THE LAW OFFICE OF

MARTIN C. PUETZ, LLC

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May 12, 2015

RECEIVED
MAY 15 2015
SC SUPREME COURT

Certified Mail

Mr. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia SC 29211-1330

Re: Joshua Forrest, #274525 v. State of South Carolina
Case No. 2011-CP-02-1834

Dear Mr. Shearouse:

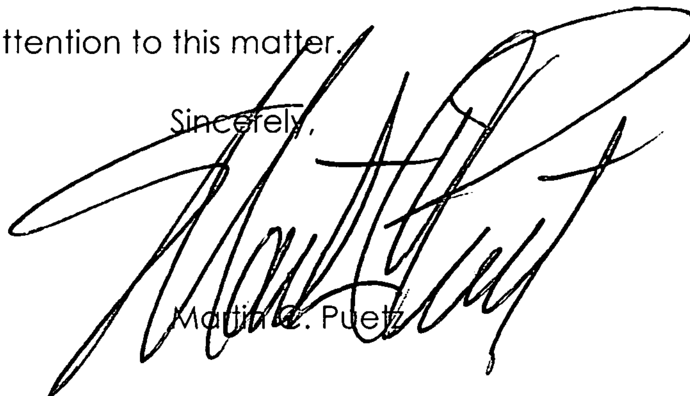
I am enclosing the following with respect to the above-referenced matter:

(1) Notice of Appeal and Proof of Service;
(2) A copy of the Order Denying Motion to Alter or Amend Judgment dated April 8, 2015, and the Order of Dismissal dated October 2, 2014, which are to be challenged on appeal; and
(3) My check in the amount of $100.00 in payment of the filing fee.

This appeal is being filed with the Supreme Court pursuant to Rule 243 of the South Carolina Appellate Court Rules.

Thank you for your attention to this matter.

Sincerely,



Martin C. Puetz

MCP:caw
Enclosures
Cc: Mr. Joshua Forrest
David Spencer, Esq.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2011-CP-02-1834

Joshua Forrest, #274525 .... Appellant,

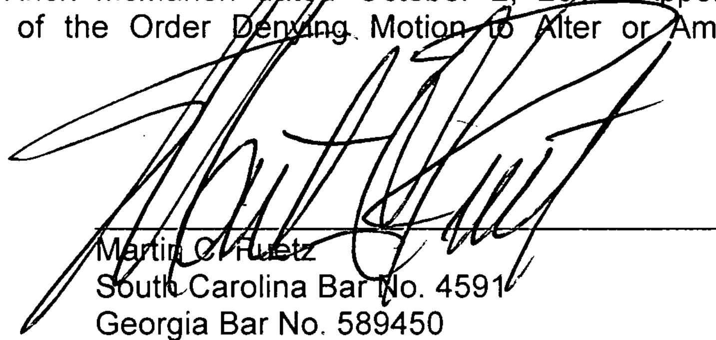
v.

State of South Carolina .... Respondent.

NOTICE OF APPEAL

Joshua Forrest appeals the Order Denying Motion to Alter or Amend Judgment of the Honorable R. Knox McMahon dated April 8, 2015, thereby affirming the Order of Dismissal of the Honorable R. Knox McMahon dated October 2, 2014. Appellant received written notice of entry of the Order Denying Motion to Alter or Amend Judgment on April 15, 2015.

Dated: May 12, 2015.



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2011-CP-02-1834

Joshua Forrest, #274525 .... Appellant,

v.

