

John D. Elliott

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November 10th, 2014

HAND DELIVERED

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina

RECEIVED

NOV 10 2014

S.C. Supreme Court

RE: Jeffrey Caulder v. State
Docket No. 2012-CP-17-156
Appeal from Dillon County

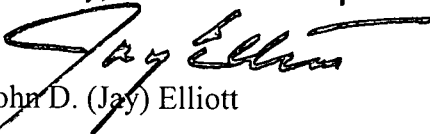
Dear Honorable Clerk:

Enclosed please find a notice of appeal in this application for post-conviction relief, together with a copy of the order appealed from, and correspondence with the assigned court reporter.

I am going to take the necessary steps to have the applicant qualify for *in forma pauperis* status. I respectfully request that the requirement of any filing fee be suspended until the court acts on his application.

Please let me know if you need anything further to perfect the applicant's appeal.

Sincerely,


John D. (Jay) Elliott

JDE:

Encl.

cc: Joshua Thomas, Esquire
Assistant Attorney General
Dillon County Clerk of Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dillon County
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2012-CP-17-00156

RECEIVED

NOV 10 2014

S.C. Supreme Court

Jeffrey Caulder, No. 336973.....Appellant,

v.

State of South Carolina.....Respondent.

NOTICE OF APPEAL

Jeffrey Caulder appeals the order of the Hon. Thomas A. Russo signed September 8th, 2014, and entered September 30th, 2014, denying relief in this application for post-conviction relief. Appellant received written notice of the entry of this order on October 1st, 2014.

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ATTORNEYS FOR JEFFREY CAULDER

By: 
JOHN D. 'JAY' ELLIOTT

Columbia, South Carolina

October 29th, 2014

Other Counsel of Record:

JOSHUA L. THOMAS
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
Phone: (803)734-2134
Attorneys for Respondent

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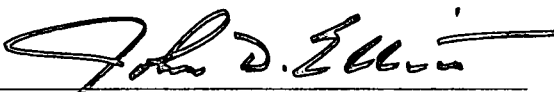
NOV 10 2014

S.C. Supreme Court

CERTIFICATE OF SERVICE

As counsel for the appellant, I certify that the foregoing Notice of Appeal was served on all parties by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows, on this 29th day of October, 2014.

Joshua L. Thomas
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211


JOHN D. ELLIOTT
Attorney for Jeffrey Caulder

FILED
 OWEN T. HYATT
 STATE OF SOUTH CAROLINA)
 COUNTY OF DILLON,)
 2014 SEP 30 AM 10:07

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTH JUDICIAL CIRCUIT

Jeffrey Caulder, #336973)
 CLERK OF COURT)
 DILLON COUNTY)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

Case No. 2012-CP-17-156

ORDER OF DISMISSAL

ATTESTED
 TRUE COPY
 [Signature]
 CLERK OF COURT
 DILLON COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 10, 2012. Respondent made a timely Return on or about July 24, 2012. The Court convened an evidentiary hearing into the matter on July 21, 2014, at the Darlington County Courthouse. Applicant was present at the hearing and represented by John D. Elliott, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Rosalind L. Sellers, Esquire, testified at the evidentiary hearing. The Court also had before it a copy of the trial transcript, the records of the Dillon County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendments, and the return. 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 Dillon County Clerk of Court. In September 2009, the Dillon County Grand Jury indicted Applicant for three counts of unlawful neglect of a child (2009-GS-

17-274, -275, and -276). Rosalind L. Sellers, Esquire (“trial counsel”), represented Applicant. On September 17-18, 2009, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. The jury found Applicant guilty as indicted. Judge Baxey sentenced Applicant to consecutive terms of ten (10) years for each count.

Applicant filed a timely notice of appeal, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant’s appeal on May 18, 2011. State v. Caulder, Op. No. 2011-UP-223 (S.C. Ct. App. filed May 18, 2011). The remittitur was returned to the circuit court on June 6, 2011.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. “The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the admission of incompetent, inadmissible evidence at trial, unobjected to by his counsel at trial, resulting in prejudice to the defendant.”
 - a. “The defendant was accused of acts of misconduct and maltreatment regarding three stepchildren, the children of his girlfriend. While the three children testified, so did two counselors who saw the children. Those counselors were allowed to testify about previous statements made to them by the children, and make comments to the jury about their interviews which had the effect of bolstering the testimony of the children and indicating they were credible. Such testimony is inadmissible. *See, State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *State v. McKerley*, Opinion No. 4957 (Ct.App. filed March 28th, 2012). This was established law in this state. *See, State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). The testimony of the two counselors was not harmless. *State v. Jennings, supra.*”

In an amendment dated January 10, 2014, Applicant set forth the following grounds for

relief:

1. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the admission of incompetent, inadmissible evidence at trial, unobjected to by his counsel at trial, resulting in prejudice to the defendant."

a. "The defendant was accused of acts of misconduct and maltreatment regarding three stepchildren, the children of his girlfriend. While the three children testified, so did two counselors who saw the children. Those counselors were allowed to testify about previous statements made to them by the children, and make comments to the jury about their interviews which had the effect of bolstering the testimony of the children and indicating they were credible.

