

# The Brooks Law Offices, LLC

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**Irma R. Brooks**  
**Attorney**

August 3, 2015

**RECEIVED**

AUG 07 2015

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

RE: Teron Jackson v State of South Carolina  
Case No. 2012-CP-43-1958

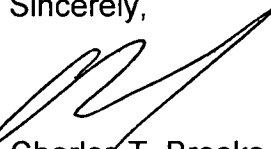
Dear Sir or Madam:

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

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

With kind regards, I am

Sincerely,



Charles T. Brooks, III  
CTB/jlb

Enclosed as stated

Cc: Daniel Gourley, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Teron Jackson, 334394

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Honorable George C. James, Jr., Circuit Court Judge

**RECEIVED**

AUG 07 2015

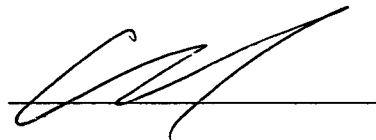
Case No: 2012-CP-43-1958

**S.C. SUPREME COURT**

Teron Jackson.....Appellant  
S.C.D.C. 334394  
v.  
The State.....Respondent

NOTICE OF APPEAL

Teron Jackson, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable George C. James, Jr., July 20, 2015, which I, Charles T. Brooks, III, received on August 3, 2015.



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THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable George C. James, Jr. Circuit Court Judge

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Case No: 2012-CP-43-1958

Teron Jackson.....Appellant

S.C.D.C. 334394

v.

The State.....Respondent

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**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on this 3<sup>rd</sup> day of August, 2015, I served the foregoing **Notice of Appeal, Order of Dismissal** , as well as **Certificate of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on August 3, 2015, addressed to the following as indicated below:

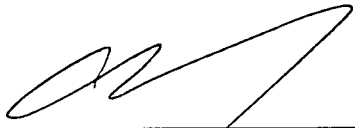
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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

Office of Attorney's General  
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Columbia, South Carolina 29211-1549

Teron Jackson, 334394  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, S. C. 29010

Dated: August 3, 2015

  
\_\_\_\_\_  
Charles T. Brooks, III  
Attorney for the Appellant  
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STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

RECORDED

2015 JUL 27 AM 10:51

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Teron Jackson, #334394,

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Case No. 2012-CP-43-1958

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 2, 2012 and amended on February 20, 2014, July 23, 2014, and December 5, 2014. Respondent made its return on March 22, 2013. An evidentiary hearing was convened on April 14, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. The Applicant was true bill indicted at the February 2009 term of the Sumter County Grand Jury under a six count indictment (2007-GS-43-0816) for Murder, two counts of Attempted Armed Robbery while Armed with Handgun, Possession of a Firearm During Commission of a Crime of Violence, Possession of Pistol by One Less Than 18 years of Age, and Lynching (1st Degree). Applicant was represented by Timothy Murphy, Esquire. On April 15-22, 2009, the Applicant proceeded to a jury trial before the Honorable R. Ferrell

*[Signature]*

Cothran, Jr. On April 22, 2009, the Applicant was found guilty of Murder, Attempted Armed Robbery, Possession of a Firearm during Commission of a Crime of Violence, and Possession of Pistol by One Less Than 18 years of Age. Judge Cothran sentenced the Applicant to thirty-seven years confinement for murder, twenty years confinement for Attempted Armed Robbery, five years confinement for Possession of a Firearm during Commission of a Crime of Violence and five years confinement for Possession of Pistol by One Less Than 18 years of Age; with the sentences to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Teron Hakeen Jackson, Op. No. 2011-UP-430 (S.C. Ct. App. filed October 3, 2011). The remittitur was sent October 19, 2011.