State of South Carolina .... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal herein on the following individuals and offices by depositing a copy of it to each by United States Mail with adequate postage on May 12, 2015, addressed as follows:

Liz Godard, Clerk of Court
Aiken County Courthouse
P.O. Box 583
Aiken, South Carolina 29802

The Honorable R. Knox McMahon
205 E. Main Street
Lexington, South Carolina 29072-3456

J. Strom Thurmond, Jr. Esq.
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P.O. Drawer 3368
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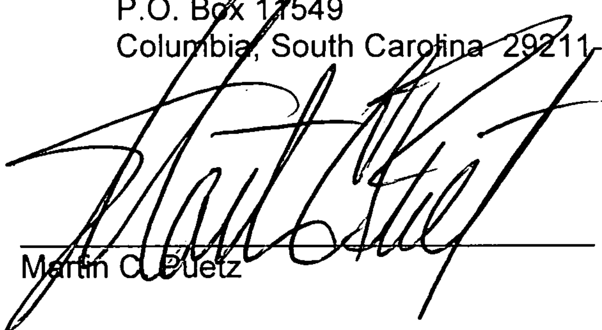


May 12, 2015

Martin C. Puetz

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2011-CP-02-1834

Joshua Forrest, #274525,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED 10.9.14
C.C.C.P.&G.S.
Deputy Clerk

This matter is before this Court by way of an application for post-conviction relief (PCR) filed August 23, 2011. The State made its return on June 15, 2012. A hearing was convened at the Aiken County Courthouse on July 30, 2014. Applicant was present and represented by Martin C. Puetz, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant's trial counsel, Sherri Hicks Stoney, Esquire, was called as a witness by Applicant. Applicant also testified on his own behalf. This Court also had before it the pleadings of both parties, the Applicant's records from the Department of Corrections, the Clerk of Court's records regarding the convictions, and the transcript of both of Applicant's trials.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted during the April 2006 term of the Aiken County Grand Jury for murder (2006-GS-02-695) and possession of a firearm or knife during commission of or attempt to commit a violent crime (2006-GS-02-694). Applicant was represented by Sherri Hicks Stoney, Esquire. Applicant was tried by jury

on December 4-6, 2006, before the Honorable Doyet A. Early, III. Judge Early declared a mistrial after the jury was unable to reach a verdict. Applicant proceeded to trial a second time and was found guilty on June 24, 2009. Applicant was sentenced by the Honorable Michael G. Nettles to life without parole to run concurrent with a sentence of five years imprisonment for possession of a weapon during a commission of or attempt to commit a violent crime.

A timely notice of Appeal was filed on behalf of the Applicant. The South Carolina Court of Appeals affirmed the conviction. State v. Forrest, Op. No. 2011-UP-254 (filed June 1, 2011). The Remittitur was sent June 24, 2011.

STATEMENT OF FACTS

Applicant was convicted of murdering Mario Reddish in the parking lot of an Elks Club in Aiken County. The homicide occurred on December 4, 2005. The first witness for the State was Latasha Brown, who testified that she knew both Reddish and Applicant. She testified that Applicant and Tameka Bussey (at the time of trial, her name was Tameka Campbell) got in a fight. Applicant pinned Bussey against the wall. Brown testified that the fight was over a hat and shoes. She testified that Applicant was then in an altercation with Reddish and Jonathon Thomas. This occurred around closing time at the club and everyone then went outside. Tr. pp. 68-72.

Outside, there was a commotion and Brown heard a gunshot. She then heard Applicant say Reddish was not leaving tonight. Applicant and Reddish walked towards each other. Reddish threw a punch and they were then "locked up" with each other. Brown testified that Applicant pulled out a gun and she then heard two shots. Reddish hit the ground. Applicant then left in a car. Tr. pp. 72-74.

Sherry Cade testified that she has known Applicant for nine years. She testified that she

saw Bussey fussing with Applicant over a baseball hat and shoes. Then Jonathon Thomas and Reddish tried to break up the altercation between Bussey and Applicant. Cade testified that nothing physical occurred when they intervened. After walking out of the club, she saw Applicant pull a gun from out of his pants and say to Reddish "MF, I'm going to kill you tonight" and fire a shot into the ground. Applicant and Reddish then ended up in a bear hug. Reddish fell after two more shots were fired. Tr. pp. 81-85.

