "Did the delay in revealing that Vigier and Staley had received deals from the State constitute a Brady violation as such information was only revealed at the second trial of the Applicant-Sanders?"

Applicant filed an amended application on June 8, 2006, asserting the following additional grounds for relief:

11. "Whether Applicant's indictment for murder (98-GS-06-180) was defective because it did not state a place and time of assault and the place and time of the death of Minh Chapman pursuant to S.C. Code Ann. §17-19-30 (1985) thereby

meaning that the Circuit Court lacked subject matter jurisdiction over the applicant at the time of Applicant's trial?"

12. "Whether the indictments for Attempted Armed Robbery 99-GS-06-079 and Criminal Conspiracy – 99-GS-06-078 were defective thereby causing the Circuit Court to lack subject matter jurisdiction over the Applicant at the time of Applicant's trial."

The State made its Return on June 13, 2007. An evidentiary hearing was convened before the Honorable J. Michael Baxley on August 8, 2007, at which Applicant was present and represented by Jane Matthews Moody, Esquire. In an order dated September 18, 2007, and filed October 4, 2007, Judge Baxley denied and dismissed the application with prejudice.

Subsequently, Applicant filed a second application for post-conviction relief (C.A. No. 2009-CP-06-0146) on June 16, 2009. In his application, Applicant asserted the following grounds for relief:

1. "Was PCR Attorney, Jane A. Moody, ineffective as counsel when she failed to communicate with Tunzy A. Sanders about his PCR Petition and PCR hearing?"
2. "Was PCR Attorney, Jane A. Moody, ineffective as counsel for the Applicant, Tunzy A. Sanders, when she failed to communicate with the former attorney for the Applicant, Tunzy A. Sanders, after being requested to do so on several occasions?"
3. "Was PCR Attorney, Jane N. Moody, ineffective as counsel for the Applicant, Tunzy A. Sanders, when she failed to notify the Applicant of the scheduling of the PCR hearing in the Barnwell County Circuit Court?"
4. "Was PCR Attorney, Jane N. Moody, ineffective as counsel for the Applicant, Tunzy A. Sanders, when she failed to notify trial counsel, Brenda K. Sanders, of the scheduling of the PCR hearing and when she failed to call Brenda K. Sanders to testify at the PCR hearing for the Applicant, Tunzy A. Sanders?"
5. "Was PCR Attorney, Jane N. Moody, ineffective as counsel for the Applicant, Tunzy A. Sanders, when she failed to file a timely notice of appeal on behalf of the Applicant, Tunzy A. Sanders within 30 days of the Barnwell County Circuit Court's decision which was rendered on October 4, 2007?"

6. "Was PCR Attorney, Jane N. Moody, ineffective as counsel for the Applicant, Tunzy A. Sanders, when she failed to notify the Applicant of the issuance of the Order Denying his PCR application until nine months after the Order had been entered by the Barnwell County Circuit Judge?"
7. "Was PCR Attorney, Jane N. Moody, ineffective as counsel for the Applicant, Tunzy A. Sanders, when she failed to adequately and individually address all of the issues outlined in the PCR Application of the Applicant, Tunzy A. Sanders, when she was specifically requested to do so on behalf of the Applicant, Tunzy A. Sanders?"
8. "Was PCR Attorney, Jane N. Moody, ineffective as counsel for the Applicant, Tunzy A. Sanders, when she failed to file a post-hearing motion with the Barnwell County Common Pleas Circuit Court requesting that Judge Baxter [sic] tender a ruling on each issue brought in the Applicant's PCR Application for Relief despite the fact that the PCR Attorney, Jane Moody, was specifically requested to do so on behalf of the Applicant, Tunzy A. Sanders?"

The Respondent made its Return on or about September 18, 2009, requesting all allegations except for Applicant's Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) claim be summarily dismissed. An evidentiary hearing into the matter was convened on January 29, 2010, at the Aiken County Courthouse. Applicant was represented by Christopher Moore, Esquire. Mary S. Williams, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. Counsels for both parties consented to the dismissal of his Application for post-conviction relief and the grant of an appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) with regard to C.A. No. 2006-CP-06-0106. By Order filed March 30, 2010, the Honorable William Jeffrey Young granted Applicants appeal pursuant to Austin v. State and denied his remaining allegations.

Subsequently, the court reporter informed Applicant that a portion of the hearing on Applicant's first post-conviction relief application (C.A. No. 2006-CP-06-00106) was missing from her tapes. Applicant requested the matter be remanded to the circuit court for a de novo hearing on Applicant's first post-conviction relief application. The South Carolina Supreme

Court granted the petition and remanded the matter to the Honorable J. Michael Baxley for the purpose of reconstructing the record of the hearing. A hearing was held on August 8, 2007 before Judge Baxley. However, Judge Baxley informed the court that he could not fully reconstruct the missing portion of the transcript. Applicant renewed his petition to remand for a de novo hearing on his first post-conviction relief application. By Order dated March 23, 2012, the South Carolina Supreme Court vacated the order dated September 18, 2007 denying and dismissing Applicant's first post-conviction relief application and the order dated March 23, 2010 finding Applicant was entitled to a belated review of the September 18, 2007 Order. The South Carolina Supreme Court granted the Applicant's petition to remand and remanded the matter to Judge Baxley for a de novo hearing on Applicant's first post-conviction relief application.

In his application (C.A. No 2006-CP-06-106), Applicant re-alleged the following grounds for relief:

1. "Did the trial court err when it allowed the admission of Aurelein Vigier's prior testimony which violated applicant's Confrontation Clause rights because he was not afforded an opportunity to cross-examine the witness regarding 'subsequent revelations' pertaining to the State's alleged 'deal' with the witness?"
2. "Did the trial judge err in ruling appellant's cellmates were not government agents at the time applicant allegedly made incriminating statements to them? Did the trial judge err in admitting testimony of David Staley and Aurelien Vigier who were jailhouse informants who had initiated contact with the applicant and who were acting as government agents at the time the alleged statements were made by the applicant?"
3. "Did the trial court err when it denied the Appellant's Motion to Quash Maurice Benning's testimony?"
4. "Did the Appellant's appeal counsel provide ineffective assistance of counsel by failing to address all of the issues in his Appeal to the Court of Appeals and the Supreme Court despite the fact that the Appellant specifically requested

that he do so and Appellant's counsel failed to address said issues despite the fact that he addressed multi issues in the co-defendants case and prevailed on those issues in the Court of Appeals?"

5. "Did the trial court commit error by convicting the Appellant despite insufficiency of the evidence?"
6. "Did the Appellant's appointed appellate counsel provide ineffective assistance of counsel by failing to address the issue of the trial court's denial of the directed verdict in Appellant's case?"
7. "Did the trial court err in its admission of the ballistics evidence where it was unclear as to the type of bullet and the fact that the ballistics expert clearly indicated that he could not sure that it came from the same gun?"
8. "Did the trial court err when it admitted testimony of jailhouse informants who were not trustworthy, had a history of testifying against other defendants and received great consideration for their testimony against the appellant in this case as well as for their testimony against the co-defendants in their own cases? Should the appellant's conviction for murder, armed robbery, and criminal conspiracy be allowed to stand such unreliable evidence without corroboration from the physical evidence in the case?"
9. "Did the delay in revealing that Vigier and Staley had received deals from the State constitute a Brady violation as such information was only revealed at the second trial of the Applicant-Sanders?"

Applicant filed an amended application on June 8, 2006, asserting the following additional grounds for relief:

10. "Whether Applicant's indictment for murder (98-GS-06-180) was defective because it did not state a place and time of assault and the place and time of the death of Minh Chapman pursuant to S.C. Code Ann. §17-19-30 (1985) thereby meaning that the Circuit Court lacked subject matter jurisdiction over the applicant at the time of Applicant's trial?"

Applicant amended Application on August 19, 2013 and filed August 21, 2013, asserting the following additional grounds for relief:

1. "Trial Counsel failed to adequately advise the Applicant of all the potential disadvantages of a bench trial versus a jury trial."

