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Attorneys and Counselors at Law

"Success is all that matters"

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July 28, 2015

RECEIVED

AUG 03 2015

Daniel E. Shearouse  
Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

S.C. SUPREME COURT

Re: *Anthony M. Riggins, #305169 vs. State of South Carolina*  
Case No.: 2014-CP-26-2120

Dear Mr. Shearouse:

Enclosed please find the original and one (1) copy of a Notice of Appeal and Certificate of Service in the above-referenced matter. Please clock and file the originals and return the clocked copies to me in the self-addressed stamped envelope I have provided for your convenience.

Thank you for your assistance in this matter and should you have any questions, please do not hesitate to contact our office.

Sincerely,



Heather L. Harris  
Paralegal

HLH/  
Enclosures

Cc: South Carolina Appellate Defense  
Joshua Thomas, Esq.  
Horry County Clerk of Court  
Anthony M. Riggins, #305169

SUPREME COURT OF SOUTH CAROLINA

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APPEAL FROM HORRY COUNTY  
In The Court of Common Pleas

Honorable Michael G. Nettles  
Common Pleas Judge of the Fifteenth Judicial Circuit

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Case No.: 2014-CP-26-2120

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Anthony M. Riggins, #305169, Petitioner,

v.

State of South Carolina, Respondent.

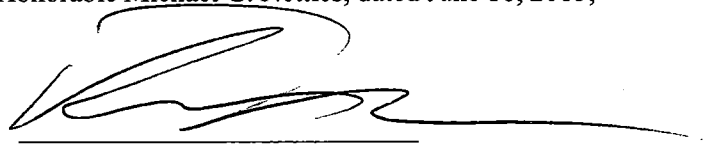
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NOTICE OF APPEAL

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Petitioner appeals the Order of Dismissal of the Honorable Michael G. Nettles, dated June 16, 2015, and received by Petitioner on July 10, 2015.

July 28, 2015



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Respondent's Attorney:  
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AUG 03 2015

S.C. SUPREME COURT

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM HORRY COUNTY  
In The Court of Common Pleas

Honorable Michael G. Nettles  
Common Pleas Judge of the Fifteenth Judicial Circuit

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AUG 03 2015

Case No.: 2014-CP-26-2120

S.C. SUPREME COURT

Anthony M. Riggins, #305169, Petitioner,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

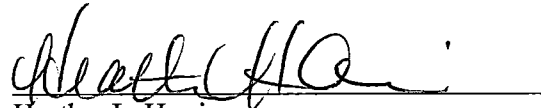
I, Heather L. Harris, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Notice of Appeal upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

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Heather L. Harris  
Paralegal

July 29, 2015  
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Anthony M. Riggins, #305169, )  
Applicant, )

Case No. 2014-CP-26-2120

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

HORRY COUNTY  
2015 JUN 26 PM 1:31  
MELANIE HUGHES-WARD  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 8, 2014. Respondent made a timely Return on or about January 13, 2015. The Court convened an evidentiary hearing into the matter on May 12, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

The following individuals testified at the evidentiary hearing: Applicant, Applicant's father, and Kia T. Wilson, Esquire. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the pleadings, and the exhibits introduced at the hearing. 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 Horry County Clerk of Court. In July 2008, the Horry County Grand Jury indicted Applicant for armed robbery (2008-GS-26-2589). Kia T. Wilson, Esquire ("trial counsel"), represented Applicant. On June 20, 2013, Applicant proceeded to trial before

copy

the Honorable John C. Hayes III and a jury. On June 21, 2013, the jury found Applicant guilty as indicted. Judge Hayes sentenced Applicant to thirty years imprisonment.

Applicant filed a timely notice of appeal, and Lara M. Caudy, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an Anders<sup>1</sup> brief. Applicant voluntarily withdrew his appeal, and the South Carolina Court of Appeals dismissed the appeal on April 2, 2014. The Court of Appeals returned the remittitur to the circuit court on April 18, 2014.

