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SEP 28 2015

LAW OFFICE OF TRICIA A. BLANCHETTE

S.C. Supreme Court

September 28, 2015
VIA HAND DELIVERY

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

RE: Gregory Daniels #297449 v. State; Docket No.: 2013-CP-21-280

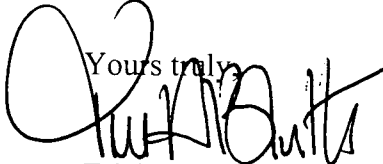
Dear Sir:

Enclosed for filing is a Notice of Appeal for the above PCR case. Also enclosed are the following:

- (1) Proof of service on the Respondent.
- (2) A copy of the Order of Dismissal and Order denying Applicant's Motion Pursuant to Rule 59, SCRPC.

I am sending a copy of these documents to the Office of Appellate Defense, along with a completed Affidavit of Indigency.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,


Tricia A. Blanchette
Attorney at Law

cc: J. Croom Hunter, Assistant Attorney General
Florence County Clerk of Court
Office of Appellate Defense
Gregory Daniels

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SEP 28 2015

APPEAL FROM FLORENCE COUNTY S.C. Supreme Court
Court of Common Pleas
Post Conviction Relief
Honorable D. Craig Brown, Circuit Court Judge

Case No.: 2013-CP-21-280

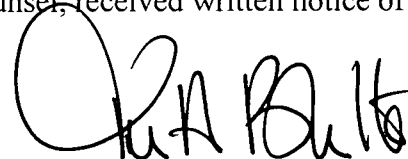
Gregory Daniels, 297449,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Gregory Daniels, Petitioner, appeals the Order of Dismissal issued by the Honorable D. Craig Brown on June 8, 2015 and filed on June 10, 2015. Petitioner also appeals the Order signed by the Honorable D. Craig Brown on August 5, 2015, which was filed on August 24, 2015. Petitioner, through counsel, received written notice of the entry of the Order on August 31, 2015.



Tricia A. Blanchette
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Columbia, SC 29211
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Other Counsel of Record:
J. Croom Hunter
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SEP 28 2015

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Post Conviction Relief
Honorable D. Craig Brown, Circuit Court Judge

S.C. Supreme Court

Case No.: 2013-CP-21-280

Gregory Daniels, 297449,.....Petitioner,

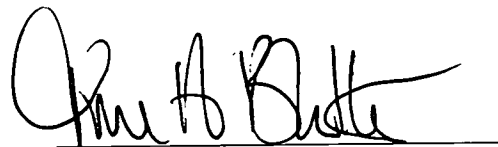
vs.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that copy of a Notice of Intent to Appeal, was hand delivered this 28th day of September to J. Croom Hunter of the Attorney General's Office, at:

Office of the Attorney General
ATT: J. Croom Hunter, Ast. AG
1000 Assembly Street, Room 519
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

September 28, 2015

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SEP 28 2015

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NO. 2013 CP 21-528 State Court

Gregory D. Daniels #29449

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 : _____

2015 JUN 11
CONNIE REEL-SCRPC & US
FLORENCE COUNTY
CLERK OF DISTRICT COURT
FLORENCE
CERTIFIED A TRUE COPY

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property of 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

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
))
Gregory D. Daniels, #297449,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-0280

ORDER OF DISMISSAL

FILED
2015 APR 10 PM 3:11
CORRIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 1, 2013. Respondent made its Return on September 17, 2013. An evidentiary hearing into the matter was convened on April 14, 2015, at the Florence County Courthouse. Due to time constraints, the hearing was broken into two days and concluded on April 17, 2015. Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from Gary Bostic, Johnny Etheridge, Esquire, Tristan Shaffer, Esquire, private investigator Pete Skidmore, and Andrew Williams. Respondent presented testimony from Deputy Solicitor John Jupertinger, Esquire, who prosecuted the murder case against Applicant, Grayson Smith, Esquire, who sat as second chair with Jack Lawson (Trial Counsel) at Applicant's trial, and Lieutenant Timothy Compton, who was the chief investigator on the State's case leading to Applicant's trial for murder. This Court also had before it a copy of the trial transcript, the Florence County Clerk of Court records, the Applicant's South Carolina

CERTIFIED: A TRUE COPY

Corrie Reel Shearin

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

Department of Corrections records, the PCR application, the appellate records, a number of exhibits, and the Return.