2. "Trial Counsel's failure to thoroughly advise the Applicant of the potential benefits of a jury trial resulted in the Applicant's inability to make a knowing and voluntary waiver of his rights."
3. "Trial Counsel failed to provide the Applicant the reasonable professional assistance of counsel where they failed to seek a continuance despite the fact that lead counsel, Brenda Sanders, was not properly notified that the Applicant's case was scheduled for trial."
4. "Trial Counsel was ineffective for failing to adequately argue the facts in support of the Applicant's motion to exclude from evidence a transcript of Aurelin Vigier's testimony from the Applicant's trial where Attorney Sanders had no previous opportunity to cross-examine this witness."
5. "Trial Counsel Sanders was ineffective for failing to respond to the trial judge's assumption that she had the opportunity to have Attorney Williams pose any questions she deemed necessary to witness Vigier."
6. "Trial Counsel was ineffective for allowing a transcript of Witness Vigier's testimony from the Applicant's first trial to be admitted without objection."
7. "Trial Counsel was ineffective for neglecting to object to a pattern of leading by the prosecution during their direct examination of State witnesses during the Applicant's trial."
8. "Trial Counsel was ineffective for failing to object to hearsay testimony from Dr. Joel Sexton concerning what he was told concerning the type of ammunition used in this homicide."
9. "Trial Counsel was ineffective for failing to object to the Solicitor's misstatement of the testimony of Maurice Benning during the prosecution's summary of the evidence before the Court where the prosecutor erroneously advised the Court that Maurice Benning had testified that he heard a shot from the area around the restaurant where the record fails to support that claim."
10. "Trial Counsel was ineffective for failing to object to the Applicant's sentence of 25 years for armed robbery where the Applicant was in fact charged with Attempted Armed Robbery."
11. "Trial Counsel was ineffective for failing to point out to the Judge that the State did not rebut claim by the Applicant that only one officer got out of the car at the first Chinese Restaurant; a fact that was not disclosed in Gadson's testimony."

Applicant submitted an additional amendment on August 19, 2013 and filed on August 22, 2013, asserting the following grounds:

12. Trial Counsel was ineffective for failing to request that the Trial Court publish on the record all of the law to be applied by the Court in reaching a decision on the Applicant's case."
13. "Trial Counsel provided the Applicant ineffective assistance of counsel when they waived the right to make a comprehensive closing argument summarizing the evidence and arguments in favor of the defense."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Additionally, Applicant called Joseph L. Savitz, III (Appellate Counsel), Dan Williams (Counsel Williams), Brenda K. Sanders (Counsel)² to testify on his behalf. The State presented testimony from DeGrant Gibbons (Solicitor). This Court also had before it a copy of Applicant's trial transcript, the records of the Barnwell County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant called Appellate Counsel to testify on his behalf. Appellate Counsel testified he worked at the Office of Appellate Defense for twenty six years. Appellate Counsel testified he would receive the transcripts of the trial, read the transcript "once or twice" and select the possible issues on appeal. (PCR tr. p. 66 line 11-22). Appellate Counsel testified once the issues were selected, he would research the relevant case law and narrow the issues down "to the issues that we think we can prevail upon." (PCR tr. p. 66 lines 23-24). Appellate Counsel testified he would then write and file the brief. (PCR tr. p. 66 lines

² This Court notes that Brenda K. Sanders (Counsel) is Applicant's sister. This Court further note's Counsel has paid PCR Counsel, Tara D. Shurling to represent Applicant in this post-conviction relief hearing. Further, PCR Counsel has alleged various allegations of ineffective assistance of counsel specifically alleging various deficiencies of Counsel during her representation of Applicant.

24-25). Appellate Counsel testified he followed this procedure in Applicant's case. (PCR tr. p. 67 line 2-5).

Appellate Counsel testified that during his representation of Applicant he communicated with Counsel regarding the various allegations she felt needed to be raised on appeal. Appellate Counsel testified that Counsel requested the issue of whether the trial court erred in denying Applicant's directed verdict motion be raised on appeal. Appellate Counsel testified the only issue raised on appeal was the use of the transcript of the jailhouse informant, Aurelin Vigier (Vigier). Appellate Counsel testified he was concerned that Applicant's counsel of choice, Brenda Sanders, was not able to cross-examine Vigier during Applicant's original trial and he was of the opinion that it was a meritorious issue. (PCR tr. p. 46 lines 3-11; p. 51 lines 8-9).

Appellate Counsel testified "if I missed an issue that was a winner on appeal, that would have won, then certainly I don't have any strategic reason for abandoning those issues. There's no sense in abandoning a winning issue in favor an issue that ultimately lost." However, Appellate Counsel explained that although there is no harm in raising multiple issues on appeal, he only raises issues that he believes to be meritorious. (PCR tr. p. 54 line 5—p. 55 line 15). Appellate Counsel testified in his opinion he raised all meritorious issues and "if [Applicant] was going to win that it was going to [be the] issue" raised on appeal. (PCR tr. p. 67 lines 6-10). Appellate Counsel testified "I did not see any other issues that I thought we would have prevailed upon." (PCR tr. p. 67 lines 10-11). Appellate Counsel further testified prior to submitting his brief for appellate review, Counsel made him aware of the various issues Applicant now alleges should have been raised on appeal. (PCR tr. p. 67 line 12-19). However, Appellate Counsel testified he made an informed decision not to raise those various issues and

instead raised the one issue that he felt was going to be successful. (PCR tr. p. 67 line 20—p.68 line 2; p. 70 lines 14-17).

Appellate Counsel testified that in his opinion, the issue of whether the testimony of David Staley (Staley) and Vigier should have been suppressed because they were allegedly acting as government agents during the time they had conversations with Applicant was not a good issue to raise. (PCR tr. p. 50 line 7—p. 51 line 15). Appellate Counsel testified he did not have any independent recollection regarding the motion to quash Maurice Benning's testimony. (PCR tr. p. 53 lines 3-22). However, Appellate Counsel testified he was sure that he felt that the issue was meritless because he did not raise it on appeal. (PCR tr. p. 53 line 23—p.54 line 4). Appellate Counsel further testified that he did not represent Michael Buckmon (Buckmon), Applicant's co-defendant, on appeal. (PCR tr. p. 55 line 25—p. 56 line 5). Appellate Counsel testified Eleanor Cleary represented Buckmon, despite the fact that Appellate Counsel's name was on the opinion. (PCR tr. p. 56 line 20-24). Appellate Counsel testified the South Carolina Supreme Court granted a directed verdict motion in Buckmon's case. (PCR tr. p. 60 lines 8-10). However, Appellate Counsel testified he did not raise the issue of whether the judge erred in denying the directed verdict motion because Vigier's testimony implicated Applicant and not Buckmon. (PCR tr. p. 60 lines 11-22). Appellate Counsel explained he raised the issue that the Vigier's testimony was unreliable and should not have been introduced into evidence. (PCR tr. p. 60 lines 11-22). Appellate Counsel testified had they been successful on appeal, the case would have been remanded for a new trial and a directed verdict would have been granted because Vigier's testimony was the only distinguishing factor between Buckmon's and Applicant's case. (PCR tr. p. 60 line 23—p. 4; p. 62 lines 17-21).

Appellate Counsel testified he did not raise the issue of whether the delay in revealing that Vigier and Staley allegedly received deals from the State constituted a Brady violation, since the testimony was only revealed at the second trial. (PCR tr. p. 64 lines 14-25). Further, Appellate Counsel testified he was of the opinion that he would not raise that issue today. (PCR tr. p. 64 lines 14-25). Appellate Counsel testified it was his opinion that Richard Breibart's, counsel for Buckmon, explanation that the State would take Buckmon's cooperation into consideration in the future was not an issue that needed to be raised on appeal. (PCR tr. p. 65 lines 1-7).

