

THE GIESE LAW FIRM, LLC  
1315 BLANDING STREET  
COLUMBIA, SC 29201

W. BARNEY GIESE

KEITH GIESE

JONATHAN D. WALLER

JUSTIN M. KATA

KELLY L. GIESE

**RECEIVED**

SEP 03 2015

(803) 708 - 6767  
FAX (803) 708 - 6769  
WWW.GIESELAWSC.COM

September 1, 2015

**S.C. SUPREME COURT**

Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211

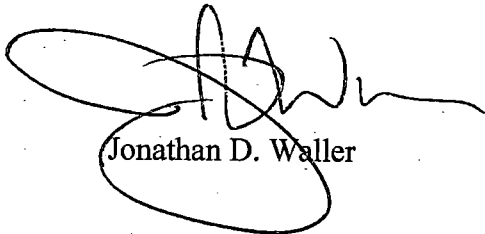
Re: Sylvester D. Taylor vs. State of South Carolina  
C/A No: 2013-CP-21-1347

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Taylor in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Croom Hunter, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM FLORENCE COUNTY  
D. Craig Brown, Circuit Court Judge

2013-CP-21-1347

**RECEIVED**

SEP 03 2015

Sylvvester D. Taylor, #251960,

Appellant,

v.

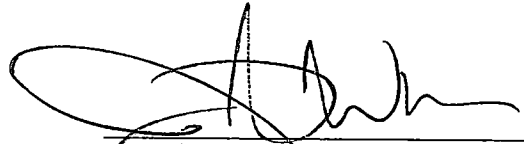
STATE OF SOUTH CAROLINA,

Respondent.

**S.C. SUPREME COURT**

NOTICE OF APPEAL

Sylvester D. Taylor, #251960, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 5, 2015, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Giese Law Firm  
SC Bar No.: 76290  
1315 Blanding Street  
Columbia, SC 29201  
803-708-6767 (phone)  
803-708-6769 (fax)  
jwaller@thegieselawfirm.com  
ATTORNEY FOR PETITIONER

This 1 day of September, 2015.

Other Counsel of Record:

J. Croom Hunter, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM FLORENCE COUNTY  
D. Craig Brown, Circuit Court Judge

2013-CP-21-1347

**RECEIVED**

SEP 03 2015

**S.C. SUPREME COURT**

Sylvester D. Taylor, #251960,

Appellant,

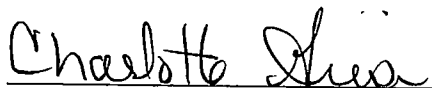
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Clayton Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 1<sup>st</sup> day of September 2015.

  
Charlotte Giese

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-21-1347

Sylvester D. Taylor, #251960

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT:** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT:** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  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