### ALLEGATIONS

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

1. Ineffective assistance of trial counsel;
  - a. "Failed to conduct an independent investigation of his own to determine if there were any documented record evidence proffering that the applicant had a learning disability for his schools, etc., research the records of the police department showing that officers made attempts to contact applicant's family members before the police interrogated applicant, reexamine the reports and SLED report results by an independent resources to determined that the evidence was without flawed findings."
  - b. "Failed to investigate the circumstances of the crime charged to make a determination of what participation did the applicant had in it so that there could have been a competent trial strategy planned for applicant's trial."
  - c. "Failed to have the court to evaluate the applicant minor status so it could have been determined rather if applicant fully understood his rights to a trial and his constitutional rights by it basic meaning."

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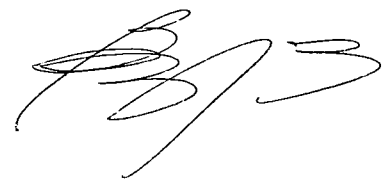
- d. "Failed to pre-trial the defective indictment where it showing the charges presented to the grand jury was without a body and therefore making it a subject matter jurisdiction issue."
  - e. "...when he did not moved to quash the indictment with the crime charged as possession of pistol by one less than 18 years old, and lynching (1st degree)."
  - f. "Failed to have applicant's trial separate from his co-defendant, due to the facts that applicant statements played a hostile component to co-defendant's defense."
  - g. "Failed to have the detectives take a lie detector tests in finding rather the detective used illegal tactics in interrogation of the applicant."
  - h. "Failed to conduct a full investigation to case in regards to the applicant's mental capacity and limited abilities to understand his constitutional rights as he had waived them when he gave multiple statements."
  - i. "Failed to place scrutiny under the facts that the applicant was in the police custody and while being questioning by the investigations applicant was threatened and psychologically fearing §44-23-410, etc."
  - j. "Failed to have independent tests done to the forensic reports as in determining what gun actually killed the decedent."
  - k. "Failed to motion for trial severance based upon the facts that the applicant made statements that placed him in a hostile position to his co-defendant defense."
  - l. "Failed to confer with applicant and advise him of a trial strategy and help plan his defense to present evidence in his favor to the jury."
  - m. "Failed to quash the indictments that was true billed by the grand jury as there were only three (3) charges submitted, and the possession of pistol by one less than 18 years of age was never submitted by law statutes, etc."
2. Ineffective assistance of appellate counsel; and
    - a. "Failed to brief all properly preserved issues that the trial counsel placed objections to on the trial record as indicated."
  3. Due process and equal protection rights violations.

Applicant filed his first amendment on February 20, 2014, alleging the following allegations:

1. "Ineffective Assistance of Appellate Counsel for not raising important issues under Bruton."

Applicant filed his second amendment on July 23, 2014, alleging the following allegations:

1. "The analysis of the elements of the crime charged in the indictment may indicate a double jeopardy problem."

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Applicants filed his third amendment to his application on December 5, 2014, alleging the following allegations:

1. Ineffective assistance of counsel
  - a. "Trial Counsel's failure to request a limiting instruction on the jury's use of Co-Defendant's confession."
  - b. "Trial Counsel ineffective for failure to call key witness."
  - c. "Trial Counsel ineffective for failing to object to a burden shifting instruction on malice. Lowery v. State, High v. State and a case to support failure to challenge competence. Matthew v. State."

### **SUMMARY OF TESTIMONY PRESENTED**

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

During the evidentiary hearing, Applicant testified that he is twenty five years old and has a tenth grade education. Applicant stated he was convicted at trial and received a thirty seven year sentence. Applicant stated that he understood the PCR process and the risks involved in going forward with his evidentiary hearing. Applicant stated that he did not meet with Trial Counsel or prepare a trial strategy. Applicant stated that he was incarcerated prior to trial. Applicant recalled reviewing the state's evidence with Trial Counsel prior to trial. Applicant recalled Trial Counsel attempting to suppress his statement.

Applicant stated that he felt Trial Counsel was ineffective for failing to request a limiting instruction on the use of the co-defendant's confession. Applicant stated that he did not feel the redactions used in the co-defendant's statement were adequate. Applicant stated that he felt he should have had a separate trial.