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. The Florence County Grand Jury indicted Applicant in April 2009 for murder and possession of a weapon during the commission of a violent crime (2009-GS-21-427, Counts 1 and 2). Jack W. Lawson Jr., Esquire, represented Applicant.¹ On April 16, 2010, a jury convicted Applicant as indicted. The Honorable Thomas A. Russo sentenced Applicant to life in prison for the murder charge and a concurrent five (5) years for the weapon possession charge.

Applicant filed a timely notice of appeal. Tristan M. Shaffer, Esquire, and Wanda H. Carter, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Supreme Court affirmed Applicant's convictions on October 10, 2012. State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). The remittitur was returned to the circuit court on October 26, 2012.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Failure of trial counsel to provide Applicant with a complete copy of discovery and review it with him prior to trial.
 - b. Failure to conduct an independent investigation and properly prepare Applicant's case for trial
 - c. Failure to call witnesses at trial.
 - d. Failure to interview Gary Bostic.
 - e. Failure to object to the State being allowed to proceed on two

¹ Mr. Lawson was deceased at the time of the PCR hearing; thus, he was unable to testify on his own behalf.

- theories: murder for hire and argument at cookout.
- f. Failure to raise a third party guilt defense.
 - g. Failure to make all viable contemporaneous objections at trial.
 - h. Failure to review Applicant's statement with him prior to trial, utilize Applicant at the Jackson v. Denno hearing and make a proper argument for suppression of Applicant's statement.
 - i. Failure to utilize Applicant as a witness at trial.
 - j. Failure to investigate and object at trial to the search and resulting records obtained on and from Applicant's phone.
 - k. Failure to advise Applicant of the State's intention to use his girlfriend's letters as evidence against him, failure to utilize the complete letters and/or additional letters to put the selected text into context, failure to prepare and utilize Applicant to testify in response to the introduction of the letters.
 - l. Failure to impeach the state's witnesses.
 - m. Failure to advise Applicant of the evidence the state intended to introduce involving the phone call between the victim and Shavonne Gass.
 - n. Failure to review the statements of Andre Bradley and Jasmine Barrett with Applicant prior to trial.
 - o. Failure to make the record clear as to the disclosure of the proffer agreement between Andre Bradley and the Federal government.
 - p. Failure to properly preserve the arguments made by appellate counsel regarding the jury charge.
2. Ineffective assistance of appellate counsel, specifically failure to address the following objections made by trial counsel:
 - a. Objection to the testimony of Shavonne Gass regarding the call with the victim and the admission of such under the present sense impression exception.
 - b. Objection to the admission of the Applicant's letters to his girlfriend.
 - c. The Jackson v. Denno hearing and admission of Applicant's statement.
 3. Prosecutorial misconduct for failing to disclose the law enforcement interview of Gary Bostic.

SUMMARY OF THE FACTS OF THE CASE

On September 5, 2008, sometime after 5:00 AM, authorities were dispatched to the corner of Dargan and Marlboro Streets in Florence. Upon their arrival, authorities found Corey Byrd's (Victim) lifeless body in the street. Tiesha Brown, who was friends with Victim and awaiting his arrival pursuant to an earlier phone conversation, informed authorities that just before she discovered the body, she heard a gunshot and observed an individual wearing black fleeing the scene.

The subsequent investigation revealed that both Victim and Applicant had been at a nearby cookout hosted by Victim's cousin, Shavonne Gass.² During the cookout, Victim and Applicant got into an argument, prompting Applicant to try and fight Victim throughout the rest of the night. Applicant, who lived near Gass, left the cookout sometime after midnight.³ When Applicant left the cookout, he was wearing black clothing.

Meanwhile, Victim remained at the cookout with Brown, who had arrived around midnight. Shortly before 4:00 AM, Victim and Gass decided to leave the cookout to purchase cigarettes. When Victim and Gass returned to the cookout, Victim discovered Brown had left with a friend. Upon finding Brown left the cookout, Victim called Brown and asked if she wanted to return. Brown told Victim she would return and the two agreed to meet at the corner of Dargan and Marlboro Street. According to Brown, this conversation took place around 4:15 AM.

