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April 17, 2015

Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

RE: Kenyatta Bryant v. State of South Carolina

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal along with a Certificate of Service and copies of the Orders being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Sincerely,

Christina Metze

Christina Metze
Paralegal

cc: Josh L. Thomas
PO Box 11549
Columbia, SC 29211

Kenyatta Bryant

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
APR 27 2015
S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Presiding Judge

2012-CP-40-07146

KENYATTA ANDRE BRYANT, #346659, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

NOTICE OF APPEAL

Kenyatta Andre Bryant, #346659, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed February 12, 2015 and received by counsel on February 16, 2015, and the Order Denying Rule 59(e) Motion filed March 31, 2015 and received by counsel on April 2, 2015, issued by the Honorable J. Ernest Kinard, Jr., presiding Judge.

Aimee J. Zmroczek, Esq.
A. J. Z. Law Firm, LLC
P.O. Box 11961
Columbia, South Carolina 29211
(803) 400-1918 telephone
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ajzlawfirm@gmail.com
ATTORNEY FOR PETITIONER

This 17th day of April, 2015

Other Counsel of Record:
Josh L. Thomas
PO Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
APR 27 2015
S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Presiding Judge

2012-CP-40-07146

KENYATTA ANDRE BRYANT, #346659, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Josh Thomas, Assistant Attorney General;, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 17th day of April, 2015.

Aimee J. Zmroczek
Attorney and Counselor at Law

SWORN TO BEFORE me this 17th day
Of April, 2015

Christina Nelson (L.S.)
Notary Public for the State of South Carolina
My Commission Expires: 9/25/16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Case No. 2012-CP-40-07146
Kenyatta Andre Bryant #346659	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER DENYING PLAINTIFF'S**
	)	**MOTION TO RECONSIDER**
State of South Carolina	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court by way of Plaintiff's Motion to Reconsider pursuant to Rule 59(e), SCRCP. Specifically, Plaintiffs ask this Court to reconsider its Order of Dismissal filed February 12, 2015.

After consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRCP, to Reconsider this Court's Order filed February 12, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
March 31, 2015

J. Ernest Kinard, Jr., Judge
Fifth Judicial Circuit

FORM 4

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

JUDGM Γ IN A CIVIL CASE

CASE NUMBER: 2012CP4007146

Kenyatta Andre #346659 Bryant
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 February 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Kenyatta Andre #346659 Bryant Aimee Jendrzejewski Zmroczek Robert Daniel Corney

Kenyatta Andre #346659 Bryant
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Kenyatta Bryant, #346659, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2012-CP-40-7146 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 22, 2012. Respondent made a timely Return on or about December 20, 2012. The Court convened an evidentiary hearing into the matter on December 8, 2014, at the Richland County Courthouse. Applicant was present at the hearing and represented by Aimee J. Zmroczek, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Charlie J. Johnson Jr., Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the appellate records. 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 Richland County Clerk of Court. In April 2010, the Richland County Grand Jury indicted Applicant for murder (2010-GS-40-1103). Charlie J. Johnson Jr., Esquire ("trial counsel"), represented Applicant. On June 20, 2011, Applicant proceeded to trial

before the Honorable James R. Barber III and a jury. On June 23, 2011, the jury found Applicant guilty as indicted. Judge Barber sentenced Applicant to forty-five (45) years imprisonment.

Applicant filed a timely notice of appeal, but voluntarily withdrew his direct appeal. The South Carolina Court of Appeals dismissed the appeal on September 10, 2012. The Court of Appeals returned the remittitur to the circuit court on October 1, 2012.

II. ALLEGATIONS

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

1. "Ineffective assistance of trial counsel"

    a. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to a constructive amended of his indictment and charge, and failure to move for a verdict in arrest of judgment and enry of judgment of acquittal based on trial court's lack or jurisdiction to convict and sentence him for a common law felony murder."
    b. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to the judge's omission of any jury charge on the elements of a robbery offense in his case."
    c. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to judg's constructive amended-mandatory presumption jury charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on the trial court's lack of jurisdiction to convict and sentence him for common law murder."
    d. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to the erroneous admission of his had in violation of his Fourth Amendment right."
    e. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to State's introduction of graphic crime scene photos of victim's body."

At the evidentiary hearing, Applicant sought relief on the following grounds:

1. Ineffective assistance of counsel for failing to object to jury instructions that did not require the State to prove the underlying felony to support a felony murder charge.

2. Ineffective assistance of counsel for failing to object to the introduction into evidence of Applicant's hat.
3. Prosecutorial misconduct for failing to disclose a plea bargain with Applicant's co-defendant.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. The Court finds trial counsel's testimony to be credible. Correspondingly, the Court finds Applicant's testimony not credible. The Court further finds trial counsel conducted a reasonable investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003), regarding Applicant's specific allegations.

