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January 6, 2015

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Brian Rashard Garris, 330406 vs. State of South Carolina  
2013-CP-14-393

Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III

CTB/srw

cc: Daniel Gourley, Esquire; Asst. AG  
South Carolina Office of Appellate Defense  
Brian Rashard Garris, 330406

**RECEIVED**

JAN 08 2015

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CLARENDON COUNTY

Court of Common Pleas  
Honorable Clifton Newman, Circuit Court Judge

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Case No: 2013-CP-14-393

Brian Rashard Garris.....Appellant  
S.C.D.C. 330406

v.

The State.....Respondent

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NOTICE OF APPEAL


Brian Rashard Garris, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Clifton Newman, November 30, 2014, which I, Charles T. Brooks, III, received on January 5, 2015.

**RECEIVED**

JAN 08 2015

**S.C. SUPREME COURT**

Other Counsel on Record:  
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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CLARENDON COUNTY

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Case No: 2013-CP-14-393

Brian Rashard Garris.....Appellant  
S.C.D.C. 330406  
v.  
The State.....Respondent

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**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this 6<sup>th</sup> day of January, 2015, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on January 6, 2015, addressed to the following as indicated below:


South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Daniel Gourley, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Brian Rashard Garris, 330406  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia, S. C. 29210

Dated: January 6, 2015

  
\_\_\_\_\_  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

Brian Rashard Garris, #330406

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-14-393

ORDER OF DISMISSAL

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
DEC 22 AM 11:05

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 1, 2013. Respondent made its return on February 28, 2014. An evidentiary hearing in to the matter was convened on October 2, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the October 2006 term of the Clarendon County Grand Jury Armed Robbery, Assault and Battery with Intent to Kill, Possession of a Firearm During the Commission of a Crime of Violence (2006-GS-14-265). Garryl Deas, Esquire, represented Applicant. The Applicant proceeded to a jury trial and was found guilty as indicted to all counts on September 5, 2008. The Honorable George C. James, Jr., sentenced applicant to twenty years for Assault and Battery with Intent to Kill to run consecutive to twenty

CERTIFIED COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 12/22/14  
Beulah G. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

years for Armed Robbery. Additionally, Judge James sentenced Applicant to five years for Possession of a Weapon During a Crime of Violence to run concurrently.

Applicant filed a timely Notice of Appeal on September 9, 2008. Assistant Appellate Defender LaNelle DuRant of the South Carolina Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed his sentence and conviction. State v. Garris, Op. No 4859 (S.C. Ct. App. filed August 10, 2011). A petition for rehearing was submitted on August 24, 2011. An Order denying the Petition for Rehearing was filed September 22, 2011. A Petition for Writ of Certiorari was filed October 24, 2011. The State made its Return to Petition for Writ of Certiorari on June 7, 2012. By Order Dated and filed on May 15, 2013, the South Carolina Supreme Court denied the Petition for Writ of Certiorari. The Remittitur was issued on May 20, 2013

### ALLEGATIONS

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

1. Ineffective Assistance of Counsel
  - a. "Trial Counsel failed to object to the testimony of states witness regarding finger print analysis..."
  - b. Failure to object to Brady violation because the fingerprint report was not disclosed in the discovery material.
  - c. Failure to object to Agent Robert's report dealing with Gun Shot Residue.
  - d. Failure to object to the photo lineup shown to Ms. Santiago because it was not provided in the discovery.
  - e. Failure to object to jury instructions.
2. Due Process violation

This Court notes Applicant failed to present any specific argument as to how his Due Process rights were violated.

## SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Garryl Deas, Esquire (hereinafter "Trial Counsel") and Amy Land, Esquire (hereinafter "Solicitor Land"). This Court also had before it a copy of the trial transcript, the Clarendon County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant stated he filed a PCR application and was seeking a new trial. Applicant stated he retained Trial Counsel right before trial. Applicant explained that Trial Counsel had represented him on some unrelated charge. Applicant stated he met with Trial Counsel once or twice prior to trial. Applicant stated he received ineffective assistance of counsel because Trial Counsel failed to object to various discovery violations. Specifically, Applicant explained that he was first appointed Harry Devoe, Esquire through the Third Circuit Public Defender's office. Applicant explained Mr. Devoe filed a discovery motion on his behalf and received discovery from the Solicitor. Applicant explained that Mr. Devoe turned all discovery material over to Trial Counsel. Applicant stated Trial Counsel failed to object to Brady/Rule 5 violations when the Solicitor failed to turnover pictures of the Victim, the results of finger print analysis, and a photo lineup shown to victim.