Following his conversation with Brown, Victim attempted to get a ride to Marlboro Street with Clifton "Ryan" Evans, who had recently arrived at the cookout. While Evans initially agreed to give Victim a ride, Evans changed his mind because Victim took too long to retrieve a cell phone charger left in Gass' house. When Evans and Gabriel Petterson, who was riding with Evans, left Victim at the cookout around 4:35 AM, Petterson observed Applicant, in the area, on his moped.

Shortly after Evans and Petterson left the cookout, Victim began walking towards Dargan and Marlboro to meet Brown. After he left, Victim called Gass. The phone call was placed at 4:55 AM, lasted fourteen (14) minutes thirty-three (33) seconds and ended at 5:09 AM. The call ended when Victim's phone went dead. Immediately before the line went dead, Victim told Gass, "the n---a I was arguing with at the cookout is behind me, do you want to talk to him?"

² At the cookout, Applicant told Gass that Victim had previously robbed him.

³ Gass also noted that Applicant frequently hung around Fraser Street near her house.

When Gass called back at 5:15 AM, Brown had already discovered Victim's dead body. Later that day, Applicant would tell his associate, Andre Bradley, and Bradley's girlfriend, Jasmine Barrett, that he killed Victim. Applicant was arrested for Victim's murder on September 11, 2008.

At trial, the State theorized Applicant was paid to kill Victim by one of Applicant's associates, Gary Bostic, in retaliation for a fraudulent drug deal. To that end, the State introduced evidence that: (1) approximately a month prior to Victim's shooting, Bostic, who lost \$3,500 as a result of the fraudulent drug deal, offered Applicant \$1,000 to kill Victim; (2) pursuant to the arrangement, Applicant would receive \$500 up front and another \$500 after Victim was killed; (3) prior to the murder, Applicant told Bradley he was going to kill Victim multiple times; (4) Bostic's phone number was in Applicant's phone by his nickname, "G.A."; (5) the picture assigned to Bostic's number was a stack of money; (6) Bradley believed Applicant had gone through the first \$500 and killed Victim to receive the additional \$500; (7) in the four days after the murder, Applicant called Bostic forty-one (41) times; and (8) Applicant wrote his then-girlfriend, Nyrena Goodman from jail and instructed her to contact Bostic on his behalf to raise money for his bond.

The State also presented testimony from Goodman, explaining on the evening of September 4, 2008, she received a phone call from Applicant. Over the course of the phone call, Applicant informed Goodman he was at a cookout down near her house and there was an individual at the cookout who had previously attempted to rob him. Continuing, Goodman explained she did not see Applicant until approximately 5:30 AM when he and a man named

Gary⁴ picked her up in a van and the trio proceeded to a local hotel.⁵ Goodman added that after she checked into the hotel, Applicant briefly joined her in the hotel room before leaving again. She further explained that while the two were in the hotel room, Applicant received a phone call during which he began talking to the other person on the line about “the dude from the cookout[.]”

On cross-examination, Goodman, when asked by defense counsel why the couple decided to stay at a hotel that night, explained that Applicant wanted to use her as an alibi. This proposition was subsequently corroborated in the form of letters written by Applicant to Goodman in which he urged Goodman to tell police he was with her in a hotel on the night in question.

At the close of the State’s case, Applicant moved for a directed verdict on all charges. The motion was denied. Following the charge conference, the defense rested, closing arguments were conducted and the jury was charged. Applicant was subsequently convicted on both counts of the indictment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

⁴ Applicant later told Goodman the man named Gary was Gary Bostic.

⁵ A receipt from the hotel indicated Goodman checked-in at 5:34 AM.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies 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, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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.

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. As an initial matter, this Court finds that Applicant's testimony is not credible. This Court notes that Trial Counsel earned an impressive reputation among the bench and the bar and finds that Applicant's self-serving testimony is unpersuasive in convincing this Court that Counsel's performance in this case was outside the realm of competent representation.