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Applicant stated that Toni Wilson was one of the victims in the armed robbery. Applicant stated Toni Wilson did not testify during the trial. Applicant stated that he was acquitted on attempted armed robbery of Toni Wilson. Applicant stated that the police alleged that he and Jermel Robinson (hereinafter "Co-defendant") attempted to rob Dominique Wimberly (hereinafter "Victim") and Toni Wilson. Applicant stated that Victim was shot and killed. Applicant opined that Trial Counsel should have called Toni Wilson to testify.

Applicant stated Trial Counsel was ineffective for failing to object to trial court's jury instruction on malice. Applicant alleges that trial court's charge was burden shifting. Applicant stated Trial Counsel was ineffective for failing to explore issues pertaining to Applicant's competence and failing to investigate his background. Specifically, Applicant noted Trial Counsel failed to investigate his educational background. Applicant stated Trial Counsel was ineffective for failing to review the forensic report on the gun found at the scene of the crime. Applicant stated that the gun found at the scene did not match the weapon used in the murder.

Applicant stated Trial Counsel was ineffective for failing to quash the indictments for lynching and murder. Applicant argued that the two charges were similar and exposed him to double jeopardy. Applicant stated Trial Counsel should have filed a motion to compel the officers to take a lie detector test. Applicant stated the tape recorder was on and off at various points of his law enforcement interviews. Applicant stated that he did confess to the crime.

Applicant stated Appellate Counsel was ineffective for failing to brief all preserved issues. Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the admission of the co-defendant's statement amounted to a Bruton violation.

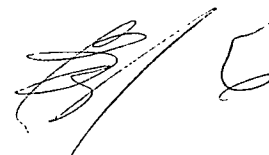


Following Applicant's testimony, Trial Counsel was called to testify by Applicant. Trial Counsel stated that Victim was driving his girlfriend, Toni Wilson, home the night of the murder. Trial Counsel stated Applicant and Co-defendant saw Victim pull up in the apartment parking lot. Trial Counsel stated that Applicant believed Victim had money because the word on the street was the Victim was a drug dealer. Trial Counsel stated his investigation revealed that Victim was not a drug dealer. Trial Counsel stated Applicant and Co-defendant planned to rob Victim. Trial Counsel stated Applicant and Co-defendant got dressed in dark clothing and retrieved their guns. Trial Counsel stated that Applicant went to the passenger side of Victim's vehicle and Co-defendant approached the driver's door. Trial Counsel stated both Applicant and Co-defendant pulled their weapons and demanded money from Victim.

Trial Counsel stated Victim grabbed Co-defendant's gun and shot Co-defendant. Trial Counsel stated Toni Wilson fled the car. Trial Counsel stated Applicant shot Victim as a result of Victim shooting his Co-defendant. Trial Counsel stated both Applicant and Co-defendant fled the scene. Trial Counsel stated Victim stumbled up the apartment stairs and into Toni Wilson's apartment. Trial Counsel stated Victim died in Toni Wilson's apartment as a result of the gunshot wounds.

Trial Counsel stated the State had Applicant's confession, Co-defendant's confession, physical evidence, and various witness statements implicating both Applicant and Co-defendant. Trial Counsel further stated Applicant led the police to his own gun and clothing.

Trial Counsel stated that he never had any concerns about Applicant's competence. Trial Counsel stated that he meet with Applicant eight (8) times. Specifically, Trial Counsel stated that they had extensive conversations about the State's evidence. Trail Counsel stated that

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Applicant helped prepare for their Jackson v. Denno hearing. Trial Counsel stated that he talked to Applicant's grandmother about the evidence.

Trial Counsel stated that there was never a real issue about Applicant's confession, despite Applicant arguing that he was coerced. Trial Counsel stated that he listened to the recording of the interview. Trial Counsel noted that the police asked "pointed" questions, but none of their questions amounted to a threat. Trial Counsel stated Applicant initially gave various general statements, but then confessed in his second statement.