Applicant further argued that Trial Counsel was ineffective for failing to object to the court allowing the Solicitor to introduce the results of the Gun Shot Residue (hereinafter "GSR") test. Applicant further stated Trial Counsel should have objected to the limiting instructions given by the judge to the jury in regards to Applicant's prior burglary—first degree charge. Specifically, Applicant stated the trial judge went into too much detail about the first degree

burglary charge. Applicant further stated that he received a plea offer of ten to fifteen years. However, Applicant stated that he was seventeen years old and decided not to take the offer.

Following Applicant's testimony, the State called Trial Counsel to testify. Trial Counsel stated that he has been practicing law for eighteen years. Trial Counsel stated he was retained to represent Applicant. Trial Counsel stated he represented Applicant on some unrelated charges that Applicant was acquitted. Trial Counsel explained Applicant was arrested on April 28, 2006, and charged with armed robbery and assault and battery with intent to kill. Trial Counsel stated the police swabbed Applicant's hands for GSR. Applicant was searched, processed through county jail, and housed in Clarendon county jail. Trial Counsel stated while being housed in Clarendon county jail, an inmate helper, Johnny McCrea (hereinafter "McCrea") picked up and dumped Applicant's food tray. McCrea stated that when he dumped the food tray a pistol fell off of the tray and into the trash can. (Tr. t. p. 298 line 8—p. 300 line 22). The pistol was ultimately collected, processed, tested by SLED and found to be a match the gun used in the shooting of victim. (Tr. t. p. 321 line 7—p. 323 line 13; p. 338 line 19—p. 342 line 10; p. 349 line 9—p. 350 line 20; p. 385 line 3—p. 386 line 8; p. 390 line 13—p. 393 line 12; p. 410 line 15—p. 413 line 20; p. 427 line 16—p. 428 line 7; p. 484 line 18—p. 489 line 10). Trial Counsel stated he made a motion to suppress the gun itself, but the motion was ultimately denied. Trial Counsel stated he further objected to the guns introduction during the trial.

Trial Counsel stated that he objected and moved for a mistrial on the basis that certain pieces of evidence were not turned over prior to trial. Specifically, Trial Counsel stated that several photos of the victim, a photo lineup shown to the victim, and a finger print analysis were not turned over prior to trial. Trial Counsel stated that he objected on the basis of a Brady violation and requested a mistrial. However, Trial Counsel stated the judge did not grant a

mistrial. Trial Counsel stated the introduction of the evidence was helpful to the Applicant. Specifically, Trial Counsel stated the photos were not harmful because they were already aware that the victim had been shot. Trial Counsel stated the victim was not able to identify the Applicant from the photo lineup, thereby helping Applicant's case. Trial Counsel stated Applicant's fingerprints did not match the fingerprint analysis conducted on the victim's car. Trial Counsel further stated he was able to thoroughly cross-examine all witnesses on the photos, photo lineup, and fingerprint analysis. Trial Counsel stated that the fingerprint analysis, photos of victim, and photo lineup would not have changed their defense at trial. Trial Counsel further stated he had no basis to object to the trial judge's jury instruction in regards to Applicant's prior charge of burglary—first degree.

Following Trial Counsel testimony, Solicitor Land was called to testify by the State. Solicitor Land testified that she prosecuted Applicant. Solicitor Land stated she turned over all Brady and Rule 5 material. Solicitor Land stated Clarendon is a particularly small town and she made every effort to make sure everything was turned over. Solicitor Land stated she had an "open file policy" with all attorneys. Solicitor Land said the representing attorney could come in and go through her file. Solicitor Land stated that there may have been some material lost in the switch from Applicant's first attorney, Harry Devoe to Trial Counsel.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's and Solicitor Land's testimony credible and Applicant's testimony not 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), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The 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.