Jonathon Thomas testified that he knew Applicant all his life and was best friends with Reddish. Thomas testified that he went to break up an argument between Applicant and Bussey. Thomas said nothing physical occurred. He clarified on cross-examination that Reddish was not anywhere near Applicant at this time. Thomas said that he approached Applicant outside and they shook hands. He was walking away when he looked back and saw Applicant fire shots at Reddish. Thomas denied having any personal conflict with Applicant. Tr. pp. 92-97; p. 103.

Applicant gave a statement to Investigator Cain. Cain testified that Applicant told him the Bussey took a baseball cap from him and ran into a crowd of people. She also slapped him and threw a drink in his face. Applicant alleged twelve males began to push him inside the club and he went outside the club. Applicant alleged Bussey and the same group of males approached him outside the club. Bussey approached Applicant and hit him again. This time, he grabbed her throat and pushed her away. Reddish then approached and hit Applicant in the face and a physical fight broke out where Reddish struck Applicant again. Cain observed that Applicant had an injury to his lip. Applicant alleged that Reddish had Applicant secured in a bear hug. While trying to break free, Applicant heard gunshots and Reddish fell to the ground. Tr. pp. 128-29. Cain asked Applicant to explain how Reddish had two frontal gunshot wounds without Applicant suffering any injury if they were locked in a bear hug. Applicant responded it

was "God's will" and confirmed he meant divine intervention. Tr. p. 130.

No defense witnesses were presented and counsel had the benefit of last closing argument. She argued inconsistencies between the three eyewitnesses and questioned why the State did not present other witnesses from the crowded club. Tr. pp. 214-217.

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 presented 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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct

should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below:

Batson motion

Applicant alleges trial counsel was ineffective for failing to make a Batson motion because three of the four jurors struck by the prosecution were African-American. Counsel testified that the jurors struck had criminal records, which would justify the prosecution's strikes. Counsel testified that in her view, it was unlikely that the Batson motion, if made, would be granted. Counsel further testified that Aiken's population is roughly seventy-five percent Caucasian and two of the jurors selected were African-American, so she felt that the racial makeup of the jury was consistent with county demographics. Counsel testified she was more concerned about the number of teachers in the jury pool, due to the fact that the trial was taking place in the summer.

This Court finds that Applicant has not met his burden of proving counsel was ineffective. This Court finds that Counsel stated reasonable trial strategy in her decision not to move to strike the jury under Batson and further, Applicant has failed to meet his burden of proving prejudice. This allegation is denied.

State's witnesses with criminal records

Applicant alleges Counsel was ineffective for failing to impeach State's witnesses with prior criminal records. Latasha Brown had a conviction from 1996 for shoplifting. Counsel testified that she considered the conviction too old to carry any valuable impeachment value. Counsel testified that she was concerned that if she impeached Brown with a stale conviction, it

would appear to the jury that she was trying to distract the jury from the real issues at trial.

Applicant also alleges that Jonathan Thomas should have been impeached with prior convictions. Thomas was convicted in 1997 of criminal sexual conduct in the third degree, and in 1999 and 2008 for failure to register on the sex offender registry. The 1997 conviction would have been stale at trial and subject to a probative/prejudicial analysis with doubtful probative value; and the sex offender registry convictions would not be admissible since they carried less than a year imprisonment and are unlikely to be considered a crime of dishonesty. See Rule 609, SCRE. This Court is skeptical that these convictions would have been allowed at trial had counsel sought to impeach with the convictions. Thomas, although called as a prosecution witness, was valuable for the defense. Thomas testified, as other witnesses did, to intervening in the dispute between Bussey and Applicant. However, he testified that Reddish was not with him. Importantly, Thomas testified that outside the club, he shook hands with Applicant and walked away. Thomas subsequently turned around to see Applicant firing gunshots. His testimony, corroborating a number of facts not particularly in controversy, also suggested that Applicant was not mad at him over the confrontation. This gives some support to Applicant's theory that Reddish, and not Applicant, was the aggressor in their controversy, since Applicant had calmed down according to Thomas.