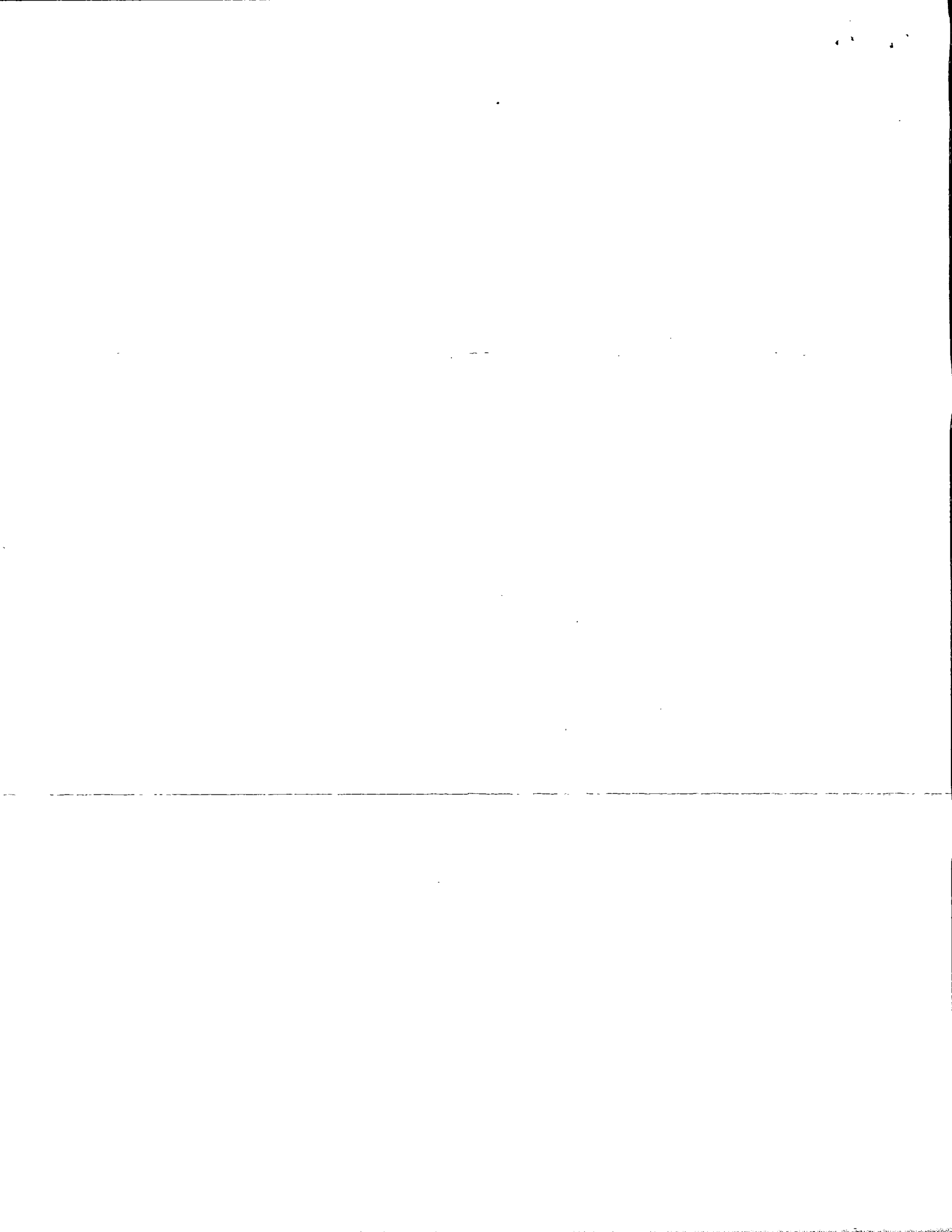
Date

CERTIFIED: A TRUE COPY

*Cornia Beth Stearns*

CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

FILED  
2015 AUG -7 PM 3:50  
CORNIA BETH STEARNS  
CCCP & GS  
FLORENCE COUNTY





STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Sylvester D. Taylor, #251960, )

Case No. 2013-CP-21-1347

Applicant, )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

**FILED**  
2015 AUG -5 AM 10:57  
CONNIE REEL-SHEARIN  
CLERK OF COURT C.R. & G.S.  
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 10, 2012. Respondent made a Return on or about March 2, 2012. The Court convened an evidentiary hearing into the matter on April 15, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, William V. Meetze, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. 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 Florence County Clerk of Court. In January 2007, the Florence County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute, third or subsequent offense (2007-GS-21-295). William V. Meetze, Esquire, represented Applicant. On April 17, 2007, Applicant proceeded to trial before the Honorable Thomas A. Russo and a jury. On April

CERTIFIED: A TRUE COPY

*Connie Reel-Shearin*

CLERK OF COURT C.R. & G.S.  
FLORENCE COUNTY, S.C.

18, 2007, Applicant failed to appear in court and Judge Russo proceeded to try Applicant in his absence.<sup>1</sup> On April 19, 2007, the jury found Applicant guilty as indicted and Judge Russo imposed a sealed sentence. On April 20, 2014, Applicant appeared in court and Judge Russo unsealed and pronounced a sentence of thirty (30) years imprisonment.

Applicant filed a timely notice of appeal, and Elizabeth A. Franklin-Best, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals reversed Applicant's conviction on May 13, 2010. State v. Taylor, 388 S.C. 101, 694 S.E.2d 60 (Ct. App. 2010). The South Carolina Supreme Court granted the State's petitioner for writ of certiorari to review the Court of Appeal's opinion on April 20, 2011. The Supreme Court reversed the Court of Appeals and affirmed Applicant's conviction on Jan. 9, 2013. State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013). The remittitur was returned to the circuit court on January 25, 2013.