## II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
  - a. Failure to preserve objection to ruling on Neil v. Biggers, 409 U.S. 188 (1972), hearing.
  - b. Failure to impeach victim at Neil v. Biggers hearing.
  - c. Failure to enter victim's statement into evidence at Neil v. Biggers hearing.
  - d. Failure to move to sequester witnesses at Neil v. Biggers hearing.
  - e. Failure to call witnesses at Neil v. Biggers hearing.
  - f. Failure to enter police report into evidence at Neil v. Biggers hearing.
  - g. Failure to enter incident report into evidence at Neil v. Biggers hearing.
  - h. Failure to properly respond to judge's questions at Neil v. Biggers hearing.
  - i. Failure to enter jail booking report into evidence.
  - j. Failure to elicit testimony about suspect's height.
  - k. Failure to impeach victim.
  - l. Failure to request voir dire questions.
  - m. Failure to request mistrial after a juror reported a relationship to the victim.
  - n. Failure to request polling of jury.
  - o. Failure to object to a juror.
  - p. Failing to call the crime scene specialist as a witness.

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<sup>1</sup> Anders v. California, 386 U.S. 738 (1967).

- q. Failure to present a 911 tape.
  - r. Failure to investigate crime scene.
  - s. Failure to object to victim's testimony.
  - t. Failure to cross-examine the victim regarding identification.
  - u. Failure to cross-examine the arresting officer about identification.
2. "Due Process Violation"
    - a. "Erroneous advice of counsel"
  3. "Prosecution Misconduct"

At the evidentiary hearing, Applicant proceeded on only the following allegations of ineffective assistance of trial counsel:

1. Failure to properly argue and preserve issues relating to the Neil v. Biggers, 409 U.S. 188 (1972), hearing.
2. Failure to strike Juror #251 for cause.
3. Failure to present Applicant's father as a witness.
4. Failure to argue for a directed verdict because there was no evidence Applicant possessed a gun.

### **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 has further 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. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

#### **A. Summary of Testimony**

Applicant testified he was arrested while walking down the street. He testified he was wearing a white t-shirt and light colored jeans. Applicant testified trial counsel did not discuss trial strategy with him and did not share discovery with him. He stated trial counsel told him she could not enter evidence. He also stated she never told him he could testify. Applicant testified he wanted several witnesses called and evidence introduced at the Biggers hearing. He testified trial counsel failed to use several police reports (See Applicant's Ex. Nos. 1-4) to impeach the

victim at the Biggers hearing.

Applicant also testified trial counsel failed to argue for a directed verdict on the grounds there was no evidence a gun was used in the robbery. Applicant alleged trial counsel should have attempted to strike Juror #251 for cause because he worked for the Myrtle Beach Police Department. He also testified he wanted trial counsel to call his father as an alibi witness.

Applicant's father testified he was with Applicant the day Applicant was arrested. He testified he last saw Applicant at 1:00 P.M. when he dropped Applicant off at a bus stop. He also testified Applicant was wearing a New York t-shirt when he dropped Applicant off at the bus stop.

Trial counsel testified she has been practicing law for almost eleven years. She recalled being appointed in January 2011 as Applicant's third attorney. Trial counsel testified she reviewed all of the discovery in the case and met with Applicant a number of times. She testified Applicant denied committing the crime, and she developed a trial strategy to challenge the victim's identification of Applicant. She recalled thoroughly challenging the victim's identification in the Biggers hearing. Trial counsel testified she impeached the victim with his written statements from the night of the crime and with the information in the incident reports. Trial counsel maintained she did not believe she needed to introduce the statement and reports as evidence because the victim admitted to the inconsistencies despite being positive of his identification. She also testified she did not introduce any of these items at trial because she would have lost the right to last closing argument.

Trial counsel testified she was out of strikes when Juror #251 was presented. She testified she did not think she could challenge the juror for cause because he testified in voir dire he could be fair and impartial. She also recalled nothing about the juror at that time caused her

to be concerned with seating him. Trial counsel testified she argued for a directed verdict on the grounds the state had not presented evidence of Applicant's guilt.