Following Applicant's testimony, Dan Williams (Counsel Williams) was called to testify by Applicant. Counsel Williams testified he represented Applicant at his initial 1999 trial (jury trial) and re-trial in 2001 (bench trial). Counsel Williams testified during the 1999 jury trial, Brenda Sanders (Counsel Sanders), was his co-counsel. However, prior to the start of trial the State alleged that she was a potential witness in the case and as a result, she was not allowed to participate in the trial. Counsel Williams testified "for that reason [Counsel Sanders] sat either at counsel's table or near counsel's table but didn't participate." (PCR tr. p. 74 lines 2-8).

Counsel Williams testified he was prepared to try the bench trial and previously made a motion for a speedy trial in October 2000. (PCR tr. p. 105 lines 8-13). Counsel Williams further testified he was the person who notified Counsel Sanders of the impending trial date. (PCR tr. p. 115 lines 1-3). Counsel Williams testified they did not request a continuance because they previously filed a motion for a speedy trial and he was of the opinion that they were prepared to try the case. (PCR tr. p. 115 lines 16-25). Counsel Williams further testified he previously tried the case, knew who the witnesses were, and did not feel there was a basis for making a motion to continue the case. (PCR tr. p. 116 lines 6-17).

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Counsel Williams testified Applicant chose to proceed with the bench trial after they selected a jury. (PCR tr. p. 75 line 12-15). Counsel Williams testified prior to the start of the bench trial, Counsel Sanders informed Counsel Williams that “she was thinking about proceeding with just a bench trial.” (PCR tr. p. 75 lines 18-22). Counsel Williams testified he understood Counsel Sanders’s reasoning and strategy for wanting to waive the right to a jury trial, but in his opinion “we were better off having a jury hear the facts...” (PCR tr. p. 80 lines 11-17). Counsel Williams testified he explained to Counsel Sanders that it was not a good idea and “that we needed to proceed as we were going, with a jury.” (PCR tr. p. 76 lines 5-7). Counsel Williams explained that Counsel Sanders was concerned with getting a fair jury trial in Barnwell County given that the community had previously heard about the case. (PCR tr. p. 76 lines 7-16). Counsel Williams testified because of Counsel Sanders’s concerns they made a motion for a change of venue, which was ultimately denied. (PCR tr. p. 76 lines 17-22).

Counsel Williams testified Counsel Sanders agreed to select a jury prior to making a motion for bench trial. (PCR tr. p. 76 line 23—p. 77 line 4). Counsel Williams testified he was “impressed” with the panel that was selected and was of the opinion that it was a fair panel. (PCR tr. p. 77 lines 5-7). Counsel Williams testified he was opposed to a bench trial and expressed his concerns to the Applicant. (PCR tr. p. 105 line 14—p. 106 line 3). Counsel Williams explained that he did not know “of any big trial like this that [I] ever heard of doing it as a bench trial as opposed to a jury trial. And I thought we’d be better off with a jury trial.” (PCR tr. p. 105 lines 18-25).

Counsel Williams testified he expressed his concerns about waiving a jury trial with Applicant, but could not recall the specific details of the conversation after a twelve year time period. (PCR tr. p. 106 lines 1-3). Counsel Williams testified it is his normal procedure to

discuss with a client “their rights in a case” including the right to a jury, the right to confront their witnesses, and the jury has to come to a unanimous decision in order for a defendant to be found guilty. (PCR tr. p. 80 lines 20-24; p. 106 lines 18-25). Furthermore, Counsel Williams testified Judge Barber advised Applicant that he had a constitutional right to jury trial and that he would be the judge of the facts and the law. (PCR tr. p. 106 lines 11-14). Counsel Williams testified Applicant previously had a jury trial and would have understood that the law requires a unanimous verdict. (PCR tr. p. 106 lines 18-21). Ultimately, Counsel Williams testified it was Applicant’s decision to waive his right to a jury trial and Applicant did so against Counsel Williams’s recommendation. (PCR tr. p. 107 lines 1-5).

Counsel Williams recalled Counsel Sanders arguing against the introduction of Vigier’s prior trial testimony arguing she did not have an opportunity to participate in his cross examination during the Massiah hearing at the first trial. (PCR tr. p. 88 lines 5-17). Counsel Williams recalled Judge Barber referencing the fact that although Counsel Sanders was not the counsel of record during the first trial, she had the ability to participate through Counsel Williams. (PCR tr. p. 89 line 22—p. 90 line 4). Counsel Williams testified he did not object to Judge Barber’s assertion because he recalled meeting with Counsel Sanders prior to the trial, reviewing evidence, and Counsel Williams specifically recalled Counsel Sanders being present during the trial. (PCR tr. p. 90 lines 5-12). Counsel Williams recalled meeting with Counsel Sanders during the first trial, but could not recall specifically whether Counsel Sanders provided notes to him. (PCR tr. p. 91 lines 4-14).

Counsel Williams testified he did not object to Judge Barber reading the transcript of Vigier’s testimony from the first trial, because “he’s a judge and he’s been a judge for a while. And to [Counsel Williams] it made sense for him just to read the record as opposed to putting a

canned witness on the stand.” (PCR tr. p. 93 line 22—p. 94 line 4). Counsel Williams testified it was his opinion that “a judge takes a transcript and he reads it. And he considers it evidence like live testimony and that’s that.” (PCR tr. p. 95 lines 7-16). Counsel Williams testified he does not object to leading questions by the prosecutor unless it is “really, really bad.” Counsel Williams further testified he could not recall any glaringly bad leading questions. (PCR tr. p. 95 line 17—p. 96 line 3). Counsel Williams testified he chose not to object to leading questions in an effort to not draw attention to the testimony presented. (PCR tr. p. 96 line 23—p. 96 line 3). Counsel Williams further testified he did not recall any “glaringly bad leading questions...” (PCR tr. p. 96 lines 2-3).

Counsel Williams recalled Dr. Joel Sexton’s testimony. Dr. Sexton wrote in his notes that the bullet found on Victim was a .22 caliber as opposed to a .25 caliber bullet. (PCR tr. p. 97 lines 1-5). Counsel Williams testified Dr. Sexton explained he was not a ballistics expert, but over the course of his career, Dr. Sexton was able to identify various calibers of bullets. Counsel Williams recalled Dr. Sexton testifying that the ballistics expert told him it was an unusual .25 caliber bullet which explained why he initially thought the bullet was .22 caliber. (PCR tr. p. 97 lines 1-15). Counsel Williams testified Dr. Sexton’s explanation was hearsay testimony and he did not have any strategic or practical reason to not object to that testimony. (PCR tr. p. 97 lines 23-25). However, Counsel Williams testified that Vello Paavel (Paavel), a SLED Forensic expert, testified at the bench trial that the bullet used to kill Victim was .25 caliber. (PCR tr. p. 107 lines 6-12).

Counsel Williams recalled he did not see how it could benefit Applicant to point out to Judge Barber during the bench trial that the State failed to rebut Applicant’s testimony that only one officer got out of the car at the scene of the homicide. (PCR tr. p. 102 lines 4-16; p. 103

lines 13-16; p. 109 lines 16-20). Counsel Williams testified that he could not recall asking the judge to place on the record the law he deemed applicable to the case nor did he feel it was necessary to have Judge Barber place the applicable law on the record. (PCR tr. p 104 lines 4-11; tr. p. 110 lines 8-11).

Counsel Williams testified that both Vigier and Staley testified at Applicant's first trial. (PCR tr. p. 108 lines 3-8). Counsel Williams further testified that Staley was present and presented live testimony implicating Applicant during the bench trial. (PCR tr. p. 108 lines 9-13). Counsel Williams further testified Judge Barber specifically stated that he did not feel Applicant was the shooter; however he felt Applicant was involved in the homicide. (PCR tr. p. 108 lines 14-19). Counsel Williams further testified Judge Barber found Applicant guilty under the "hand of one is the hand of all." (PCR tr. p. 108 lines 20-24).