## **II. ALLEGATIONS**

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

1. "Ineffective assistance of trial counsel"
  - a. "counsel failed to investigate the facts and laws surrounding my whole case"
2. "Violation of due process per the Federal, United States and South Carolina Constitution And fourth amendment"
  - a. "counsel failed to properly attack search and seizure"

However, at the PCR hearing, Applicant proceeded with the following allegations:

1. Failure to challenge the chain of custody.
2. Failure to object to impermissible comments during the State's closing argument.

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

---

<sup>1</sup> Judge Russo found Applicant knowingly and voluntarily waived his right to be present at trial.

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. This Court finds Counsel's testimony credible and Applicant's testimony not credible. 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 (2003). Furthermore, this Court finds that Applicant abandoned all allegations except for those specifically addressed below.

**A. Summary of Testimony**

Applicant testified he was arrested in 2006, and Vick Meetze (Counsel) was appointed to represent him. Applicant testified he was successful in bonding out of jail, and that he only discussed his case with Counsel a couple of times. Applicant testified he and Counsel did discuss the elements of the charge he was facing as well as the possible sentences he was facing. Applicant testified he and Counsel never discussed the State's evidence against him, with the exception of the incident report. Applicant testified they never discussed any possible witnesses to present at trial; nor did they discuss trial procedures. Applicant acknowledged during his testimony that he did not have any witnesses to testify on his behalf at the PCR either. Applicant believed Counsel did not show any faith in his story. Applicant testified he appeared for jury selection, at which point he agreed to plead guilty to a negotiated five year sentence. Applicant testified he believed the chain of custody was improperly presented at trial, and he thought the evidence should have been excluded based on issues with the search.

Applicant next called Counsel to testify. Counsel testified he was appointed as part of his duties as a public defender, and he met with Applicant more than twice. Counsel testified he discussed the search with Applicant. Counsel testified he believed the search was illegal and the drugs should have

been excluded because the search was based on an anonymous tip. Counsel believed the police had no basis to stop Applicant and because it was obvious Applicant did not have any weapons on him, Counsel believed the search exceeded the legal scope of a Terry frisk. Counsel testified he argued this to the trial court, but the judge allowed the drugs over his objection. Counsel testified Applicant never wanted a trial, and he was not sure if he told Applicant the trial would move forward without him present.<sup>2</sup> Counsel testified he could not recall any specific strategy in declining to object to the chain of custody. Counsel also testified he did not object to Applicant's statement because he did not believe there were any grounds on which to exclude it.

On cross-examination, Counsel testified he has been practicing law for sixteen years, thirteen of which have been spent in criminal practice. Counsel testified Applicant's trial did not begin for three days after his failure to appear for the guilty plea, and Applicant still could have accepted the plea up until the start of the trial. Counsel testified Applicant's name was called three times prior to the start of trial, as required by law. Counsel testified he filed Rule 5 and Brady motions and reviewed the discovery materials with Applicant. Counsel testified he reviewed the elements of the charges with Applicant. Counsel testified he did discuss Applicant's version of the facts. Counsel testified that once the drugs were admitted, his strategy at trial was to argue that Applicant only possessed the drugs for personal use and had no intent to distribute. Counsel testified he reviewed the chain of custody and did not see any issues with it. However, Counsel testified he did object to certain testimony offered by the manager of the drug lab. Counsel testified Applicant never gave him any potential witnesses to contact or leads to investigate. Counsel testified the solicitor's comments during the State's closing did not strike him as objectionable. Counsel testified Applicant knew his plea would be the next morning after he decided not to go to trial. Counsel acknowledged the Court of Appeals did reverse Applicant's

---

<sup>2</sup> Applicant's bond paperwork was admitted into evidence at the PCR hearing. From this paperwork it is clear Applicant

conviction based on his objections to the admission of the drugs, but the Supreme Court reinstated the conviction.

### **B. Ineffective Assistance of 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,

---

was aware of the consequences of his failure to appear.

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.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Additionally, Applicant has failed to meet his burden of proving that his statement was coerced in any way. Counsel's testimony indicates he did not believe he had any basis for challenging the admissibility of the statement.