A. Summary of Testimony

Trial counsel testified he has practiced criminal defense for nineteen (19) years. He met with Applicant at least ten (10) times during the course of his representation. During these meetings, trial counsel discussed all of the State's evidence with Applicant. He also discussed any possible defenses Applicant may have. Trial counsel testified Applicant indicated he was not present when the shooting happened. Based on this information, trial counsel believed the best defense strategy was to argue the State could not prove Applicant actually shot the victim, and that Applicant was not acting in concert with the co-defendant in robbing the victim.

Trial counsel retained an investigator and visited the scene of the murder. He also recalled interviewing Applicant's family and other individuals with Applicant the night of the

murder. Trial counsel recalled the determining factor in the case was whether the jury believed Applicant's version of events or the co-defendant's version. Trial counsel testified he understood there was no felony murder in South Carolina. Rather, he believed the jury could infer the element of malice from the fact the killing was committed during a drug robbery. Trial counsel understood the State's theory of the case to be that Applicant shot the victim during a robbery.

Trial counsel recalled cross-examining the co-defendant in an effort to show the co-defendant was the shooter. He also recalled asking the co-defendant about his plea deal, and the co-defendant indicating he had no deal. Trial counsel also recalled attempting to suppress Applicant's hat that was found in a police vehicle previously used to transport Applicant for questioning.

Applicant testified he was never charged with robbery. He believes he should not have been convicted of murder because he was not also convicted of robbery. Applicant testified he could not have been convicted of murder under the felony murder rule because the judge did not instruct the jury on the elements of the underlying felony. Applicant admitted he was planning to sell fake drugs to the victim when the co-defendant decided they were going to rob the victim instead. Applicant also testified trial counsel should have renewed the objection to the introduction of the hat because the hat was not abandoned in the police vehicle.

B. Ineffective Assistance of Trial Counsel

Applicant bears the burden of proving the allegations in the 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 trial counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning

of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel 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)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Failure to Object to Instruction on Felony Murder Inference

The Court finds Applicant failed to meet his burden to demonstrate trial counsel was ineffective in failing to object to the judge's instructions on the felony murder inference. South Carolina is one of the few jurisdictions that does not have a felony murder statute. Gore v. Leeke, 261 S.C. 308, 315, 199 S.E.2d 755, 757 (1973). Instead, our state follows the common law doctrine of felony murder that allows a permissible inference of malice from the commission of a dangerous felony. See Lowry v. State, 376 S.C. 499, 506, 657 S.E.2d 760, 764 (2008).

Thus, the pertinent element to be proved in a felony murder case in South Carolina is malice aforethought. See S.C. Code Ann. § 16-3-10 ("'Murder' is the killing of any person with malice aforethought, either express or implied."). In other jurisdictions with the legislatively adopted crime of felony murder, the commission of the underlying felony is a substitute for malice aforethought. See, e.g., Robles v. State, 188 So. 2d 789, 793 (Fla. 1966) ("If premeditation is so vital a part of the crime of murder in the first degree, it must follow that the elements of the felony of burglary, which may be proved in lieu of premeditation, are equally vital and should therefore have been the subject of instructions to the jury."). Thus, those jurisdictions require proof of the elements of the underlying felony. Id. Because South Carolina adheres to the common-law definition of murder, proof of the elements of the underlying felony need not be established. Therefore, trial counsel was not deficient for failing to request instructions on the elements of armed robbery.

Furthermore, trial counsel was not deficient because the trial judge issues adequate and correct jury instructions on the inference of malice. The South Carolina Supreme Court has endorsed the following charge on implied malice from the commission of a felony:

> "The law says if one intentionally kills another during the commission of a felony, the implication of malice may arise. If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive."

State v. Norris, 285 S.C. 86, 92, 328 S.E.2d 339, 343 (1985), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) and State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); see also Lowery, 376 S.C. at 506, 657 S.E.2d at 764 (approving similar charge). The trial judge's charge on the felony murder inference was nearly a verbatim recitation of this

approved charge. (Trial Tr. p. 713, lines 6-17). Because the trial judge issued the instruction endorsed by the Supreme Court, trial counsel had no grounds for an objection to the charge. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency for failing to make arguments where "it would have been futile for Attorney to have made such arguments").