Following Counsel Williams's testimony, Brenda Sanders (Counsel Sanders) was called to testify by the Applicant. Counsel Sanders testified she is currently a district court judge in Detroit, Michigan. (PCR tr. p. 119 lines 19-24). Counsel Sanders testified she has been a judge for approximately six years and is licensed only in the state of Michigan. (PCR tr. p. 120 lines 11-16). Counsel Sanders testified she was sworn into the Michigan bar in 1985 and was in private practice for majority of her career dealing with both criminal and civil cases. (PCR tr. p. 143 lines 3-14). Counsel Sanders testified Counsel Williams moved for her admission pro hac vice. (PCR tr. p. 120 lines 17-21). Counsel Sanders testified she was not allowed to participate in Applicant's first trial and was removed as counsel of record because of a witness testimony issue. (PCR tr. p. 120 line 22—p. 121 line 9).

Counsel Sanders testified it was clear she was counsel of record for Applicant's second trial; however Counsel Sanders felt she was not apprised of all the information during the course

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of her preparation for trial. (PCR tr. p. 121 lines 15—p. 122 line 1). Counsel Sanders testified she never received any documents to her office in Michigan from the Solicitor's office, specifically, Counsel Sanders testified she could not recall receiving any notice of trial from the Solicitor's office. (PCR tr. p. 122 lines 16-23). Counsel Sanders testified Counsel Williams called and left a voicemail message on her phone stating Applicant's case was set for trial in approximately two weeks. (PCR tr. p. 123 lines 18-24). Counsel Sanders further testified she was required to adjourn her cases as a lawyer and make arrangements to be present for Applicant's trial. (PCR tr. p. 123 line 24—p. 124 line 1). Counsel Sanders testified she did not request a continuance because she had "very little control over the situation." (PCR tr. p. 124 lines 10-14). Counsel Sanders testified that Counsel Williams had more information and explained to her that the case was moving forward no matter what. (PCR tr. p. 124 lines 14-16). However, Counsel Sanders testified she discussed the notice issue with the Court in hopes of getting an "adjournment or to give...some more time to prepare the case in South Carolina." (PCR tr. p. 125 lines 6-14).

Counsel Sanders testified she vaguely recalled arguing Vigier's testimony should not be allowed into evidence. (PCR tr. p. 126 lines 17-23). Counsel Sanders testified during Applicant's first jury trial, she was not present at counsel's table, but sat in the first row behind the attorneys. (PCR tr. p. 127 lines 6-9; p. 128 lines 15-21). Counsel Sanders testified she and Counsel Williams had a lot of discord between each other which hindered their communication during Applicant's first jury trial. (PCR tr. p. 127 lines 6-17). Counsel Sanders testified during the first jury trial she was unable to consult with Counsel Williams because Judge Clary made his ruling in regards to her not being allowed to participate in the trial. (PCR tr. p. 128 line 22—p. 129 line 2). However, Counsel Sanders testified there were recesses where she was able to

consult with Counsel Williams. (PCR tr. p. 129 lines 3-6). Counsel Sanders further testified she may have had the opportunity to hand Counsel Williams notes and talk to Counsel Williams during the Massiah hearing of the first jury trial. (PCR tr. p. 130 lines 9-17).

Counsel Sanders testified that three defense attorneys had the opportunity to cross-examine Vigier during Applicant's first jury trial, including Counsel Williams. (PCR tr. p. 154 line 11—p. 155 line 2). Counsel Sanders further testified in her opinion she would have been able to do a better job of cross-examining Vigier, despite the fact that she was distraught when representing Applicant (brother) during the bench trial. (PCR tr. p. 155 lines 1—p. 156 line 9). Counsel Sanders testified in her opinion Vigier was a "biased witness who had a deal before he even got up to testify against her brother (Applicant)." (PCR tr. p. 155 lines 15-18). Counsel Sanders testified the fact that Vigier "walked on very serious—I think it was attempted murder, robbery; the same kind of charges that were brought against [her] brother (Applicant)" was never brought out during cross examination in the first trial. (PCR tr. p. 155 lines 19-21). Counsel Sanders testified the fact that Vigier had absconded to France and was no longer available for cross-examination showed he was an unreliable person. (PCR tr. p. 158 lines 1-11). Counsel Sanders further testified she "believe[d] that their (Vigier) testimony...should be scrutinized" and she felt "a judge would...look at the unreliability of it and say, 'no way.' 'This is too important....why would I rest my decision on to two jailhouse informants'." (PCR tr. p. 159 lines 2-9).

Counsel Sanders testified it was a mistake for her not objecting to Judge Barber reading the transcript versus having the testimony published in the courtroom. Counsel Sanders testified "I was greatly emotionally impacted in these proceedings due to the fact that my brother was on trial." (PCR tr. p. 132 lines 7-22). Counsel Sanders testified she did not request that Judge

Barber publish on the record all of the law to be applied by the court in reaching a decision. (PCR tr. p. 140 lines 10-12). Counsel Sanders testified she presumed it would be done due to her experience in federal court where the current case law requires the trial judge to publish the law to be considered. (PCR tr. p. 140 lines 10-23). Counsel Sanders testified she did not think to point out to the court during closing arguments the fact that the State had not presented any reply testimony to refute Applicant's testimony about observing the officers going to the wrong restaurant. (PCR tr. p. 141 lines 3-8). Counsel Sanders testified in her opinion it was important to point out this information to the court. (PCR tr. p. 141 lines 8-14).

Counsel Sanders testified that she advises all criminal defendants of their constitutional rights, including their right to a jury trial. (PCR tr. p. 143 lines 15-17). Counsel Sanders testified she advised Applicant of his right to a jury trial. (PCR tr. p. 144 lines 14-16). However, Counsel Sanders testified it was her decision to pursue a bench trial and not Applicant's. (PCR tr. p. 134 lines 2-8). Counsel Sanders testified she could not recall whether she discussed with the Applicant the fact that Judge Barber would know that a jury had previously convicted him of murder. (PCR tr. p. 135 lines 6-10). Counsel Sanders testified she could not recall if she discussed the fact that a jury of twelve would not be allowed to know that he had been previously found guilty. (PCR tr. p. 135 lines 11- 20). However on cross-examination, Counsel Sanders testified she discussed the potential pros and cons of pursuing a bench trial. (PCR tr. p. 134 lines 10-14). On cross-examination, Counsel Sanders testified she would advise all her criminal defendants that it would take a unanimous verdict for them to be found guilty. (PCR tr. p. 143 lines 18-21). Counsel Sanders further testified that it is a "textbook principle" that if only one juror held out that would be enough for a mistrial. (PCR tr. p. 143 lines 22-25). However,

Counsel Sanders testified she did not discuss this “text book principle” with Applicant. (PCR tr. p. . p. 134 line 24—135 line 5).

Counsel Sanders testified one of the reasons she advised Applicant to pursue a bench trial over a jury trial was due to the pretrial publicity. (PCR tr. p. 146 line 22—p. 147 line 2). Counsel Sanders further testified she advised Applicant to pursue a bench trial because she “thought the evidence was so scarce in [Applicant’s] case that anyone could look at it and say not guilty, including Judge Barber.” (PCR tr. p. 148 lines 9-15). Counsel Sanders testified the evidence was “filled with inaccuracies and disputed in every way. The witnesses contradicted themselves in every way” and Counsel Sanders “could not see anyone with a trained eye saying guilty.” (PCR tr. p. 148 lines 9-20). Counsel Sanders further testified at the time she felt a bench trial would best benefit Applicant. (PCR tr. p. 150 lines 2-6).

Following Counsel Williams’s testimony, Tunzy Sanders (Applicant) was called to testify on his own behalf. Applicant testified that prior to his bench trial, neither counsel advised him what would happen if all twelve jurors did not unanimously agree. (PCR tr. p. 164 line 24—p. line 165 line 3). Applicant testified no one advised him that he could get a mistrial if only one of the twelve jurors did not find him guilty. (PCR tr. p. 165 lines 4-7). However, Applicant testified during his jury trial the judge instructed the jury that their verdict would have to unanimous in order to convict. (PCR tr. p. 164 lines 15-23).