#### 1. Chain of Custody

With regard to Counsel's alleged failure to object based upon the chain of custody, this Court finds Applicant has failed to show any ineffectiveness on the part of Counsel. A complete chain of custody must be established as far as practicable when a party seeks the admission of fungible evidence like drugs or a blood sample during trial. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct. App. 2005); see Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 ("The State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable."). However, the proof of the chain of custody need **not** exclude every possibility of tampering. State v. Smith, 326 S.C. 39, 41, 482 S.E.2d 777, 778 (1997); see Rogers, 361 S.C. at 187, 603 S.E.2d at 915 ("South Carolina law does not require testimony as to the exclusion of any possibility of tampering."). Instead, in order to satisfy the requirements for establishing the chain of custody, the evidence and testimony presented during trial must simply not leave to conjecture who was in possession of the fungible item and what was done with it between its seizure and analysis. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995). "[I]f the identity of each

person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive.” State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-206 (2007). Furthermore, “where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility.” State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001).

This Court finds Counsel is an extremely capable and experienced criminal lawyer. Counsel testified he reviewed the chain of custody and did not believe there were any legitimate grounds on which to object to the chain of custody. This Court has weighed Counsel’s testimony as well as reviewed the transcript of Applicant’s trial. Based on the foregoing, and in conjunction with the applicable jurisprudence, this Court can find no ineffectiveness on the part of Counsel for electing not to challenge the chain of custody. There is no question as to the weight of the drugs, from whom they were confiscated, or how they were handled between the seizure and the trial. As such, this Court finds the allegation without merit.

## 2. The State’s Closing Argument

With regard to Counsel’s alleged failure to object to the State’s closing argument, this Court finds Applicant has failed to show any ineffectiveness on the part of Counsel. “Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries’ positions.” State v. Mouzon, 321 S.C. 27, 31-32, 467 S.E.2d 122, 124-25 (Ct. App. 1995), aff’d, 326 S.C. 199, 485 S.E.2d 918 (1997) (citing Herring v. New York, 422 U.S. 853 (1975)). “A solicitor’s closing argument must be carefully tailored

so as not to appeal to the personal biases of the jury.” Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). “The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” Id. at 609–10, 602 S.E.2d at 744. “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). “The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id.

This Court finds Applicant has failed to show the State’s closing argument “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id. Applicant specifically alleged the Solicitor’s language was objectionable, where he said “It’s pretty obvious if he hadn’t had anything on him like this, he would have had no reason to resist the officers and would certainly talk to them.” (Transcript p. 147.) Applicant also claimed Counsel should have objected to the Solicitor’s language on page 149, where he said he wanted to address a comment Counsel made in his opening argument concerning the jury’s role in dealing with Applicant’s life and liberty. Although Counsel testified he had no specific reason for not objecting to either of these comments made by the Solicitor, this Court finds Applicant has failed to show how Counsel’s failure to object constituted ineffectiveness. Furthermore, Applicant has failed to show any resulting prejudice, especially considering the great weight of the evidence against Applicant. As such, this Court finds no ineffectiveness on the part of Counsel for not objecting, and the allegation is without merit.

### **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.

#### **D. Overwhelming Evidence of Guilt**

This Court notes that Applicant can show no prejudice in regards to any of the alleged allegations as there is clear overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (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); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

#### **IV. CONCLUSION**

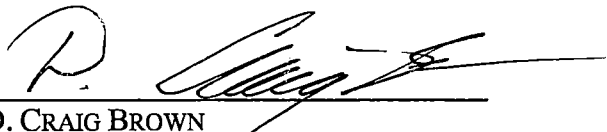
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 5 day of August, 2015.

  
D. CRAIG BROWN  
Presiding Judge  
Twelfth Judicial Circuit

Florence, South Carolina

**FILED**  
2015 AUG -5 AM 10:54  
GONNIE REEL-SHEARIN  
CCCP & G.S.  
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY  
  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

THE GIESE LAW FIRM, LLC  
1315 BLANDING STREET  
COLUMBIA, SC 29201

B48178.05

**\$1.150**

US POSTAGE  
FIRST-CLASS

062S0009473977  
29201



etamp.gieselaw.com

Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211