A. Failure to properly investigate and review discovery with Applicant

With regard to Applicant's allegations that Trial Counsel failed to review discovery with Applicant prior to trial, this Court finds Applicant's testimony not credible. At the PCR hearing, Applicant alleged that Trial Counsel did not thoroughly review and discuss the discovery

materials with him. To support these allegations, PCR Counsel attempted to enter into evidence numerous audio and transcribed witness statements, incident reports, and polygraph reports from Trial Counsel's file that Applicant claims Trial Counsel never went over with him. Applicant alleged he never saw these documents until PCR Counsel reviewed them with him. The State stipulated to the authenticity of the exhibits due to the fact that they were contained within Trial Counsel's file, but the State objected to their admission based on hearsay and relevance grounds. PCR Counsel asserted she was not attempting to enter the exhibits for the truth of the matter asserted, but rather to show that Applicant would have wanted Trial Counsel to go over them with him prior to trial. The State responded that in order for Applicant to show prejudice resulting from his alleged inability to review the files prior to trial, the content of the exhibits would necessarily have to be examined. The State further argued that such examination was impermissible because the documents were rife with hearsay since the witnesses who gave the statements or created the documents were not present to testify at the PCR hearing. The State further argued that if the content of the exhibits was inadmissible in order to show any resulting prejudice, then the exhibits themselves were not relevant to Applicant's claims of ineffective assistance of counsel. PCR Counsel argued that normally the exhibits would be admissible through Trial Counsel, but this case presented an unusual situation because Trial Counsel is deceased. However, PCR Counsel's arguments are unpersuasive; even if Trial Counsel was alive and able to testify, the State has already stipulated to the authenticity of the exhibits. This Court notes that Applicant would still have the burden of overcoming the hearsay contained within the exhibits. See S.C. Code Ann. § 17-27-80 (2014) (PCR actions are governed by the usual rules of civil procedure); Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002). As such, after much careful deliberation, this Court sustained the State's objections and refused to admit the majority

of Applicant's proposed exhibits into evidence.⁶ This Court further notes that it is the Applicant's burden to prove the allegations he has raised, and this Court can see no reason why Applicant could not have subpoenaed the subjects of the exhibits which he attempted to introduce. Additionally, the State showed great restraint in allowing, without objection, thorough testimony by Applicant in regard to the exhibits in question and how he specifically felt he was prejudiced. Thus, it is this Court's opinion that admission of the exhibits was further made irrelevant because Applicant was permitted great latitude in discussing each proposed exhibit.

With regard to each specific item Applicant attempted to introduce from Trial Counsel's file, this Court finds that the items were contained within the file, and as such, this Court must presume that Trial Counsel was aware of the items and reviewed them. Furthermore, Grayson Smith's testimony at the PCR hearing indicated that he observed Trial Counsel reviewing the audio files on multiple occasions. Smith also testified that Trial Counsel was an extremely dedicated attorney, and he thought it highly unlikely Trial Counsel would have proceeded to trial unprepared, without having reviewed the evidence and discussed it with his client. Smith further testified it was highly unlikely that Trial Counsel would not have used an investigator from the Public Defender's Office to visit the crime scene and attempt to investigate possible defenses or additional witnesses.

Additionally, John Jepertinger testified his office turned over all discovery and Rule 5 materials to Trial Counsel. Jepertinger further testified that he had a good working relationship with Trial Counsel going back many years, and he had tried multiple cases with Trial Counsel,

⁶ Applicant attempted to enter multiple audio files as exhibits, specifically the 911 call, audio from the microphones of the officers who arrived on the scene of the murder, the statement of Gregory Daniels, and the statement of Nyrena Goodman. The 911 call and Daniels' statement were entered without objection, and the Officers' audio from the scene was entered over the State's objection. Nyrena Goodman's audio statement is also included on the disc provided to this Court by PCR Counsel; however, Goodman's statement was **not** admitted as an exhibit and should not be construed as such.

both while in private practice and as a public defender, before becoming a solicitor. Jepertinger noted that he defended a death penalty case with Trial Counsel in 1991. Jepertinger testified that he believed Trial Counsel would customarily review discovery with his clients.

Additionally, Lieutenant Compton testified he met with Trial Counsel, as well as Frank White and Ron Smith, both investigators from the Public Defender's Office, in preparation for Applicant's trial. As such, this Court must presume that if Trial Counsel elected not to utilize certain items as part of Applicant's defense, he had a valid strategy for doing so, whether Applicant agreed with it or not. Under Strickland, there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable[.]" Strickland, 466 U.S. at 690; see also Meyer v. Branker, 506 F.3d 358, 374 (4th Cir. 2007) ("[L]egal judgments based on thorough investigation are virtually unassailable on collateral review."). The determination of what strategy to pursue was trial counsel's to make, not Respondent's. See Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547. (Ct. App. 2014).