Trial Counsel stated the SLED expert, Frank Defreese, was unable to positively match the .38 caliber bullets found at the scene of the crime to the .38 caliber pistol found in Applicant's car. Trial Counsel stated that the inconclusive results were more helpful to the defense than harmful. Trial Counsel stated that he made a motion for severance and that the motion was denied by the trial court.

Trial Counsel stated that he explained to Applicant that they were going to attempt to suppress his confession. Trial Counsel stated that he advised Applicant that there was a zero percent chance of acquittal if his confession was not suppressed. Trial Counsel stated that they discussed trying to fashion a theory that might lead to a lesser-included charge being submitted to the jury. Trial Counsel stated that he made three requests for a voluntary manslaughter charge, but the trial judge denied the request. Trial Counsel stated that they discussed a possible self-defense claim because Applicant shot Victim after Victim shot Co-defendant. Trial Counsel stated that he explained to Applicant that a self-defense claim was not valid because the facts did not merit a self-defense charge.

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Trial Counsel stated that he and Applicant discussed the possibility of pursuing a plea offer. Trial Counsel noted Applicant's youth. Trial Counsel stated Applicant never wanted to plead guilty. Trial Counsel stated that he argued the trial court's jury instruction on malice was burden shifting. Trial Counsel stated that he did not see a reason to call Toni Wilson to testify during trial. Trial Counsel stated that Toni Wilson would not have been helpful to Applicant's case. Trial Counsel stated that he had no basis to move to quash the indictments for murder and lynching.

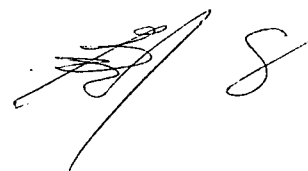
Trial Counsel stated that his view on the use of Co-defendant's statements remain the same. Trial Counsel stated that the two confessions were interlocking. Trial Counsel noted that there was nothing in Co-defendant's confession that was not in Applicant's own confession. Trial Counsel stated he moved to suppress the confession but the trial judge denied the motion.

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

This Court has had the opportunity to review the record in its entirety and has considered the evidence 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. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### **INEFFECTIVE ASSISTANCE OF COUNSEL**

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

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prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

**1. Ineffective assistance of counsel for failing to investigate Applicant's competence.**

This Court finds Trial counsel was not ineffective for failing to explore issues pertaining to the Applicant's competence or for failing to investigate his background. This Court finds very credible Trial Counsel's testimony that the Applicant was engaged in the process and understood everything about the case. Trial counsel spoke with the Applicant's grandmother and thereafter he had no concerns about competence.



During the hearing, this Court was able to closely observe the applicant's performance on the witness stand, and it is readily apparent that the Applicant speaks very well and understands all issues. There is no question that he was able to understand the charges against him and was able to (and did) assist Trial Counsel in his defense. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

**2. Ineffective assistance of counsel for failing to make a motion to sever.**

The Applicant complains that Trial Counsel was ineffective for failing to ask for a severance. The record reveals trial counsel did request a severance but the request was denied by the trial judge. (Tr. p. 88 line 17—p. 96 line 22).

**3. Ineffective assistance of counsel for failing to call Toni Wilson as a witness.**

The Applicant seems to complain ineffective assistance on the ground that Trial Counsel did not call victim Toni Wilson to the witness stand. He claims that since the jury asked during deliberations why Ms. Wilson didn't testify, she should have been called to testify. Since Ms. Wilson did not testify at the PCR hearing, this court cannot consider any testimony she might have given at trial to determine whether failure to call her constitutes ineffective assistance of counsel. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (Holding the Applicant's mere

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speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice).