Such testimony is inadmissible. *See, State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *State v. McKerley*, Opinion No. 4957 (Ct.App. filed March 28th, 2012). This was established law in this state. *See, State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). The testimony of the two counselors was not harmless. *State v. Jennings, supra*. Moreover, one of the counselors was allowed to give opinion testimony as to whether the children were the victims of "child abuse." There was no objection to the qualifications of either counselor as experts, and hence able to provide opinion testimony, nor any challenge to their methodology for arriving at such an assessment. *Cf., State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), requiring South Carolina's trial courts to perform a gatekeeping function in the qualifications of experts or admissions of their testimony.

Finally, there was no reason for the counselors to testify in the first place. All three children testified, as did their mother. The testimony of the counselors added no relevant evidence to prove the charges against the defendant, other than to bolster the testimony of the children. *See, State v. Morgan*, 326 S.C. 503, 485 S.E.2d 112 (Ct.App. 1997), rev'd on other grounds by *State v. White, supra*."

2. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the failure of his counsel to object to the testimony of the investigating police officer, whose testimony impermissibly bolstered the state's case, and vouched for the testimony of the prosecution."

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

- a. "Throughout the testimony of the investigating officer, he routinely commented that he had probable cause to make the arrest of Mr. Caulder. This is inadmissible due to the unfair prejudice which attaches to such testimony. *S.C.D.S.S. v. Lisa C.*, 380 S.C. 406, 669 S.E.2d 647 (Ct.App. 2008). Without objection, he was allowed to testify that he "determined that child abuse had been committed by [the wife] and the subject here," meaning Mr. Caulder. Opinion testimony, especially by a police officer, that a defendant is guilty is clearly inadmissible and prejudicial. *Cf. State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013), where the investigating officer merely testified what actions he took in response to his investigation. *See, e.g., State v. Odom*, 116 N.J. 65, 560 A.2d 1198 (1989); *Smith v. State*, 674 So.2d 791 (Fla.Dist.Ct.App. 5th Cir. 1996); *Nugent v. Commonwealth*, 639 S.W.2d 761 (Ky. 1982).

Moreover, the investigating officer testified without objection that he relied heavily on the opinions, of the local forensic interview facility, the Durant Center, as to whether "child abuse" has occurred. This improperly bolstered the state's case. *See, Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010), where counsel's failure to object to impermissible testimony by a "forensic interviewer" could not amount to a reasonable trial strategy, citing *Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001)."

3. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the failure of his counsel to object to testimony improperly attacking his character."
 - a. "The prosecution, without objection, introduced testimony from one child that the defendant had no heart. The prosecution also introduced evidence that the defendant got in arguments with his wife, and threw things at her. The prosecution introduced testimony from another child that he was "mad at him" for what the defendant did to him. The prosecution introduced testimony from another child that "he didn't really care enough for us," or he would not have committed the alleged maltreatment. The defendant's wife, a co-defendant, testified to other irrelevant characteristics of the defendant. In a criminal case, the state cannot attack the character of the defendant unless he himself places his character at issue. *Mitchell v. State*, 298 S.C. 186, 379 S.E.2d 123 (1989). This and other evidence regarding the character of the accused was improperly admitted into evidence, despite the fact that the defendant did not even take the stand."

4. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution, due to the failure of counsel to move to sever the three counts against three children, due to unfair prejudice."
 - a. "The defendant was accused of abusing three children. The prosecution joined all three charges in this prosecution. Even though joinder may be permissible, a court must consider whether joinder of the offenses and the proof presented on those charges may nonetheless deprive the defendant of a fair trial. Cf., *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974). The defendant was unduly prejudiced by trying all three of these cases together, due to the prospect that the jury would be overcome with emotion or passion and might infer a criminal disposition on the part of the defendant. See, e.g. *State v. Tate*, 286 S.C. 462, 334 S.E.2d 289 (Ct.App. 1985). Counsel's failure to seek severance was ineffective, resulting in prejudice to the defendant."
5. The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution, due to the failure of counsel to insist on a proper instruction to the jury regarding reasonable doubt.
 - a. "The trial court gave an instruction to the jury on reasonable doubt which did not comport with the elements required for instruction on this issue in this state's courts. State trial courts have been cautioned since as long ago as 1991 not to attempt to define reasonable doubt for a jury beyond its plain and ordinary meaning. See, *State v. Manning*, 305 S.C. 413, 409 S.E.2d 372 (1991). Furthermore, the trial court charged the jury on the facts in the context of this instruction, saying that the mere debate by the jury on the guilt or innocence of the victim "does not mean that reasonable doubt automatically exist(sic) in this case, or any other case for that matter." The trial court's instruction to the jury, taken as a whole, was confusing and there is a reasonable likelihood the jury applied the instruction in a way which undermined the state's burden of proof. Cf., *Todd v. State*, 355 S.C. 396, 585 S.E.2d 305 (2003). Counsel was ineffective in failing to insist on a proper instruction on reasonable doubt."