Regardless, the Court further finds Applicant failed to demonstrate he was prejudiced by the trial judge's jury instruction. Jury instructions must be reviewed in light of the whole charge and not in isolation. Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) (citing State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)). Here, the trial judge gave a complete and thorough charge on the elements of murder. (Trial Tr. p. 711, line 21-p. 713, line 17). He also instructed the jury on the theory of accomplice liability (Trial Tr. p. 713, line 18-p. 715, line 25) and criminal intent (Trial Tr. p. 716, line 12-p.717, line 2). Viewing the charge as a whole, the trial judge's instruction on the felony murder inference was did not prejudice Applicant. The instruction was proper in light of the facts of this case.

Furthermore, no prejudice occurred even if the elements of armed robbery should have been charged to the jury. The evidence adduced by the State at trial indicated it was proceeding on a theory that Applicant shot the victim. Because the State's theory was one of malice murder, and not felony murder, the trial judge was not required to instruct the jury on the elements of armed robbery. See Alicea v. State, 392 So. 2d 960, 961 (Fla. Dist. Ct. App. 1980) (noting that, in jurisdiction where elements of underlying felony must be proven, error in the felony murder instruction is harmless where the evidence supports a jury finding of premeditated murder). Furthermore, although the jury was not instructed on the elements of armed robbery, they were allowed to use their common sense in deliberations. Even though the jury was not instructed on the elements of armed robbery, they surely understood the act of holding a victim at gunpoint

and taking money from him constitutes the crime of armed robbery. See State v. Keith, 283 S.C. 597, 598, 325 S.E.2d 325, 325-26 (1985) (defining armed robbery, common law robbery, and larceny). Thus, there could be no error from the lack of an instruction on the elements of armed robbery under the facts of this case.

Finally, the Court finds the overwhelming evidence of Applicant's guilt precludes a finding of prejudice. The evidence at trial indicates Applicant and the co-defendant became passengers in the victim's car with the intention of selling him fake drugs. At some point, the co-defendant decided they would rob the victim instead. The victim resisted this armed robbery. While the victim was struggling with the co-defendant, Applicant exited the passenger side of the vehicle, walked around the car to the driver's side, and shot the victim. Applicant's fingerprints were on the driver side door of the car, and the victim's blood was on his hat. In light of this overwhelming evidence, the Court finds Applicant failed to demonstrate how he was prejudiced by the inclusion of an instruction on the felony murder inference. Hutto v. State, 387 S.C. 244, 249, 692 S.E.2d 196, 198 (2010) ("No prejudice occurs, despite deficient performance, when there is overwhelming evidence of guilt." (citing Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009))).

2. Failure to Suppress Applicant's Hat

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to object to the introduction of Applicant's hat. Initially, the Court notes the alleged "search" in this case was actually an inadvertent discovery while the officer was installing a child safety seat in his vehicle. Thus, it is questionable whether a Fourth Amendment "search" even occurred in this case. Cf. State v. Abdullah, 357 S.C. 344, 353-54, 592 S.E.2d 344, 349 (Ct. App. 2004) (inadvertent discoveries do not trigger protections of Fourth Amendment). In

this factual scenario, where the officer was not acting in his official duties when he discovered the hat, the Court finds this was not a "search" for purposes of the Fourth Amendment.

Regardless, Applicant did not have standing to object to any search of the police vehicle. The Fourth Amendment does not protect an individual from a search or seizure when he has no privacy interest in the premises searched. State v. Robinson, Op. No. 27463 (S.C. Sup. Ct. filed Nov. 12, 2014) (Shearouse Adv. Sh. No. 45 at 31, 36) ("[T]o claim the protection of the Fourth Amendment, a defendant must demonstrate that he had an actual and reasonable expectation of privacy in the place searched." (citations omitted)). Because the vehicle searched belonged to the police officer, Applicant cannot claim a privacy interest in any items he would have left in the vehicle. See State v. Maybank, 352 S.C. 310, 316-17, 573 S.E.2d 851, 855 (Ct. App. 2002) (defendant has no privacy interest in vehicle driven by another if he is not in the vehicle). Similarly, Applicant's mere ownership of the seized hat is not sufficient to lend standing to challenge the seizure. Id. at 317, 573 S.E.2d at 855 (citing Rawlings v. Kentucky, 448 U.S. 98 (1980); Alderman v. United States, 394 U.S. 165 (1969)). Likewise, Applicant's actions in secreting the hat under the vehicle seat demonstrate an intent to abandon the property. Because the property was abandoned, Applicant had no right to challenge its admission at trial. See United States v. Stevenson, 396 F.3d 538, 546 (4th Cir. 2005) ("When a person voluntarily abandons his privacy interest in property, his subjective expectation of privacy becomes unreasonable, and he is precluded from seeking to suppress evidence seized from it." (citing United States v. Leshuk, 65 F.3d 1105 (4th Cir.1995); Abel v. United States, 362 U.S. 217 (1960))). Therefore, the Court finds Applicant failed to demonstrate trial counsel was ineffective in failing to object to the introduction of the hat because such an objection would have been unsuccessful. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