Also, aside from the fact that the Applicant was acquitted of the Attempted Robbery of Ms. Wilson, Trial Counsel explained he did not call her as a witness because she did not see who committed the murder and attempted robbery; Trial Counsel also explained the solicitor didn't call Ms. Wilson as a witness because she was so terribly distraught. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (finding that trial counsel's choice not to call various witnesses because, in his judgment at the time, their testimony would not have been of value to petitioner's case). This Court agrees and finds Trial Counsel correctly concluded that to call Ms. Wilson as a witness would have only lead her to give a graphic and prejudicial account of what happened during the murder.

**4. Ineffective assistance of counsel for failing to object to a "burden shifting" jury charge on malice.**

The Applicant claims Trial Counsel failed to object to a "burden shifting" jury charge on malice. This ground has no merit, as the charge was a correct statement of the law insofar as this case is concerned. To the extent that the charge was improper in light of State v. Belcher, this argument has no merit since Trial Counsel asked for a lesser included charge on voluntary manslaughter, which was correctly refused by the trial court.<sup>1</sup> This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms.

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<sup>1</sup> In State v. Belcher, the Supreme Court held that a "jury charge instruction that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify homicide." 385 S.C. 597, 600, 685 S.E.2d 802, 803-04 (2009). The Supreme Court held further "the permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder." Id. at 612, 685 S.E.2d at 810 (2009).



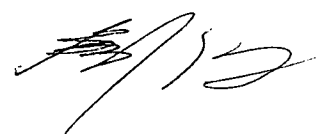
Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel’s performance.

**5. Ineffective assistance of counsel for failing to move to quash the indictment.**

The Applicant claims Trial Counsel should have moved to quash the indictment because it improperly alleged both lynching and murder in two separate counts. The Applicant testified that he felt those two charges “run in the same time bracket.” The Court is aware of no authority precluding an indictment on both charges. Also, since the trial court charged the jury it could not find the applicant guilty of both offenses (Tr. p. 477 line 6—p. 478 line 8), the Applicant suffered no prejudice. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel’s performance.

**6. Ineffective assistance of counsel for failing to use a limiting instruction on the jury’s use of the statement of his co-defendant.**

The Applicant claims Trial Counsel should have requested a limiting instruction from the trial judge on the jury’s use of the statement of his co-defendant. He is correct on that threshold issue. This Court could not find in the transcript where a limiting instruction was requested or given. Under the Bruton line of cases, the trial court, upon request, must charge the jury that it can only consider the co-defendant’s statement, if at all, against the co-defendant. However,

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this court finds there was no prejudice to the defendant resulting from Trial Counsel's failure to request the limiting instruction. In State v. McDonald, 412 S.C. 133, 771 S.E.2d 840 (2015), the Supreme Court held that the defendant's confrontation rights were violated because the co-defendant's confession, even redacted, indicated that "another person" was clearly referring to the defendant. The court, however, also concluded that any error in admitting the confession was harmless, in light of the overwhelming evidence of the defendant's guilt.

In the instant case, it is likely that under the law as recently developed, even a redacted statement from the Applicant's co-defendant would have been inadmissible. Trial counsel did make the argument that the statement, as redacted, obviously implicated the Applicant as "another person" or "the other person." Appellate counsel did not raise this issue on appeal, but should have. Neither Trial Counsel's failure to request a limiting instruction nor Appellate Counsel's failure to raise the issue on appeal prejudiced the Applicant because the evidence of the Applicant's guilt was overwhelming. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S. Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Applicant completely confessed to his involvement to the police. Witness Chyenne Rosenberg testified that immediately after the attempted robbery and murder, the Applicant called her and told her Co-defendant had been shot. (Tr. p. 285 line 19-22). The perpetrators had been identified as wearing all black clothing and wearing masks. Witness Talisha Kinard testified she saw the Applicant wearing all black and holding a mask and a gun the day before the murder. (Tr. p. 152 line 1-19). Ms. Kinard testified Applicant said "he was going to rob the next N----- that he saw." (Tr.