Applicant testified Counsel Williams wanted a jury trial while Counsel Sanders wanted a bench trial and “at the end it was decided that it would be a bench trial.” (PCR tr. p. 166 lines 18-23). Applicant testified that Counsel Williams argued that a bench trial was not typically done in this jurisdiction nor had he ever participated in a bench trial. (PCR tr. p. 170 lines 3-6). Applicant testified Counsel Sanders was concerned with the pretrial publicity and being able to

receive a fair trial due to a unrelated murder that had just taken place a few weeks prior to Applicant's trial. (PCR tr. p. 171 lines 2-14). Applicant testified Counsel Williams made a motion for a change of venue, but it was ultimately denied. (PCR tr. p. 171 lines 15-17). Applicant testified Judge Barber asked the potential jurors during voir dire if they had read about the unrelated murder and "everybody raised their hand." (PCR tr. p. 171 lines 18-20). However, Applicant testified they all put their hands down when Judge Barber asked if that would affect their ability to be fair and impartial. (PCR tr. p. 171 lines 18-24).

Applicant testified Judge Barber asked Applicant if he wanted to proceed with a bench trial, which he responded "yes, sir." (PCR tr. p. 173 lines 14-16). Applicant testified Judge Barber explained to him that he had a right to a jury trial. (PCR tr. p. 173 line 22—p.174 line 1). Applicant testified Judge Barber mentioned that he had previously been through one jury trial and had observed the process. (PCR tr. p. 174 lines 2-6). Applicant testified he recalled during his first jury trial the judge instructing the jury on the law. (PCR tr. p. 176 lines 19-21). Applicant further testified during his first jury trial the trial judge told the jury several times that their verdict had to be a unanimous decision (PCR tr. p. 176 lines 22-24). However, Applicant claimed he did not understand the meaning of unanimous. (PCR tr. p. 177 lines 2-13). Applicant further testified he did not recall the judge polling the jury by asking them to raise their hand after they had reached their verdict. (PCR tr. p. 179 line 17—p. 180 line 2).

Applicant testified he told Judge Barber that he wished to go forward with a bench trial. (PCR tr. p. 174 lines 8-10). Applicant testified Judge Barber explained to him that he would be the judge of the law and the facts. (PCR tr. p. 174 lines 11-15). Applicant testified he understood that in a jury trial the jury would decide the facts of the case. (PCR tr. p. 174 lines 16-18). Applicant testified that he could not recall Judge Barber asking both attorneys if they

were satisfied with the inquiry made regarding Applicant's decision to proceed with a bench trial, however the transcript reflects such questioning. (PCR tr. p. 174 lines 19-24; Tr. p. 84 line 22—p. 85 line 1). Applicant testified he did not ask Judge Barber any additional questions about the process of a bench of trial nor did he ask Judge Barber the meaning of the process. (PCR tr. p. 175 lines 4-9). Yet, Applicant testified if he had understood the difference between a bench trial and a jury trial he would not have waived his right to a jury trial. (PCR tr. p. 168 lines 1-5).

Following Applicant's testimony, DeGrant Gibbons (Solicitor) was called to testify by the State. Solicitor testified he attempted to get Vigier to come testify in the second trial. Specifically, Solicitor testified he drafted a letter several weeks before trial to Counsel Williams explaining they were having problems locating Vigier. (PCR tr. p. 184 lines 18-22). Solicitor testified he previously saw Vigier at a magistrate court hearing prior to the bench trial and informed Vigier that he would be called to testify. (PCR tr. p. 184 line 23—p. 185 line 1). Solicitor testified he had an investigator go to Vigier's address and they received information indicating Vigier was a French National and had fled back to France. (PCR tr. p. 185 lines 2-6). Solicitor testified that Vigier was being prosecuted by Assistant Solicitor Rob Madsen for armed robbery, attempted murder, and assault and battery with intent to kill, but Solicitor never made any deal with Vieger. (PCR tr. p. 186 lines 6-12). Vigier testified against his co-defendant stemming from the charges Vigier was facing, and his cooperation was taken into consideration. (PCR tr. p. 186 lines 16-25). Solicitor further testified he previously was involved in a bench trial which resulted in the defendant being acquitted of the charges. (PCR tr. 187 lines 2-8).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and 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. Specifically, this Court finds that Appellate Counsel's, Counsel Williams's and Solicitor's, testimony is very credible while Applicant's testimony is not as credible. 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).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCR; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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. After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Did the Appellant's appeal counsel provide ineffective assistance of counsel by failing to address all of the issues in his Appeal to the Court of Appeals and the Supreme Court despite the fact that the Appellant specifically requested that he do so and Appellant's counsel failed to address said issues despite the fact that he addressed multi issues in the co-defendants case and prevailed on those issues in the Court of Appeals?

This Court finds Applicant's allegation that Appellate Counsel was ineffective for failing to address all potential issues on appeal, despite Appellant's request to address certain issues is without merit. The Applicant must show that Appellate Counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Appellate Counsel testified he would receive the transcripts of the trial, read the transcript "once or twice" and select the possible issues on appeal. (PCR tr. p. 66 line 11-22). Appellate Counsel testified once the issues were selected, he would research the relevant case law and narrow the issues down "to the issues that we think we can prevail upon." (PCR tr. p. 66 lines 23-24). Appellate Counsel testified he would then write and file the brief. (PCR tr. p. 66 lines

24-25). Appellate Counsel testified he followed this procedure in Applicant's case. (PCR tr. p. 67 line 2-5).

Furthermore, Appellate Counsel testified in his opinion he raised all meritorious issues and "if [Applicant] was going to win that it was going to [be the] issue" raised on appeal. (PCR tr. p. 67 lines 6-10). Appellate Counsel testified "I did not see any other issues that I thought we would have prevailed upon." (PCR tr. p. 67 lines 10-11). A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, 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 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Appellate Counsel further testified prior to submitting his brief for appellate review, Counsel made him aware of the various issues Applicant now alleges should have been raised on appeal. (PCR tr. p. 67 line 12-19). However, Appellate Counsel testified he made an informed decision not to raise those various issues and instead raised the one issue that he felt was going to be meritorious. (PCR tr. p. 67 line 20—p.68 line 2; p. 70 lines 14-17).

Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Appellate Counsel testified he raised the issue that the Vigier's testimony was unreliable and should not have been introduced into evidence. (PCR tr. p. 60 lines 11-22). Appellate Counsel testified had the issue been successful on appeal, the case would have been remanded for a new trial and a directed verdict would have been granted because Vigier's testimony was the only distinguishing factor

between Buckmon's and Applicant's case. (PCR tr. p. 60 line 23—p. 4; p. 62 lines 17-21). This Court finds Applicant failed to meet his burden in regards to this allegation. Furthermore, this Court finds Applicant failed to meet his burden of showing any resulting prejudice from Appellate Counsel's alleged deficiency.

Did the Appellant's appointed appellate counsel provide ineffective assistance of counsel by failing to address the issue of the trial court's denial of the directed verdict in Appellant's case?

This Court finds Applicant's allegation that Appellate Counsel was ineffective for failing to address the issue of the trial court's denial of the directed verdict motion to be without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, 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 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983).). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Appellate Counsel testified in his opinion he raised all meritorious issues and "if [Applicant] was going to win that it was going to [be the] issue" raised on appeal. (PCR tr. p. 67 lines 6-10). Appellate Counsel testified "I did not see any other issues that I thought we would have prevailed upon." (PCR tr. p. 67 lines 10-11).