Regardless, this Court finds counsel's strategy in not utilizing prior convictions against Brown to be reasonable and does not think it is likely that Thomas's convictions would have been admitted for impeachment purposes at trial. Further, this Court finds impeachment with these convictions would not likely change the outcome of trial. Accordingly, this Court finds that Applicant has not met his burden of proving counsel ineffective.

Failure to investigate, failure to subpoena witnesses

Applicant alleges counsel should have subpoenaed witnesses for the defense. Counsel testified that beyond one witness, Tiffany Grimes, Applicant did not give any other names of potentially helpful witnesses. Grimes testified at trial, and in counsel's estimation was not a beneficial defense witness. Counsel also testified she was concerned that if she sought out additional witnesses from the club, she might generate witnesses for the prosecution that would be detrimental to Applicant's case. Counsel agreed there was a strategic advantage to having last closing argument. This Court notes Applicant failed to present any witnesses at the PCR hearing to support this claim. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (in order to succeed on a claim that counsel was ineffective for failing to interview/call a witness, the applicant must present competent evidence showing what the testimony of the proposed witness would be). This Court finds that counsel's performance was not deficient and that she explained reasonable trial strategy in regards to investigating or interviewing potential witnesses. This Court finds reasonable her decision not to call Grimes at the second trial, and concurs in her professional judgment that Grimes was not a beneficial witness. This Court also find that Applicant failed to show he was prejudiced by any perceived deficiency of counsel in regards to investigating or obtaining potential witnesses for the defense.

Investigator Cain's testimony

Applicant complains about testimony from Investigator Cain that referenced Applicant's prior period of incarceration:

> . . . Forrest reported while inside, Bussey, his ex-girlfriend, who had formed a relationship with Mario Reddish during his, Forrest, recent incarceration, began a verbal argument over his flirtations with Monique.
>
> Forrest continued to report Bussey took his ball cap and relocated within a group of 12 males toward the rear of the Elk's

> Club. Forrest reported he approached her to retrieve his cap whereas Bussey threw a drink on him and slapped his face several times.
>
> Forrest reported he ignored Bussey's assault and after obtaining his cap, the 12 males began to shove him and he left the interior of the Elk's Club relocating to the rear driver door of the white-in-color Lincoln operated by James Forrest.
>
> Forrest reported he opened the door to enter, was unable to due to the driver's seat being fully declined and upon relocating to the front of the vehicle observed Bussey and the same group of males approaching him.
>
> Forrest reported Bussey hit his face several times and he grabbed her throat and pushed her away. Forrest reported Reddish then approached – Mario Reddish then approached him and punched him in the face and a physical fight erupted whereas Mario Reddish again struck him in the jaw as the fight relocated to the front region of the Lincoln.

Tr. p. 127, line 10 – p. 128, line 11. Cain testified similarly at the Jackson v. Denno hearing. Applicant alleges that counsel should have made a motion in limine to not have the term incarcerated mentioned.

Counsel testified she did not object to Cain's testimony because she did not want it to appear that she was hiding anything from the jury. Additionally, she noted the testimony suggested a short period of incarcerated and did not reference a particular charge. Given this context, she did not think the testimony was prejudicial. This Court agrees with counsel that the oblique reference to incarceration was not prejudicial. Further, the testimony provides context beneficial to the defense. Bussey was clearly the instigator and clearly was unreasonable. This is underscored by the fact that she broke up with Applicant while he was involuntarily elsewhere and was now jealous that he was flirting with another women, even though she started dating Reddish while he was incarcerated. Her actions were clearly the catalyst for these unfortunate events. This Court does not find that the testimony was prejudicial and finds its omission would not have changed the outcome of trial. Instead, this Court believes it was generally beneficial to

the defense and probative in providing context. This Court finds that counsel's performance was not ineffective.