*Ineffective Assistance of Counsel for failing to object to the testimony of state's witness and Brady violation regarding fingerprint analysis.<sup>1</sup>*

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to witness testifying to the fingerprint analysis and Brady violation is without merit. Trial Counsel testified that he objected and moved for a mistrial based on a Brady/Rule 5 violation for failing to turn over the fingerprint analysis conducted on the victim's car. (Tr. t. p. 501 line 13—p. 502 line 21). Trial Counsel specifically stated in his motion for a mistrial that "I would certainly think that...the fingerprint analysis is certainly exculpatory evidence and should have been provided to me under Rule 5..." (Tr. t. p. 502 lines 12-20). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency. Applicant must show that counsel's deficient performance prejudiced him 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. Trial Counsel stated the results of the fingerprint analysis did not change Applicant's defense. To the contrary, Trial Counsel stated the fact that Applicant's fingerprints were not found on the victim's car supported Applicant's defense of mistaken identity. This Court further notes, Trial Counsel was able to thoroughly cross-examine Investigator Rick Elms on the fingerprint analysis. (Tr. t. p. 429 line 23—p. 431 line 24). Specifically, this Court finds that Investigator Elms testimony that the handprints/fingerprints found on the victim's car did not match Applicant's handprint/fingerprints is not prejudicial to Applicant. Furthermore, this

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<sup>1</sup> This Court addresses allegations (a) and (b) as one allegation of ineffective assistance of counsel for failing to object to the introduction of the fingerprint analysis as a violation of Brady/Rule 5.

Court finds Applicant failed to present any additional evidence as to how his defense would have changed if he had the finger print analysis prior to the start of trial. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to object to Agent Robert's report dealing with Gun Shot Residue.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to object to Agent Robert's report dealing with gunshot residue to be without merit. Initially, this Court notes the issue of whether the Trial Court erred in denying his motion to suppress the gunshot residue was briefed, argued, and ruled upon by the South Carolina Court of Appeals. State v. Garris, Op. No 4859 (S.C. Ct. App. filed August 10, 2011). This Court notes Trial Counsel objected to testimony regarding the Gun Shot Residue. (Tr. t. p. 682 line 7-10; p. 699 line 4—p. 703 line 17)). The testimony was proffered by the trial court and ruled admissible over Trial Counsel's objection. (Tr t. p. 703 line 17-22). This Court notes Trial Counsel continually objected to the testimony of both Investigator Lin Ham and Agent John Roberts. (Tr. t. p. 706 lines 8-14; p. 711 lines 18-22; p. 717 lines 5-16; 727 lines 9-11; p. 728 line 9-21). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court notes Applicant can show no prejudice as this issue was properly objected to by Trial Counsel during the course of trial and preserved for appellate review. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

*Ineffective Assistance of Counsel for failing to object to the photo lineup shown to Ms. Santiago because it was not provided in the discovery.*

This Court notes Applicant's allegation that Trial Counsel was ineffective for failing to object to the photo lineup shown to victim is without merit. Trial Counsel stated and the record reveals that Trial Counsel moved for a mistrial on the basis of a Rule 5/Brady violation for failing to disclose the photo lineup prior trial. (Tr. t. p. 502 lines 7-10). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency. Applicant must show that counsel's deficient performance prejudiced him 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. This Court notes Victim readily admitted that she was unable to identify Applicant. A review of the record reveals that Trial Counsel was able to thoroughly cross-examine Victim on her physical description and composite drawing of her assailant. Trial Counsel stated the fact that victim was shown a photo lineup and was not able to identify victim did not have an impact on Applicant's defense. To the contrary, Trial Counsel stated the fact that victim was unable to pick Applicant out of the photo lineup only bolstered Applicant's defense that he was innocent. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to object to the trial court's jury instruction regarding Applicant's prior charge of burglary—first degree.*

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the trial court's jury instructions regarding his prior burglary-first degree charge is meritless. Trial Counsel testified that he had no basis to object to the trial court's instructions to the jury. This Court agrees with Trial Counsel assessment of the jury instructions. The trial court instructed the jury as follows:

I want to specifically tell you, ladies and gentlemen, in this case you have heard testimony that on April 28, 2006, the defendant was arrested on a charge that is completely unrelated to this case. The defendant, as you know, was found not guilty on that unrelated charge. I charge you and I emphasize to you that you are not to consider the mere existence of those other charges in any way in determining the guilt or non-guilt in this case.

(Tr. t. p. 789 line 20—p. 790 line 2). This Court finds that the trial court's jury instruction instructing the jury not to consider Applicant's prior burglary—first degree charge proper. As such, this Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to provide sufficient evidence as to how he was prejudiced by the trial court's instructions to the jury. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

#### **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 the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

2014 DEC 22 AM 11:05

**CONCLUSION**

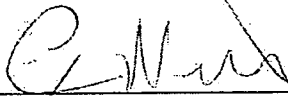
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 30<sup>th</sup> day of November, 2014.

  
CLIFTON NEWMAN  
Presiding Judge  
Third Judicial Circuit

Columbia, South Carolina