C. Prosecutorial Misconduct

The Court finds Applicant failed to meet his burden to show the State committed prosecutorial misconduct by withholding information about a plea deal with the co-defendant. Applicant bears the burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 799-899 (1989) (citing Wasman v. United States, 468 U.S. 559 (1984)). Generally, prosecutorial misconduct involves a solicitor's improper efforts to collect evidence or unfair trial tactics. State v. Needs, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998) (citations omitted). Because Applicant alleges the State presented untruthful testimony regarding the co-defendant's plea deal,[1] he bears the burden of proving the co-defendant's testimony was untruthful. United States v. Griley, 814 F.2d 967, 971 (4th Cir. 1987) (citing Dansby v. United States, 291 F.Supp. 790 (S.D.N.Y. 1968)). Furthermore, Applicant must also show, in addition to the impropriety of the testimony, a reasonable likelihood the testimony affected the judgment of the jury. See Giglio v. United States, 405 U.S. 150, 154 (1972) ("We do not, however, automatically require a new trial whenever 'a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict" (citations omitted)).

The trial record indicates the State had not entered into a plea bargain with the co-defendant at the time of trial. The solicitor stated she had not reached any agreement with the co-defendant. (Trial Tr. p. 268, line 20-p. 269, line 5). The co-defendant's attorney confirmed the solicitor made no promises to the co-defendant. (Trial Tr. p. 269, lines 6-14). Applicant testified he had no deal in place, but hoped he would get some help after his testimony. (Trial Tr. p. 291, line 24-p.293, line 3; p. 313, line 24-p. 314, line 2). The mere fact the co-defendant

[1] See Napue v. Illinois, 360 U.S. 264, 269 (1959) (Fourteenth Amendment prohibits "conviction obtained through use of false evidence" involving plea negotiations).

may have been allowed to plead to a lesser-included offense at a later date does not overcome the clear testimony in the record that no deal was in place at the time of trial. Instead, the co-defendant's trial testimony accurately reflects his expectations of the eventual outcome of his prosecution. Viewing the record as a whole, the Court finds Applicant has not demonstrated his conviction was obtained with the use of false testimony such as to run afoul of the standard set forth in Napue.

Furthermore, Applicant has not shown how he would have been prejudiced even assuming the solicitor, the co-defendant's attorney, and the co-defendant were being untruthful about the terms of the plea negotiations. The co-defendant admitted he expected leniency in exchange for testifying. Any further information about the State's negotiations with the co-defendant would be cumulative impeachment evidence. See State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693-94 (1996) (no Brady violation where impeachment evidence was merely cumulative). Furthermore, because there was overwhelming evidence Applicant shot the victim, further exploration of the co-defendant's expectations regarding his cooperation would not have led to a different result in this trial. See State v. Taylor, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998) (court must consider alleged Brady violations in the context of the entire record (citing United States v. Agurs, 427 U.S. 97 (1976))). Therefore, the Court finds Applicant has not shown the jury would have reached a different result had they been informed the co-defendant later would be allowed to plead to a lesser charge.

D. 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. Specifically, the Court notes Applicant testified at the

hearing that he only sought relief on the foregoing grounds. Accordingly, the Court finds Applicant has abandoned any further 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), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

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

AND IT IS SO ORDERED this 29 day of January, 2015.

Camden, South Carolina

THE HONORABLE J. ERNEST KINARD, JR.
Presiding Judge

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
) CASE NO.: 2012-CP-40-7146
KENYATTA BRYANT, #346659)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Aimee J. Zmroczek, Bar No. 77193 Address: PO Box 11961, Columbia SC 29211 Phone: _____Fax _____ E-mail: _____Other: _____	Josh L. Thomas, Bar No. 100777 Address: PO Box 11549, Columbia SC 29211 Phone: _____ Fax_____ E-mail: _____Other: _____

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

RICHLAND COUNTY FILED
2015 FEB -9 AM 11:14
JEANETTE W. McBRIDE C.C.P. & G.S.

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

_____ 1/7/15
Signature of Attorney for ☐ Plaintiff/☒ Defendant Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

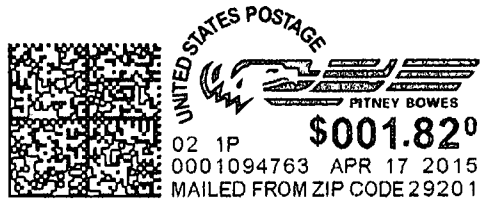
☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____



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Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
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