While Applicant may claim that he felt Trial Counsel failed to adequately review the evidence in his case, testimony from others at the PCR hearing, as well as the fact that the items in question were in Trial Counsel's file, leaves no doubt in this Court's mind that Trial Counsel spent many hours preparing for Applicant's trial, and that his reasons for not utilizing certain pieces of evidence were strategic. Furthermore, Applicant presented no testimony, other than his opinion, that neither Trial Counsel nor someone from the Public Defender's Office ever visited the crime scene or performed any independent investigation. Accordingly, this Court finds Applicant's claims that Trial Counsel failed to properly investigate, review the evidence, and prepare for trial to be without merit.

B. Failure to utilize Applicant as a witness

Applicant claims that due to Trial Counsel's alleged deficiencies in preparing for trial and reviewing discovery with him, Applicant was unprepared to testify at trial, and that he would have testified had he known what evidence the State was planning to use against him. This Court finds Applicant's testimony in this regard wholly not credible.

Applicant specifically alleges that had he known about the State's intention to use the Goodman letters and the testimony of Andre Bradley and Jasmine Barrett against him, he would have insisted on testifying. The record before this Court refutes Applicant's assertions. The trial transcript clearly indicates that all such testimony was entered into the record during the State's case in chief. Once the State rested, the trial judge asked Trial Counsel if Applicant was planning to testify, to which Trial Counsel responded, "We have discussed it, but we're not in a position to make a final decision right now, Your Honor." (Trial p. 542). At that point, the trial judge ended proceedings for the day and gave Applicant the night to decide whether he wished to testify. The next morning, trial resumed, and Trial Counsel indicated to the trial judge that Applicant did not wish to testify. Applicant's intention was memorialized when the trial judge went over his right to testify, and Applicant indicated on the record that he did not wish to testify. (Trial pp. 544-45). Furthermore, this Court finds Applicant's claims that Trial Counsel never discussed the Goodman letters or the testimony of Andre Bradley and Jasmine Barrett prior to trial inconceivable, especially considering the weight of such evidence. As such, this Court finds the allegation to be without merit.

C. Failure to discuss Shavonne Gass' testimony

At the PCR hearing, Applicant alleged that Trial Counsel never discussed Shavonne

Gass' statement or testimony with Applicant. This Court finds such an allegation preposterous. Gass testified at trial that she was on the telephone with Victim moments before his death, and the victim stated the person he was arguing with at the cookout was following him. Trial Counsel had Gass' statement in his file, as well as the telephone records, and for Applicant to claim Trial Counsel never discussed the State's proverbial "nail in the coffin" with him completely undermines any remaining facade of credibility Applicant may have had. As such, this Court finds this allegation to be without merit.

D. Failure to call witnesses at trial

Applicant alleges Trial Counsel was ineffective for failing to subpoena and call defense witnesses at trial, specifically Gary Bostic and Andrew Williams. In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id. A witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (finding counsel's decision to not call witnesses reasonable where their testimony would have been of no value to the case and they made inconsistent statements in the past); Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011).

This Court will address Gary Bostic more thoroughly in the section devoted to him below, but as an initial matter, this Court finds Trial Counsel was not ineffective for not utilizing

Gary Bostic as a witness. With regard to Andrew Williams, this Court also finds Trial Counsel was not ineffective for not utilizing him as a witness.

Applicant testified at the PCR hearing that Williams was with him the entire time he and Goodman were at the hotel after Victim was murdered, and that Goodman was never in the hotel room alone with Williams. This conflicts with Goodman's testimony at trial that she woke up and Applicant was not in the room but Williams was present. Williams testified at the PCR hearing that he was Applicant's uncle and was at the hotel room with Goodman and Applicant, and that he was never in the room alone with Goodman. Williams testified he took Applicant to get a rental car that morning and that nothing seemed out of the ordinary. Williams claimed he would have been willing to testify at Applicant's trial, but that he was never subpoenaed or contacted by anyone about Applicant's case.