At the evidentiary hearing, the Applicant proceeded on all of the allegations in his amended application except the allegation of ineffectiveness for failing to sever the cases, which

Applicant withdrew at the hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This 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

Trial counsel testified she was appointed to Applicant's case while she was working as a contract public defender in the Fourth Circuit. She recalled cross-examining Deputy Tyler on why he determined there was probable cause to arrest Applicant. Trial counsel testified she did not object to Deputy Tyler's testimony because he never stated he believed Applicant was guilty. Trial counsel testified part of her trial strategy was to show Deputy Tyler did not do an independent investigation because he was friends with the children's grandmother.

Trial counsel recalled the testimony of the victims in this case. On cross-examination, she testified the State's theory of the case was that Applicant had mentally abused the children, as there was no evidence of physical abuse. Trial counsel also recalled the testimony of the victims' therapists, Ms. Tuck and Ms. Allen-Cook. She testified these witnesses were the victims' treating counselors. She testified each witness testified to their qualifications and were qualified to testify as the victims counselors. Trial counsel testified Ms. Tuck was involved in the forensic interview of one of the victims, but did not testify at trial as to the substance of the forensic interview. She recalled neither of these counselors or Deputy Tyler testified about the

children's forensic interview. However, she did recall cross-examining the counselors about the diagnostic techniques they used to diagnose the victims. Trial counsel also testified she did not find any part of Judge Baxley's charge objectionable.

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 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." 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 that 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. Counselors' Testimony

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to the testimony of Ms. Tuck and Ms. Allen-Cook. Initially, the Court finds the line of cases dealing with testimony of forensic interviewers inapposite in this case because neither of these witnesses were qualified as forensic interviewers. See State v. Kromah, 401 S.C. 340, 359, 737 S.E.2d 490, 500 (2013); State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012); State v. Jennings, 394 S.C. 473, 479, 716 S.E.2d 91, 94 (2011). Furthermore, each of these cases were decided after Applicant's trial. Thus, trial counsel did not have the benefit of their guidance. See Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (citations omitted), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) ("We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial.").

In this case, the counselors were qualified as experts in the field of child abuse counseling and treatment. (Trial Tr. 307:4-6; 348:7-9). The Court finds this was a proper ground for expert testimony because it could assist the trier of fact in determining whether the alleged crimes actually occurred. Cf. State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) (expert testimony and behavioral evidence admissible to prove crime occurred). Accordingly, trial counsel was not deficient in failing to object to the counselor's qualification as expert witnesses.

Furthermore, the testimony of the counselors was not irrelevant to any issues in the case. Ms. Tuck testified she diagnosed the victims with symptoms of child abuse and developed a treatment plan for them. Ms. Allen-Cook further diagnosed one of the victims with post-traumatic stress disorder and developed a treatment plan for him. The counselors' testimony was relevant to the elements of the alleged crime of unlawful neglect of a child.² The record indicates the State proceeded on a theory that Applicant's conduct threatened the mental health of the victims. The testimony of the victims' counselors was relevant to the mental injuries of the victims. Accordingly, trial counsel had no viable objection to the relevancy of the counselors' testimony.

Finally, the Court finds Applicant was not prejudiced by the admission of any testimony from the counselors that vouched for the credibility of the victims. Most of the testimony Applicant alleges was improper vouching was merely testimony about the diagnosis and treatment of the victims. However, the Ms. Tuck did testify she did not believe the victims inflated the story (Trial Tr. 342:10-14), and Ms. Allen-Cook testified one of the victims did not appear to be lying about the abuse (Trial Tr. 357:14-20). To the extent this testimony was objectionable,³ the Court finds its admission did not prejudice Applicant. The State only referenced the testimony of the counselors once in its closing argument. (Trial Tr. 399:22-401:7). However, Judge Baxley instructed the jury arguments are not evidence. (Trial Tr. 72:16-24). Judge Baxley also instructed the jury it was the sole judge of the credibility of

² See S.C. Code Ann. § 63-5-70(A)(1) ("It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child [...] to place the child at unreasonable risk of harm affecting the child's life, physical or mental health[.]").