Appellate Counsel testified he did not raise the issue of whether the judge erred in denying the directed verdict motion because Vigier's testimony implicated Applicant and not Buckmon. (PCR tr. p. 60 lines 11-22). Appellate Counsel explained he raised the issue that the

Vigier's testimony was unreliable and should not have been introduced into evidence. (PCR tr. p. 60 lines 11-22). Appellate Counsel testified had they been successful on appeal, the case would have been remanded for a new trial and a directed verdict would have been granted because Vigier's testimony was the only distinguishing factor between Buckmon's and Applicant's case. (PCR tr. p. 60 line 23—p. 4; p. 62 lines 17-21). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). This Court finds Applicant has failed to meet his burden in regards to this allegation. Furthermore, this Court finds Applicant has failed to show that the issue Applicant alleges should have been raised by Appellate Counsel was clearly stronger than the issue actually raised. Greer, 800 F.2d at 646. Furthermore, this Court finds Applicant has failed to show how Appellate Counsel's alleged deficiency resulted in any actual prejudice. As a result, this Court finds this allegation must be denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF COUNSEL

Trial Counsel's failure to thoroughly advise the Applicant of the potential benefits of a jury trial resulted in the Applicant's inability to make a knowing and voluntary waiver of his rights.

This Court finds Applicant's allegation that Trial Counsel's failure to thoroughly advise the Applicant of the potential benefits of a jury trial resulted in the Applicant's inability to make a knowing and voluntary waiver of his rights is without merit. This Court finds Applicant knowingly, voluntarily, and intelligently waived his right to a jury trial. See Patton v. United States, 281 U.S. 276, 312-13, 50 S.Ct. 253, (1930) *overruled on other grounds by Williams v. Florida*, 399 U.S. 78, 92, 90 S.Ct. 1893 (1970). A defendant's knowing and voluntary waiver of

statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between the court and defendant, between the court and defendant's counsel, or both. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000); See United States v. Boynes, 515 F.3d 284 (2008) (finding the Sixth Amendment does not require district court "to interrogate defendants as to the voluntariness of their waiver of a jury trial"); See Adams v. United States, 317 U.S. 269, 271. 63 S.Ct. 236, 241 (1942) (finding "whether or not there is an intelligent competent, self-protecting waiver of jury trial by an accused must depend upon the unique circumstances of each case).

In Moore v. State, 399 S.C. 641, 732 S.E.2d 871 (2012), the South Carolina Supreme Court found the trial court's lack of an on the record colloquy regarding the defendant's waiver of his right to a jury trial was grounds for reversal and remand. Id. at 874. In Moore the court found that the "record reflects that there was *no* colloquy between the court and [defendant's] trial counsel or [defendant] regarding the waiver." Id. (emphasis added). Furthermore, defendant's counsel could not testify that he explained to defendant the differences between a jury trial and a bench trial. Id. Additionally, defendant testified during the PCR hearing that he completed only the seventh grade, could not read or write, and did not know ahead of time that his counsel was planning to make a motion for a bench trial. Id. at 875.

Unlike Moore, the trial court had a lengthy and detailed discussion with Applicant about his waiver of a jury trial. (Tr. p. line 3—p. 85 line 6). Specifically, the trial court questioned Applicant whether he wished to waive his right to a jury trial and move forward with a bench trial. (Tr. p. 83 lines 10-11). The trial court specifically advised Applicant that he had a constitutional right to a jury trial. (Tr. p. 83 lines 12-14). The trial court noted Applicant had recently been through one jury trial and "observed the process." (Tr. p. 83 lines 15-16). The

trial court further noted that a jury had been drawn and the Applicant had the opportunity to participate in the selection of his jury panel. (Tr. p. 83 lines 15-21). The trial judge advised Applicant that he would be both the judge of the facts and the judge of the law in a bench trial. (Tr. p. 83 line 24—p. 84 line 1). The trial judge explained that “normally in cases, the jury is the judge of the facts. They listen to all of the evidence and ultimately determine the facts in the case.” (Tr. p. 84 lines 2-5). The trial court further questioned both Counsel Sanders and Counsel Williams whether they deemed a further inquiry necessary. (Tr. p. 84 line 22—p. 85 line 1).

Additionally, Counsel Williams testified he was opposed to a bench trial and expressed his concerns to the Applicant. (PCR tr. p. 105 line 14—p. 106 line 3). Counsel Williams explained that he did not know “of any big trial like this that [I] ever heard of doing it as a bench trial as opposed to a jury trial. And I thought we’d be better off with a jury trial.” (PCR tr. p. 105 lines 18-25). Counsel Williams testified he expressed his concerns about waiving a jury trial with Applicant, but could not recall the specific details of the conversation after a twelve year time period. (PCR tr. p. 106 lines 1-3). Counsel Williams testified it is his normal procedure to discuss with a client “their rights in a case” including the right to a jury, the right to confront their witnesses, and the jury has to come to a unanimous decision in order for a defendant to be found guilty. (PCR tr. p. 80 lines 20-24; p. 106 lines 18-25). Furthermore, Counsel Williams testified Judge Barber advised Applicant that he had a constitutional right to jury trial and that he would be the judge of the facts and the law. (PCR tr. p. 106 lines 11-14). Counsel Williams testified Applicant previously had a jury trial and would have understood that the law requires a unanimous verdict. (PCR tr. p. 106 lines 18-21). Ultimately, Counsel Williams testified it was Applicant’s decision to waive his right to a jury trial and Applicant did so against Counsel Williams’s recommendation. (PCR tr. p. 107 lines 1-5).

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Additionally, Applicant testified Judge Barber asked him if he wanted to proceed with a bench trial, which he responded “yes, sir.” (PCR tr. p. 173 lines 14-16). Applicant testified Judge Barber explained to him that he had a right to a jury trial. (PCR tr. p. 173 line 22—p.174 line 1). Applicant testified Judge Barber mentioned that he had previously been through one jury trial and had observed the process. (PCR tr. p. 174 lines 2-6). Applicant testified he recalled during his jury trial the judge instructing the jury on the law. (PCR tr. p. 176 lines 19-21). Applicant further testified during his jury trial the trial judge told the jury several times that their verdict had to be a unanimous decision (PCR tr. p. 176 lines 22-24). Applicant denied he understood the meaning of unanimous. (PCR tr. p. 177 lines 2-13). Applicant further testified he did not recall the judge polling the jury by asking them to raise their hand after they had reached their verdict. (PCR tr. p. 179 line 17—p. 180 line 2).

Applicant testified he told Judge Barber that he wished to go forward with a bench trial. (PCR tr. p. 174 lines 8-10). Applicant testified Judge Barber explained to him that he would be the judge of the law and the facts. (PCR tr. p. 174 lines 11-15). Applicant testified he understood that the jury would decide the facts of the case. (PCR tr. p. 174 lines 16-18). Applicant testified that he could not recall Judge Barber asking both attorneys if they were satisfied with the inquiry made regarding Applicant’s decision to proceed with a bench trial, however the transcript reflects such questioning. (PCR tr. p. 174 lines 19-24; Tr. p. 84 line 22—p. 85 line 1). Applicant testified he did not ask Judge Barber any additional questions about the process of a bench of trial nor did he ask Judge Barber the meaning of the process. (PCR tr. p. 175 lines 4-9). Yet, Applicant testified if he had understood the difference between a bench trial and a jury trial he would not have waived his right to a jury trial. (PCR tr. p. 168 lines 1-5).

This Court finds that Applicant knowingly and voluntarily chose a bench trial in lieu of a jury trial. This Court finds that Applicant understood the differences between a jury trial and a bench trial. He was advised by Judge Barber that Judge Barber would decide the facts of the case instead of a jury if electing a bench trial. Further, Applicant's experience at the first trial decries any contention that he did not understand the pros and cons of a jury trial. This Court finds that Applicant's contention that he did not understand what "unanimous" meant is not credible. Especially given that he admitted recalling the trial court using this term in its instructions to the jury at Applicant's first trial. This Court also rejects Counsel Sanders' contention that the decision to waive the jury trial was her decision and not her brother's. This Court also believes that her testimony was biased in favor of her brother. However, this Court notes that to the extent that Applicant was not given an opportunity to decide prior to trial whether he wanted to choose a bench trial instead of a jury trial, this oversight would have been cured by the trial court's colloquy with Applicant that ensured a bench trial was what Applicant sought.