However, on cross-examination, Williams' credibility began to fade. When asked why he never contacted Trial Counsel or law enforcement to give a statement vouching for Applicant's whereabouts or activity, Williams testified that he was unaware Applicant was facing murder charges. Williams further testified he was unaware Applicant was detained.⁷ This assertion conflicts with Williams' earlier testimony that he had a close relationship with Applicant and that he saw him on a regular basis. Furthermore, when asked whether he had been convicted of passing a fraudulent check in 2008, Williams became indignant and denied that he ever faced such a charge. This Court does not find that Williams' answer was truthful. Having had an opportunity to observe Williams and listen to his testimony, this Court finds that his testimony was not credible and likely would have hurt Applicant at trial. Additionally, this Court finds Williams could not have accounted for Applicant's whereabouts at the time of the murder

⁷ This Court notes Applicant was detained from September 11, 2008 until trial began on April 12, 2010.

anyway. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). Accordingly, this Court finds Trial Counsel was not deficient for failing to utilize Williams as a witness, and the allegation is without merit.

E. Failure to object to the State being allowed to proceed on two theories

Applicant alleges Trial Counsel was ineffective for failing to object to the State proceeding under what Applicant characterizes as dual theories of the case. Applicant alleges ineffectiveness and posits Trial Counsel should have objected to the State being allowed to proceed and present evidence at trial of both the murder for hire scheme and the theory that Applicant murdered Victim because of the fight at the cookout. This Court finds this allegation to be without merit.

Applicant was indicted and convicted of murder. Murder is defined as the killing of any person with malice aforethought, either expressed or implied. See S.C. Code Ann. § 16-03-10. Conspicuously missing from the elements of murder is motive. This Court interprets Applicant's allegation as an argument that Trial Counsel should have objected to the State proceeding on multiple theories behind the motive for murdering Victim. Nonetheless, "[m]otive is not an essential element of crime [(murder)] and need not be shown." State v. Thrailkill, 73 S.C. 314, 318, 53 S.E. 482, 484 (1906). This Court is aware of no jurisprudence requiring the State to select a particular motive to go forward with, nor is this Court aware of any cases showing Trial Counsel is ineffective for failing to argue the State should have to elect a particular motive on which to proceed. Furthermore, this Court notes there was ample evidence presented at trial to support that Applicant fought with Victim at the cookout, and that Applicant was hired to murder

Victim. While Applicant's specific reasons for murdering Victim are not known, such definitive proof is not required nor expected to prove the elements of the charged offense. Additionally, based on the record, this Court has no doubt as to the guilt of Applicant. As such, this Court finds the allegation to be without merit.

F. Third Party Guilt

Applicant alleges Trial Counsel was ineffective for electing not to pursue a third party guilt defense. This Court finds this allegation to be without merit.

In State v. Gregory, 16 S.E.2d 532 (S.C. 1941), the South Carolina Supreme Court set forth the rule governing the admissibility of evidence offered by the defendant to establish that someone else committed the offense with which he was charged. This rule for the admission of "third party guilt" was stated as follows:

“ [E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible..... [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party.’ “ 198 S.C., at 104-105, 16 S.E.2d, at 534-535 (quoting 16 C.J., *Criminal Law* § 1085, p. 560 (1918) and 20 Am.Jur., *Evidence* § 265, p. 254 (1939); footnotes omitted).

16 S.E.2d at 534-535 (quoting 16 C.J., *Criminal Law* § 1085, p. 560 (1918) and 20 Am.Jur., *Evidence* § 265, p. 254 (1939); footnotes omitted).

At the PCR hearing, Applicant attempted to lay the blame on Clifton Evans or some other unknown person, but the facts presented at trial, as well as Lt. Compton's testimony show that such allegations are not indicative of a valid third party guilt defense. Applying the rule set forth

in Gregory, this Court finds that any such evidence of third party guilt would have been inadmissible at trial. Thus, this Court finds Trial Counsel was not ineffective for not pursuing a third party guilt defense, and the allegation is without merit.

G. Failure to raise all contemporaneous objections at trial

Applicant alleges Trial Counsel was ineffective for failing to raise all possible contemporaneous objections at trial. This Court finds Applicant's allegation to be without merit. It is well founded that "any alleged impropriety must be examined on appeal in light of the entire record." State v. Brown, 333 S.C. 185, 191, 508 S.E.2d 38, 41 (Ct.App.1998). A criminal defendant is entitled to a fair trial, not a perfect one. State v. Mizell, 332 S.C. 273, 504 S.E.2d 338 (Ct.App.1998), *cert. denied* (Apr. 12, 1999). State v. Sweet, 342 S.C. 342, 348, 536 S.E.2d 91, 94 (Ct. App. 2000).