### **B. Ineffective Assistance of Trial Counsel**

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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, trial counsel's 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. Biggers Hearing**

The Court finds Applicant failed to meet his burden to show trial counsel performed ineffectively in any aspect of her conduct of the Biggers hearing. Applicant’s allegation trial counsel failed to utilize the victim’s statement and the police report is without merit. Trial counsel conducted an extensive and thorough cross examination of the victim at the pre-trial hearing. She cross-examined the victim on the circumstances of his identification, the inconsistencies in his written statement, and the lack of details in his report to police. (Trial Tr. p. 8, line 17-p. 15, line 22). The fact that the victim's statement or police reports were not introduced is inconsequential in light of this thorough cross-examination. See Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (per curiam) (“[T]he Confrontation Clause guarantees an opportunity for effective cross examination, not cross examination that is effective in whatever way, and to whatever extent, the defense might wish”); see also Simpson v. Moore, 367 S.C. 587, 598 n.2, 627 S.E.2d 701, 707 n.2 (2006) (“Though hindsight may provide a different view of counsel’s actions, Simpson is not entitled to a new trial for the sole purpose of presenting a ‘fancier’ case.” (citing Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998))). Furthermore, Applicant failed to show how introduction of these materials as exhibits would have provided additional information that was not presented through the victim’s testimony. Jackson v. State, 329 S.C. 345, 351, 495 S.E.2d 768, 771 (1998). Accordingly, the Court finds Applicant failed to demonstrate trial counsel’s performance during the Biggers hearing was deficient or that he was prejudiced by her performance.

Applicant's allegation trial counsel failed to preserve the suppression motion for appellate review is also without merit. Trial counsel thoroughly argued the suppression motion in a pre-trial hearing. The victim was the first witness to testify. Trial counsel did not need to make a contemporaneous objection to the victim's identification because no evidence was taken between the trial court's ruling on the admissibility of the identification and the victim's testimony. State v. Forrester, 343 S.C. 637, 642-43, 541 S.E.2d 837, 840 (2001). Accordingly, trial counsel was not deficient because this issue was properly preserved for appellate review. Regardless, Applicant has also not shown prejudice because the trial judge properly denied the suppression motion. See State v. Brown, 356 S.C. 496, 507, 589 S.E.2d 781, 787 (Ct. App. 2003) ("show-up" identification admissible where totality of circumstances indicates identification is reliable). Therefore, relief is denied on this ground.

## **2. Juror #251**

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective for failing to move to strike Juror #251 for cause. Regarding this allegation, the Court finds trial counsel's testimony credible and gives it great weight. Initially, the Court notes trial counsel could not have struck Juror #251 for cause. S.C. Code Ann. § 14-7-820 disqualifies from jury service any "clerk or deputy clerk of the court, constable, sheriff, probate judge, county commissioner, magistrate or other county officer, or any person employed within the walls of any courthouse[.]" Juror #251 testified in voir dire that he was a "counter-terrorism advisor to the SWAT team" in Horry County. (Trial Tr. p. 23, lines 6-8). Applicant failed to present any testimony from Juror #251 at the evidentiary hearing to demonstrate Juror #251 was "vested with like powers and duties of a law enforcement officer" to disqualify him from jury service. State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000) overruled on other

grounds by Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009) (citing State v. Johnson, 123 S.C. 50, 115 S.E. 748 (1923)). Because no such evidence was presented, the Court will not speculate on whether Juror #251 was disqualified. Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) (“Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice[.]” (citations omitted)); Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (finding of prejudice cannot be based on “pure conjecture”).