This Court finds that Applicant has not met his burden of proving counsel was ineffective and denies this allegation.

Trial Counsel failed to provide the Applicant the reasonable professional assistance of counsel where they failed to seek a continuance despite the fact that lead counsel, Brenda Sanders, was not properly notified that the Applicant's case was scheduled for trial.

This Court finds Applicant allegation that Trial Counsel failed to provide Applicant the reasonable professional assistance of counsel where they failed to seek a continuance despite the fact that Counsel Sanders, was not properly notified that Applicant's case was scheduled for trial is without merit. "Where there is no showing that any other evidence on behalf of the appellant

could have been produced or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial,” a continuance is unnecessary. State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51-52 (1996). Counsel Williams testified he was prepared to try the bench trial and had previously made a motion for a speedy trial in October 2000. (PCR tr. p. 105 lines 8-13). Counsel Williams further testified he was the person who notified Counsel Sanders of the impending trial date. (PCR tr. p. 115 lines 1-3). Counsel Williams testified they did not request a continuance because they had previously filed a motion for a speedy trial and he was of the opinion that they were prepared to try the case. (PCR tr. p. 115 lines 16-25). Counsel Williams further testified that he had previously tried the case, knew who the witnesses were, and did not feel there was a basis for making a motion to continue the case. (PCR tr. p. 116 lines 6-17). Furthermore, Applicant must show actual prejudice from the denial of a continuance. Skeen v. State, 325 S.C. 210, 213-14, 481 S.E.2d 129, 130-32 (1997) (Absent showing that additional preparation would have benefitted defense, counsel's failure to request continuance did not result in ineffective assistance). Applicant failed to present any evidence as to what benefit additional preparations would yield if counsel requested a continuance. As a result, this Court finds this allegation is denied and dismissed with prejudice.

Trial Counsel was ineffective for failing to adequately argue the facts in support of the Applicant's motion to exclude from evidence a transcript of Aurelin Vigier's testimony from the Applicant's trial where Attorney Sanders had no previous opportunity to cross-examine this witness.

This Court finds Applicant's allegation that trial counsel was ineffective for failing to adequately argue the facts in support of the Applicant's motion to exclude from evidence a transcript of Aurelin Vigier's (Vigier) testimony from the Applicant's trial where Counsel Sanders had no previous opportunity to cross-examine the witness is without merit. Counsel

Williams recalled Counsel Sanders arguing against the introduction of Vigier's prior trial testimony based on the fact that she had not had an opportunity to participate in his cross examination during the Massiah hearing. (PCR tr. p. 88 lines 5-17). Counsel Williams recalled Judge Barber referencing the fact that although Counsel Sanders was not the counsel of record during the first trial, she had the ability to participate through Counsel Williams. (PCR tr. p. 89 line 22—p. 90 line 4). Counsel Williams testified he did not object to Judge Barber's assertion because he recalled meeting with Counsel Sanders prior to the trial, reviewing evidence, and Counsel Williams specifically recalled Counsel Sanders being present during the trial. (PCR tr. p. 90 lines 5-12). Counsel Williams recalled meeting with Counsel Sanders during the first trial, but could not recall specifically whether Counsel Sanders provided notes to him. (PCR tr. p. 91 lines 4-14). Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Further SCRE 804(b)(1) states that former testimony is not excluded by the hearsay rule if the:

"Former Testimony: Testimony given as a witness at another hearing of the same or a different proceeding...taken in compliance with law in the course of the same or another proceeding, if the **party** against whom the testimony is now offered...had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination."

(emphasis added). This Court finds that under the rules of evidence the right to cross examine a witness follows the **party** not the individual attorney. As such, this Court finds that Counsel Williams had the opportunity and similar motive when cross examining Vigier during Applicant's first trial. Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. As a result, this Court finds this allegation is denied and dismissed with prejudice.

Trial Counsel Sanders was ineffective for failing to respond to the trial judge's assumption that she had the opportunity to have Attorney Williams pose any questions she deemed necessary to witness Vigier and allowing the transcript to be admitted into evidence without objection.

This Court finds Applicant's allegation that trial counsel was ineffective for failing to respond to the trial judge's assumption that she had the opportunity to have Attorney Williams pose any questions she deemed necessary to witness Vigier is without merit. Counsel Sanders testified there were recesses where she was able to consult with Counsel Williams. (PCR tr. p. 129 lines 3-6). Counsel Sanders further testified she may have had the opportunity to hand Counsel Williams notes and talk to Counsel Williams during the Massiah hearing of the first jury trial. (PCR tr. p. 130 lines 9-17). Counsel Williams testified Judge Barber referenced the fact that although Counsel Sanders was not the counsel of record during the jury trial, she had the ability to participate through Counsel Williams. (PCR tr. p. 89 line 22—p. 90 line 4). Counsel Williams testified he did not object to Judge Barber's assertion because he recalled meeting with Counsel Sanders prior to the jury trial, reviewing evidence with Counsel Sanders, and Counsel Sanders was present during the jury trial. (PCR tr. p. 90 lines 5-12). Counsel Williams recalled meeting with Counsel Sanders during the first trial, but could not recall specifically whether Counsel Sanders provided notes to him. (PCR tr. p. 91 lines 4-14). Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, Applicant can show no prejudice as the South Carolina Court of Appeals specifically found that the admission of Vigier's prior testimony did not violate Applicant's Confrontations Clause rights. State v. Sanders, 356 S.C. 214, 588 S.E.2d 142 (Ct. App. 2003). The court held that Vigier's testimony was properly admitted during the bench trial under Rule

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804(b)(1). Id. Therefore, this Court finds Applicant has failed to meet his burden of proof and this allegation is denied and dismissed with prejudice.

Trial Counsel was ineffective for neglecting to object to a pattern of leading by the prosecution during their direct examination of State witnesses during the Applicant's trial.

This Court finds Applicant's allegation that Trial Counsel was ineffective for neglecting to object to a pattern of leading by the prosecution during their direct examination of State witnesses during the Applicant's trial is without merit. Counsel Williams testified he does not object to leading questions by the prosecutor unless it is "really, really bad." Counsel Williams testified he could not recall any glaringly bad leading questions. (PCR tr. p. 95 line 17—p. 96 line 3). Counsel Williams testified he chose not to object to leading questions in an effort to not draw attention to the testimony presented. (PCR tr. p. 96 line 23—p. 96 line 3). Counsel Williams re-iterated he did not recall any "glaringly bad leading questions..." (PCR tr. p. 96 lines 2-3). Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds Counsel Williams articulated a valid strategic reason for not objecting to leading questions. Furthermore, Applicant failed to show sufficient prejudice as a result of counsel's alleged deficiency. As a result, this Court finds this allegation should be denied and dismissed with prejudice.

Trial Counsel was ineffective for failing to object to hearsay testimony from Dr. Joel Sexton concerning what he was told concerning the type of ammunition used in this homicide.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to hearsay testimony from Dr. Joel Sexton concerning what he was told concerning the

type of ammunition used in this homicide is without merit. Counsel Williams recalled the testimony of Dr. Joel Sexton who wrote in his notes that the bullet found on the Victim was a .22 caliber as opposed to a .25 caliber bullet. (PCR tr. p. 97 lines 1-5). Counsel Williams testified Dr. Sexton explained that he was not a ballistics expert, but over the course of his career, Dr. Sexton was able to identify various calibers of bullets. Counsel Williams recalled Dr. Sexton testifying that the ballistics expert told him it was an unusual .25 caliber bullet which explained why he initially thought the bullet was .22 caliber. (PCR tr. p. 97 lines 1-15). Counsel Williams testified Dr. Sexton's explanation was hearsay testimony and he did not object. (PCR tr. p. 97 lines 23-25). However Counsel Williams testified that Vello Paavel (Paavel), a SLED Forensic expert, testified at the bench trial that the bullet used to kill the Victim was a .25 caliber. (PCR tr. p. 107 lines 6-12).