The trial transcript shows that Trial Counsel vigorously challenged the State's case, particularly in regard to the letters from Nyrena Goodman and the testimony of Andre Bradley. Furthermore, Trial Counsel challenged the Admissibility of the Applicant's statement through a Jackson v Denno hearing. Trial Counsel made multiple contemporaneous objections throughout the trial, particularly on pages 84, 95, 98, 253, 258, 269, 325, 331, 364, 372, 384, 395, 467, 474, and 476 of the transcript. He also moved for a directed verdict at the close of the State's case, and on page 546 he renewed all of his objections, which the majority opinion of the Supreme Court found to be sufficiently preserved. As such, this Court finds Applicant had a fair trial and finds the allegation to be without merit.

H. Failure to review Applicant's statement and utilize Applicant's testimony at the Jackson v. Denno hearing

Applicant alleges Trial Counsel never discussed whether Applicant should testify at the Jackson v. Denno hearing and never reviewed Applicant's statement with him. Applicant testified it was his understanding that he was only giving a statement to discuss the events that transpired at the cookout. Applicant testified his statement was taken out of context because it was only partially recorded, and he would not have given a statement if he had known he was a murder suspect. This Court finds this allegation to be without merit.

Applicant testified he was read his Miranda warnings. Lieutenant Compton also testified he read Applicant his rights prior to both times Applicant was questioned. Compton further testified that he did not obtain a waiver of rights form from Applicant prior to his second statement because he had not intended to interview Applicant that day. Compton testified Applicant approached him and wanted to give a statement. Compton testified he went over Applicant's rights prior to the second statement. With regard to Applicant's testimony that he does not remember giving the second statement, this Court finds Applicant not credible. Lieutenant Compton further testified he does not customarily begin recording statements until the person being questioned begins talking about issues that are relevant to the investigation. Compton testified he follows this procedure because he would otherwise end up with hours of irrelevant audio. On cross-examination, Compton testified that he believed he would not be able to get Applicant to confess, so his strategy throughout the interview was to develop Applicant's version of events, from which he could work backwards and find inconsistencies. Essentially, Compton's goal was to catch Applicant in a lie and develop the case from that point. Compton testified he was successful in doing this because after ruling out various potential suspects, the evidence kept pointing back to Applicant as the shooter.

This Court finds Applicant has failed to indicate anything specific that his testimony could have provided to establish that his statements were not given freely and voluntarily or that he was coerced. Accordingly, Applicant has failed to meet his burden of showing that the outcome of the trial would have been different if he had testified during the Jackson v. Denno hearing, and the allegation is without merit.

I. Failure to investigate and object to the search and resulting records obtained from Applicant's phone

Applicant alleges Trial Counsel was ineffective for failing to object to the State's search of Applicant's phone and the records resulting from the search. This Court finds Applicant has failed to present any credible evidence to support this allegation, specifically how Trial Counsel would have been able to successfully exclude the phone records from evidence at trial. Accordingly, this Court finds this allegation is without merit.

J. Failure to impeach the State's witnesses

Applicant alleges Trial Counsel was ineffective for failing to impeach the State's witnesses. To establish the requisite prejudice necessary to prove a claim of ineffective assistance of counsel, a PCR applicant must demonstrate that his attorney's errors had an effect on the judgment against him. See Strickland, 466 U.S. at 691. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Edwards v. State, 392 S.C. at 456-57, 710 S.E.2d at 64 (quoting Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008)). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; Edwards, 392 S.C. at 456-57, 710 S.E.2d at 64.

Although Trial Counsel was not present to testify at the PCR hearing, the record clearly shows that Trial Counsel vigorously cross-examined multiple witnesses at trial. Absent credible evidence to the contrary, this Court must presume Trial Counsel had a valid strategy for the method in which he cross-examined the State's witnesses. This Court finds Applicant has presented no credible evidence to the contrary; as such, this Court finds the allegation to be without merit.

K. The Andre Bradley Proffer Agreement

Applicant alleges Trial Counsel was ineffective for failing to clarify the record as to the existence of a proffer agreement between Andre Bradley and the Federal Government. This Court finds this allegation to be without merit.