The only evidence of Juror #251's employment is his testimony in voir dire. That testimony does not indicate Juror #251 is a “sheriff” or deputy sheriff such that he would be automatically disqualified under the statute. See Bryant v. State, 264 S.C. 157, 158, 213 S.E.2d 451, 452 (1975) (statute “does not specifically disqualify a special deputy sheriff from jury duty”). Juror #251 also acknowledged in voir dire that he could still be fair and impartial regardless of his relationship with law enforcement. (Trial Tr. p. 23, lines 20-25). Therefore, Applicant has not demonstrated trial counsel had valid grounds to move to strike Juror #251 for cause. Bryant, 264 S.C. at 158, 213 S.E.2d at 452 (special deputy not disqualified where there was “no showing of bias or prejudice”); Hughey, 339 S.C. at 450, 529 S.E.2d at 727 (2000) (“In light of the fact that the voir dire of [corrections officer] reveals no bias, [corrections officer's] subjective view of his employment does not disqualify him[.]”). Furthermore, the Court also notes trial counsel used all of her preemptory strikes before Juror #251 was presented. (Trial Tr. p. 31, line 22-p. 32, line 2).

Because trial counsel had no grounds to move to exclude Juror #251 from the jury, she was not deficient in failing to do so. Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (counsel not deficient for failing to make specific arguments where “it would have been futile for [counsel] to have made such arguments”). Furthermore, Applicant has not

demonstrated prejudice from trial counsel's decision to not strike Juror #251 because Applicant received a trial before a fair and impartial jury. State v. Stanko, 376 S.C. 571, 576, 658 S.E.2d 94, 96-97 (2008) ("While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury."). Accordingly, relief is denied on this ground.

### **3. Applicant's Father**

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective for failing to call Applicant's father as a witness. Applicant's father testified at the evidentiary hearing that he last saw Applicant at 1:00 P.M. wearing a tee shirt similar to the one police and the victim described him wearing when he was arrested at 8:00 P.M. Because this testimony would have been more harmful than helpful if presented at trial, trial counsel was not ineffective in failing to call Applicant's father as a witness.

### **4. Directed Verdict Motion**

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective in failing to further argue for a directed verdict. Trial counsel argued for a directed verdict on the grounds there was no evidence to connect Applicant to the crime. (Trial Tr. p. 91, lines 6-20). This argument is sufficient. The fact trial counsel did not specifically point out the absence of a gun is not significant where she otherwise argued no evidence supported submission of the case to the jury. Accordingly, trial counsel was not deficient in her argument for a directed verdict. Furthermore, the victim's testimony indicates Applicant created the appearance of having a weapon under his shirt during the robbery. Such testimony is sufficient to sustain a conviction for armed robbery. See S.C. Code Ann. § 16-11-330(A) ("A person who commits

robbery [...] while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony[.]”). Therefore, Applicant was not prejudiced when trial counsel did not specifically mention the lack of a gun in her directed verdict motion.

### **5. Overwhelming Evidence of Guilt**

Independent of the above analysis, the Court finds Applicant has not demonstrated he was prejudiced by trial counsel’s performance in any regard because there is overwhelming evidence of Applicant’s guilt. The victim testified he observed Applicant in the well-lit hotel lobby on 4<sup>th</sup> Avenue when Applicant demanded money making a representation of a weapon. He described Applicant as wearing an “I love NY” tee shirt. Fifteen minutes later, Police apprehended Applicant on 7<sup>th</sup> Avenue wearing an “I love NY” tee shirt turned inside-out. The victim positively identified Applicant as the man who robbed him. This evidence overwhelmingly implicates Applicant in this crime. Accordingly, the Court finds Applicant cannot demonstrate any of the above alleged errors of trial counsel contributed to his conviction. See Brown v. State, 383 S.C. 506, 518, 680 S.E.2d 909, 916 (2009) (no prejudice where there exists overwhelming evidence of guilt); Franklin v. Catoe, 346 S.C. 563, 574, 552 S.E.2d 718, 724 (2001) (same).

### **C. All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### **IV. CONCLUSION**


Based on the foregoing, the Court finds and concludes Applicant has not established by a preponderance of the evidence 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 16 day of June, 2015.

  
\_\_\_\_\_  
THE HONORABLE MICHAEL G. NETTLES  
Presiding Judge

Homee, South Carolina




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