Advice in rejecting plea offer

Applicant alleges counsel was ineffective in her advice regarding an offer from the prosecution for Applicant to plead guilty to voluntary manslaughter and receive a twenty year prison sentence. Applicant alleges he was not advised correctly on his exposure to life without parole and did not have adequate time to discuss the offer. Counsel testified she advised Applicant he was facing life without parole. Counsel testified the offer came after Applicant was already served with notice that the prosecution would seek life without parole based on a prior most serious offense. Counsel urged Applicant to take the offer and discussed the offer at length. This Court finds Applicant's testimony lacks credibility and finds counsel's testimony to be credible and gives it great weight. This Court finds Applicant was advised that he would receive life without parole upon conviction for murder and that Applicant rejected the offer with eyes wide open as to the risks and benefits of rejecting the offer. This Court finds counsel's advice to take the plea offer was reasonable and did not fall below professional norms. Given Applicant's credibility problems that will be further discussed, this Court finds that Applicant failed to meet his burden of proving prejudice. Accordingly, this allegation is denied.

Cross examine witnesses on sobriety or drug use

Applicant alleges that counsel should have cross-examined more thoroughly witnesses from the first trial who claimed sobriety because they were drug users and/or dealers. This Court denies this allegation because the first trial ended in mistrial. The remedy for ineffective assistance of counsel is a new trial, so any defects in counsel's representation are mooted by a mistrial.

Fractured humerus in victim's autopsy

Applicant alleges counsel should have investigated evidence showing Applicant's existing injuries that were noted in the autopsy. Applicant has failed to show what additional benefits would accrue from investigating the autopsy results. Counsel testified that she did not see any potential gains from further investigation. This Court finds Applicant failed to meet his burden of proving either prong of Strickland and denies this allegation.

Inferred malice charge

Applicant complains that counsel was ineffective for failing to object to the implied malice instruction given by the trial court to the jury, citing State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). However, Belcher explicitly holds that it will not apply retroactively and Applicant's trial occurred prior to Belcher being issued. Further, counsel is not required to be clairvoyant and anticipate changes in law. Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992). Accordingly, this Court finds that counsel was not ineffective.

Burden shifting allegation

Applicant further claims that the following portion of the trial court's instruction to the jury was impermissible burden shifting: "Malice may be inferred from conduct showing total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon." Tr. p. 234, lines 16-18. Despite the use of the permissive term "may" in the instruction, Applicant describes this instruction as a mandatory presumption. This Court disagrees. Counsel testified that she did not consider this instruction to be burden shifting. This Court finds that counsel's judgment on the matter does not fall below professional norms and further finds that the instruction does not tend to shift the burden of proof and is an accurate statement of law. Accordingly, this Court finds counsel was not ineffective.

Self-defense

Applicant alleges counsel was ineffective for not discussing and pursing self-defense. Counsel testified she thought self-defense would be a strong claim, but Applicant insisted he did not have a weapon. See generally McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995) (upholding denial of relief where counsel testified he did not pursue an entrapment defense because applicant denied committing drug distribution offense until fifteen minutes prior to trial). Applicant admits he did not tell counsel that he had a weapon. Underscoring Applicant's credibility problems is his testimony on this point. Applicant told Investigator Cain that he did not have a weapon, that he heard shots while he was in a bear hug with Reddish, and after the shots were fired, Reddish fell down. Applicant now admits at the PCR hearing that he had a weapon, but claims he acted in self-defense and despite what he told Cain and the testimony from other witnesses, he was not locked in a bear hug with Reddish. Applicant admits he did not tell Cain the truth because he was trying to get out of trouble. This Court finds that Applicant's new version of events is not credible. Further, Applicant failed to advise counsel of this information. Accordingly, counsel's performance is not deficient, nor is Applicant prejudiced by the alleged deficiency. In so finding, this Court finds counsel's testimony is credible and gives it great weight. Further, this Court finds that Applicant's testimony lacks credibility and finds that he has picked another untruthful version of events to obtain a desired result. This Court further finds that had he testified, his testimony would not have affected the outcome of the trial. This allegation is denied.