This Court finds counsel's failure to object was reasonable under professional norms. 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." Counsel Williams testified that Vello Paavael, a SLED Forensic expert, ultimately testified during the bench trial that the bullet used to kill the Victim was a .25 caliber. (PCR tr. p. 107 lines 6-12). As a result, this Court finds Applicant has failed to meet his burden of proof and this allegation must be denied and dismissed with prejudice.

Trial Counsel was ineffective for failing to object to the Solicitor's misstatement of the testimony of Maurice Benning during the prosecutions summary of the evidence before the Court where the prosecutor erroneously advised the Court that Maurice Benning had testified that he heard a shot from the area around the restaurant where the record fails to support that claim.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the Solicitor's misstatement of the testimony of Maurice Benning during the prosecutions summary of the evidence before the Court where the prosecutor erroneously advised the Court that Maurice Benning had testified that he heard a shot from the area around the restaurant where the record fails to support that claim is without merit. Applicant argues counsels were ineffective for failing to object to the solicitor's closing argument referencing the testimony of Maurice Benning (Benning). During trial, Benning testified he was walking away from the Chinese restaurant when he "heard a sound, like it was...somebody hitting, banging something against something and I started running then." (Tr. p. 285 lines 7-21). Benning further testified "when they (Michael Buckman and Applicant) came around the corner, I said, what happened, that's when I got the gun back form Mr. Sanders and that when Mike said, I shot her." (Tr. p. 287 lines 10-13). During closing arguments, the solicitor stated "he (Benning) saw Mr. Buckman with a gun, standing beside the back wall of the Chinese restaurant. And at that point he turned around and knew something was going on and a few seconds later he heard a shot. And the next thing he said was that they came running up, back to his house and indicated – Michael Paul indicated he had shot the lady." (Tr. p. 418 line 23—p. 419 line 4). The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). To be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). This Court finds counsels were not ineffective for failing to object to the solicitor's closing argument as his summary of the evidence is supported by the record.

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Trial Counsel was ineffective for failing to object to the Applicant sentence of 25 years for armed robbery where the Applicant was in fact charged with Attempted Armed Robbery.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the Applicant sentence of twenty-five years for armed robbery where the Applicant was in fact charged with Attempted Armed Robbery was withdrawn by the Applicant. (PCR tr. p. 99 lines 23-25).

Trial Counsel was ineffective for failing to point out to the Judge that the State did not rebut claim by the Applicant that only one officer got of the car at the first Chinese Restaurant; a fact that was not disclosed in Gadson's testimony.

This Court finds that Applicant's allegation that Trial Counsel was ineffective for failing to point out to the judge that the State did not rebut claim by the Applicant that only one officer got of the car at the first Chinese Restaurant; a fact that was not disclosed in Gadson's testimony is without merit. Counsel Williams recalled that he did not see how it could benefit Applicant to point out to Judge Barber during the bench trial that the State failed to rebut Applicant's testimony that only one officer got out of the car at the scene of the homicide. (PCR tr. p. 102 lines 4-16; p. 103 lines 13-16; p. 109 lines 16-20). This Court finds Counsel's judgment on this matter to be reasonable. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has failed to show sufficient prejudice from any alleged deficiency of counsel. As a result, this Court finds this allegation is denied and dismissed with prejudice.

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Trial Counsel was ineffective for failing to request that the Trial Court publish on the record all of the law to be applied by the Court in reaching a decision on the Applicant's case.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to request that the Trial Court publish on the record all of the law to be applied by the Court in reaching a decision on the Applicant's case is without merit. Counsel Williams testified that he could not recall asking the judge to place on the record the law he deemed applicable to the case nor did he feel it was necessary to have Judge Barber place the applicable law on the record. (PCR tr. p 104 lines 4-11; tr. p. 110 lines 8-11). This Court agrees with Counsel Williams that it was unnecessary for the trial court to give itself on the record instructions prior to reading a verdict. Nor is this court aware of anything requiring the trial court to do so. Based on the foregoing, this Court finds that Applicant has not shown trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant failed to show sufficient prejudice from any alleged deficiency of counsel. As a result, this Court finds this allegation is denied and dismissed with prejudice.

Trial Counsel provided the Applicant ineffective assistance of counsel when they waived the right to make a comprehensive closing argument summarizing the evidence and arguments in favor of the defense.

This Court finds Applicant's allegation that Trial Counsel provided the Applicant ineffective assistance of counsel when they waived the right to make a comprehensive closing argument summarizing the evidence and arguments in favor of the defense was withdrawn. (PCR tr. p. 137 lines 14-25).

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present

any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

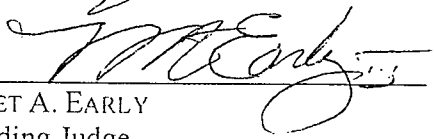
This Court notes that that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCPP, 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 18th day of August, 2014.

Bramberg, South Carolina


DOYET A. EARLY
Presiding Judge
Second Judicial Circuit

LAW OFFICE OF



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September 15, 2014

RECEIVED

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S.C. SUPREME COURT

Daniel F. Gourley, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-

RE: Tunzy Sanders, #255493 v. State of South Carolina; 2006-CP-06-106.

Dear Mr. Gourley:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. The family has not decided yet if they will be able to hire me to handle this appeal. I have requested that they make a decision no later than September 30th. I will let you know if they decide to hire someone else or let the Appellate Division of the South Carolina Commission on Indigent Defense handle this appeal. I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina ✓
Tunzy Sanders, # 255493
Brenda Sanders, Esquire

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September 16, 2014

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

Re: Tunzy Sanders, #255493 v. State of South Carolina; 2006-CP-06-106.

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 the Order of Dismissal issued by Judge Early in this matter. I was retained to represent this client in the circuit court only. The family has not yet advised me whether they intend to hire me to handle this appeal. I am asking that they make this decision immediately. I am providing the client a copies of this Notice of Appeal, and a Form Affidavit of Indigency. I am instructing him to fill it out and return it to me immediately for submission to Appellate Division of the South Carolina Commission on Indigent Defense, if he wishes to seek representation by them. I will make certain he is aware that time is of the essence, and that he must return his affidavit to me immediately. 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,

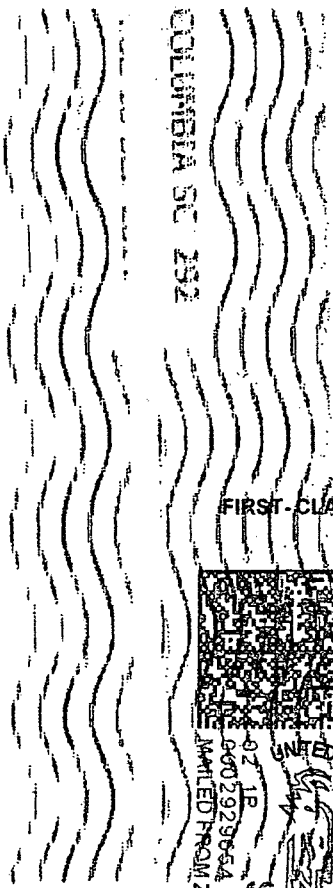
A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

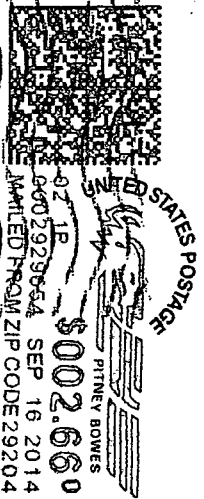
Enclosure

cc: Daniel F. Gourley, Assistant Attorney General
Lorienne French, Legal Service Coordinate, Appellate Defense
Tunzy Sanders, #255493
Brenda Sanders



COLUMBIA SC 292

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