³ Again, the Court notes the cases addressing vouching by expert witnesses were not decided until after Applicant's trial.

witnesses. (Trial Tr. 419:6-420:3). Furthermore, the testimony of each of the victims was consistent, and the victims' mother corroborated their story. In light of the entire record, including the other evidence presented at trial, the Court finds Applicant was not prejudiced by the admission of the counselors' testimony. See Kromah, 401 S.C. at 362, 737 S.E.2d at 501 (“Based on the entire record, including the physical evidence documented in this case, the challenged testimony could not reasonably have affected the result of the trial[.]”). Therefore, Applicant has not shown trial counsel was ineffective for failing to object to the counselors' testimony.

2. Deputy Tyler's Testimony

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to the testimony of Deputy Tyler. The Court finds credible trial counsel's admission she did not object to any of Deputy Tyler's testimony because she wanted to show the inadequacies in his investigation. 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))).

The Court also finds Deputy Tyler's testimony was not unfairly prejudicial in the context of this case. Deputy Tyler's testimony was not opinion testimony regarding Applicant's guilt. See S.C. Dep't of Soc. Servs. v. Lisa C., 380 S.C. 406, 417, 669 S.E.2d 647, 653 (Ct. App. 2008) (“For the fact-finder to make a determination based on the Detective's opinion of guilt would be improper.”). Instead, Deputy Tyler testified to the actions he took in response to a report of child abuse. Such testimony is admissible. Kromah, 401 S.C. at 355, 737 S.E.2d at 498 (citing State

v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004)). Furthermore, Deputy Tyler never revealed any of the contents of the forensic interviewers report upon which he relied in making the determination to arrest Applicant. Id. Accordingly, Applicant has not shown trial counsel was ineffective in failing to object to Deputy Tyler's statements regarding Applicant's arrest.

3. Children's Testimony

The Court further finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to the testimony of the victims in this case. Although a witness normally may not comment on the character of the defendant, testimony about prior bad acts may be admitted under the *res gestae* theory. State v. Wood, 362 S.C. 520, 527, 608 S.E.2d 435, 439 (Ct. App. 2004). "The *res gestae* theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." Id. At 528, 608 S.E.2d at 439 (citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)).

Under the facts of the present case, the Court finds the testimony of the victims was "necessary and relevant to a full presentation of the evidence in this case." Id., 608 S.E.2d at 439-40. The State did not present a single incident of abuse to support its case, but rather alleged an ongoing course of conduct by Applicant resulting in damage to the victims' mental health. The challenged testimony encompasses the children's understanding of the injuries they allegedly sustained from Applicant. In light of the State's theory of the case, the Court finds the children's testimony about Applicant's other actions and their perception of him was admissible

as part of the *res gestae* of the alleged crime. Accordingly, trial counsel was not ineffective in failing to object to this testimony.

4. Reasonable Doubt Charge

The Court finds Applicant failed to meet his burden of proof to show trial counsel ineffective in failing to object to Judge Baxley's reasonable doubt charge. "[J]ury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000) (citing State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)). The Court agrees with trial counsel's testimony that she found nothing objectionable about Judge Baxley's charge. Judge Baxley's charge on reasonable doubt is largely a recitation of the charge cited with approval in Todd v. State, 355 S.C. 396, 401, 585 S.E.2d 305, 308 (2003). Furthermore, the charge that a "full and free discussion of the issue ... does not mean that reasonable doubt automatically exists" (Trial Tr. 424:8-12) is not an improper comment on the facts because it does not reference any specific facts of the trial. In light of the entirety of Judge Baxley's thorough charge, the Court finds Applicant has not shown a reasonable likelihood the jury misapplied the law or misunderstood the State's burden of proof. Accordingly, trial counsel was not deficient for failing to object to the charge.

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 any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

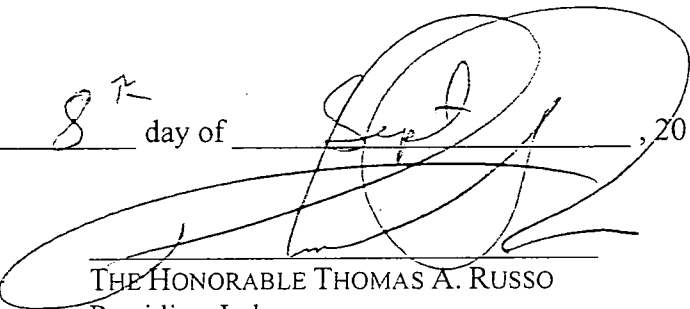
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 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), SCRCR, 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 8th day of Sept, 2014.


THE HONORABLE THOMAS A. RUSSO
Presiding Judge

Darlington, South Carolina