Family difficulties

Applicant alleges counsel was ineffective for failing to present evidence that there was a history of difficulties and ill will between the Thomas and Forrest families. At the PCR hearing,

Applicant introduced an indictment from 1991 charging a James Forrest with assaulting Lewis Thomas, Sr. Applicant testified that this James Forrest was his brother (Applicant was with his cousin, also named James Forrest, the night of the murder). Applicant testified that Lewis Thomas was Jonathan Thomas' older brother. Applicant alleges that Lewis Thomas died as a result of the assault and his brother James Forrest pled guilty to voluntary manslaughter. Applicant's counsel indicated that he had not been able to locate an indictment or sentencing sheet for voluntary manslaughter.

This Court notes Applicant's lack of credibility generally in his testimony and further notes Applicant bears the burden of proof in this proceeding. Accordingly, in the absence of proof, this Court finds that Applicant did not meet his burden of proving bad blood between families or even the purported 1991 homicide. However, this Court will continue further analysis that assumes these facts were true.

This Court would note that at trial, during cross-examination, Thomas denied knowledge of bad blood. Thomas also denied that Forrest's brother killed his brother. He denied any animosity personally with Applicant. Tr. pp. 103-104.

The evidence at trial supported a physical confrontation with Reddish, but not Thomas. Further, some evidence suggests that Reddish might have been the aggressor, but no evidence indicates Thomas was the aggressor or that bad blood between families was a motive for Thomas or a basis for fear by Applicant. The matter seems generally collateral to the issues presented at trial, and so this Court questions whether counsel would have been able to present extrinsic evidence of the alleged difficulties at trial. See State v. Beckham, 334 S.C. 302, 321, 513 S.E.2d 606, 615 (1999) ("When a witness denies an act involving a matter collateral to the case in chief, the inquiring party is not permitted to introduce contradictory evidence to impeach the

witness.").

Even if the court records were found and admitted, this Court does not believe that it would have changed the result of trial. For one thing, the fact that Applicant might have a brother who also committed a homicide carries potential prejudice to Applicant. Second, the conflict was principally with Bussey and then Reddish, not Thomas. The evidence would not have changed the outcome of trial if it was admitted. Further, this Court adheres to its position that Thomas' testimony was more helpful than prejudicial to Applicant, because it established the lack of hard feelings between the two, giving some support to the contention that Reddish was the actual aggressor. This Court finds that Applicant failed to meet his burden of proving this allegation.

CONCLUSION

Based on 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.

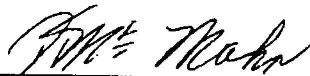
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. <u>See</u> Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. <u>State v. Bray</u>, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to <u>Austin v. State</u>, 305 S.C. 453, 409 S.E. 2d 395 (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 an applicant's behalf.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of Oct, 2014.



R. Knox McMahon
Presiding Judge
Second Judicial Circuit

Lexington, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0201834

Joshua Lamar Forrest	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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. ☐ See Page 2 for additional information.

☐ **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 JUDGMENT 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 (List amount(s) below)

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	10/9/2014 Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **10-9-14**, and a copy mailed first class or placed in the appropriate attorney's box on **10-9-14**, to attorneys of record or to parties (when appearing pro se) as follows:

Martin Charles Puetz 415 Fourth St. Augusta, GA 30901	**Daniel Gourley**
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
Court Reporter	**Liz Godard - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2011-CP-02-1834

Joshua Forrest, #274525,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

This matter is before this Court by way of an application for post-conviction relief (PCR) filed August 23, 2011. The State made its return on June 15, 2012. A hearing was convened at the Aiken County Courthouse on July 30, 2014. Applicant was present and represented by Martin C. Puetz, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General. Following the hearing, this Court issued its Order of Dismissal on October 9, 2014, denying Applicant's PCR application. On October 23, 2014, Applicant's counsel filed a motion pursuant to Rule 59(e), SCRCP, attaching Applicant's handwritten arguments.