p. 152 line 22-25). Ms. Kinard also testified that after the shooting, she saw the Applicant outside wearing all black and sitting on the curb; shortly thereafter, Applicant disappeared and came back wearing a white shirt. (Tr. p. 151 line 8 - 18). Ms. Kinard gave the police the Applicant's name (Tr. p. 151 line 21 - 25). Upon being Mirandized, Applicant voluntarily told the police that he was involved in the crimes, but initially told the police that he was not the shooter. (Tr. p. 239 line 7-9; Tr. p. 241 line 14-18; Tr. p. 248 line 15-18). Applicant later admitted he had a .38 caliber revolver and the Co-defendant had a .40 caliber semi-automatic handgun. (Tr. P. 258 line 24 – p. 259 line 1). Applicant admitted the Co-defendant approached the victim's car on the driver's side while he approached the victim's car on the passenger side. (Tr. p. 259 line 19-21). Applicant told police that he told Victim to "Give me all your shit." (Tr. p. 260 line 4). Victim, who was driving, grabbed the Co-defendant's gun and shot the Co-defendant. The Applicant stated he then fired four times from the passenger side into the vehicle at the murder victim. (Tr. p. 254 line 16-20; Tr. p. 255 line 6; Tr. p. 260 line 6-11). The pathologist testified at trial that the murder victim was shot either four or five times and died from those wounds. (Tr. p. 300 line 3-25 – p. 301 line 1-20). The pathologist testified the bullets predominantly entered the victim's body from the right side and traveled to the left side of his body, which is consistent with the shots being fired at the driver from the vehicle's passenger side, which is exactly where the Applicant placed himself in his statement to law enforcement. (Tr. p. 300 line 6, 10, 18; Tr. p. 308 line 11-16). Applicant told the police they could find his gun under the seat of his car. (Tr. p. 255 line 24-25). The police did find Applicant's .38 caliber gun under the seat of his car. (Tr. p. 256 line 9-10).

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The court concludes that despite a limiting instruction not being requested by trial counsel and despite appellate counsel not raising Bruton issues on appeal, evidence of the Applicant's guilt was overwhelming; therefore, the Applicant sustained no prejudice from these errors.

**7. Ineffective assistance of counsel for failing to meet with him and discuss trial strategy.**

The Applicant claims Trial Counsel was ineffective for failing to meet with him to discuss trial strategy. This ground has no merit. First, this Court finds credible Trial Counsel's testimony that he met with the Applicant eight times and that he told the Applicant that the basic trial strategy was to get his confession suppressed. Trial Counsel also testified that he discussed with the Applicant his belief that self-defense was not a valid defense and that if the confession came in, they would try to establish voluntary manslaughter. Trial counsel tried and failed to get the confession suppressed and asked for a lesser-included option of voluntary manslaughter, which the trial court properly refused. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

**8. Ineffective assistance of counsel for failing to request additional testing on his gun.**

The Applicant claims Trial Counsel was ineffective for failing to ask for testing on his gun. Trial testimony revealed that SLED ballistic testing revealed inconclusive results as to what caliber bullets were fired into the victim. (Tr. p. 406 line 18—p. 407 line 1). Trial counsel

testified that he viewed inconclusive results as a positive finding for the defense. This Court agrees with Trial Counsel's assessment that further testing would not have been a wise strategy. Therefore, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

**9. Ineffective assistance of counsel for failing to request the officers who interrogated him submit to a lie detector test.**

The Applicant claims Trial Counsel should have asked that lie detector tests be administered to the officers who interrogated the Applicant; the veracity of the officers' answers would determine whether the officers turned the tape recorder off during the interrogation to threaten and harass the Applicant. This has no merit as there is no authority allowing for such testing to be done on police officers, and the results of any such tests would be inadmissible.

**ALL OTHER ALLEGATIONS**

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

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his



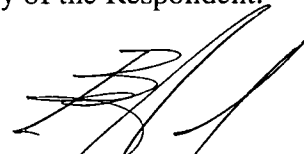
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED:**

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

July 20, 2015



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GEORGE C. JAMES, JR.  
Presiding Judge  
Third Judicial Circuit

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