Applicant alleges counsel was ineffective for not objecting to the trial court's answer to a jury note stating the following: "Does premeditated have to be toward a specific person or toward a random crowd." Tr. p. 246, line 24 – p. 247, line 1. After discussion between the prosecution and counsel, the trial court advised the jury of the following:

> And to the extent this is a question about the law, the word premeditated is a legal term which is not a part of the offense of murder or voluntary manslaughter. Premeditation is not contemplated in the two crimes as defined in the State of South Carolina.

4.13.15
C.C.C.P.&G.S.
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 13 day of April 2015
C.C.C.P. & G. S., Aiken County, S.C.
Deputy Clerk

> Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time of the act – the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Tr. p. 251, lines 1-11.

This Court disagrees with Applicant's argument that this was not an appropriate manner to answer the jurors' question. Applicant relies on State v. Franklin, 310 S.C. 122, 425 S.E.2d 758 (Ct. App. 1993) *rev'd on other grounds by* Brightman v. State, 336 S.C. 352, 362, 520 S.E.2d 614, 616 (1999). In Franklin, the Court of Appeals found the defendant was not entitled to a jury instruction on voluntary manslaughter based on an argument between defendant and his father the day before and the day that defendant killed his father. Defendant also killed his stepmother. The Court of Appeals found that there was no evidence of legal provocation since "mere words are not a sufficient provocation for killing with a deadly weapon." Id. at 126, 520 S.E.2d at 761. Further, the argument did not occur immediately before the shooting, indicating a lack of heat of passion. Id. The Court of Appeals noted, "There was also ample evidence of deliberation and premeditation by Franklin before he shot his victims." Id.

In this context, the Court of Appeals was not finding that premeditation was a necessary element of murder. Instead the Court of Appeals was noting the lack of evidence of a sudden heat of passion as an element of voluntary manslaughter based on the evidence of premeditation.

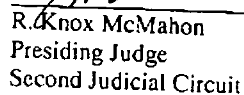
Applicant also relies on State v. Blassingame, 271 S.C. 44, 244 S.E.2d 528 (1978). In that case, the jury sent a note asking for additional instructions on the definitions of murder and voluntary manslaughter. The trial judge advised the jury, in relevant part, "If you believe that this defendant killed her son but did not have malice aforethought in her heart, didn't intend to kill him, she would be guilty of [voluntary] manslaughter." Id. at 46, 244 S.E.2d at 529. The

Supreme Court noted that voluntary manslaughter does require intent and therefore the instruction was erroneous. In the instant case, the trial court's instruction was a correct statement of law. Therefore, the issue has no merit and this Court denies Applicant's motion.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. The previous order fully comports with the requirements of Rule 52(a), SCRCP.

IT IS THEREFORE ORDERED: That Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 8th day of April, 2015.



R. Knox McMahon
Presiding Judge
Second Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0201834

Joshua Lamar Forrest	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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. ☐ See Page 2 for additional information.

☐ 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 JUDGMENT 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 (List amount(s) below)

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 | 4/13/2015 Date

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

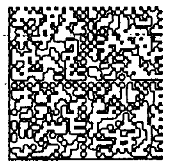
This judgment was entered on **13th day of April, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **13th day of April, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

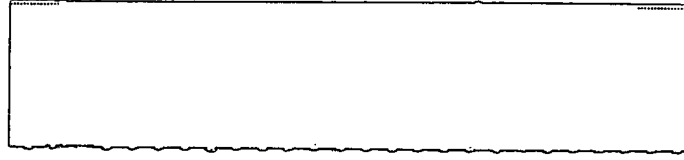
Martin Charles Puetz 415 Fourth St. Augusta, GA 30901	**Mary Williams Leddon** PO Box 11549 Columbia, SC 29211-1549
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	Liz Godard by Shannon [illegible]
Court Reporter	**Liz Godard - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Law Office of Martin C. Puetz, LLC
415 Fourth Street
Augusta GA 30901





Mr. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia SC 29211-1330