Beginning on page 372, and lasting until page 377 of the trial transcript, Trial Counsel raises the issue of the proffer agreement to the trial judge, wherein the trial judge admonishes the State that he will not tolerate anything being hidden from the defense. Deputy Solicitor Jupertinger told the trial judge he was unaware of the existence of any agreement. Lieutenant Compton told the trial judge he had not seen any paperwork regarding the proffer, and he had merely been told "it's a possibility" Bradley could receive some benefit for his testimony. (Trial p. 374). The trial judge then broke for the day in order for the State to obtain all information from the Feds relating to Bradley's proffer agreement and turn it over to the defense. When the trial resumed, the record reflects the issue had been worked out and Trial Counsel was informed of the proffer agreement because on pages 436 and 437 of the trial transcript, Trial Counsel cross-examines Bradley about the proffer agreement he signed with the Federal Government. Trial Counsel again asks Bradley about the agreement on page 442.

Both Compton and Jepertinger testified at the PCR hearing that the State never had any type of agreement with Andre Bradley. Jepertinger further testified he had no control over whether the Feds signed a proffer agreement with Bradley. Compton testified it was never his intention to mislead the Court or Trial Counsel, and that he did not realize he was under any obligation to inform Trial Counsel of the possibility of a proffer agreement between Bradley and the Feds, especially considering he never even saw any paperwork related to the proffer until that day of the trial when it became an issue. Compton testified he spoke up at the trial because he did not want the trial judge to think the State was attempting to hide something from the defense.

Based on the record as well as the testimony presented by Jepertinger and Compton, this Court finds not only that Trial Counsel made the record clear with regard to the proffer agreement between Bradley and the Federal Government, but this Court finds Jepertinger and Compton's testimony credible with regard to the disclosure of the proffer agreement to Trial Counsel. Although not specifically raised by Applicant, this Court also finds that neither Compton nor Jepertinger committed misconduct regarding the proffer agreement. Accordingly, this Court finds Applicant's allegation to be without merit.

L. Failure to preserve objections to the jury charge

Applicant alleges Trial Counsel was ineffective for failing to properly preserve his objections to the jury charge. This Court finds this allegation to be without merit because the Supreme Court found Trial Counsel's objection to the jury charge was preserved. See State v. Daniels, 401 S.C. 251, 263, 737 S.E.2d 473, 479 (2012).

2. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524

S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error). “Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is ‘difficult to demonstrate that counsel was incompetent.’” United States v. Mason, No. 3:06–607–CMC, 2012 WL 5845807 at 1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would dissuade the very goal of vigorous and effective advocacy . . .” Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). “‘Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.’” Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). “To establish prejudice relating

to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at 1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

Applicant has alleged Appellate Counsel was ineffective in failing to raise three specific issues to the appellate court: 1. Trial Counsel's objection to the testimony of Shavonne Gass regarding her phone conversation with Victim prior to his death, 2. Trial Counsel's objection to the admission of the Goodman letters, and 3. The admission of Applicant's statement. This Court finds it unnecessary to further specifically address each of Applicant's allegations regarding ineffective assistance of appellate counsel. Rather, this Court finds it more expedient to address the allegations as a whole.

As an initial matter, this Court finds Appellate Counsel's testimony credible. Appellate Counsel testified at the PCR hearing that he represented Applicant while he was employed at the South Carolina Commission on Indigent Defense as an Appellate Defender. Counsel testified that he had been practicing as an Appellate Defender for approximately one year prior to being assigned Applicant's case, and by that time he had handled forty or fifty appeals. Appellate Counsel testified that his strategy was to raise the issues he felt would have the most merit on appeal. Counsel testified he raised issues with the trial judge's jury charge because he felt that it was the issue which had the greatest likelihood of success on appeal. Counsel testified the trial judge's comments were objectionable, and although Counsel testified he felt the objections to the comments were somewhat preserved, this Court notes the Opinion of the Supreme Court makes it clear the issue was preserved for review. Appellate Counsel testified he felt the issue he raised was a good one because the Supreme Court almost immediately ordered an oral argument, an

event which Counsel testified was rare. Counsel testified he did not have a specific reason for not having raised the objection to Gass' testimony about her phone conversation with Victim. Counsel testified he did not think it was all that important at the time. Appellate Counsel further testified he did not have a particular reason for not raising Trial Counsel's objection to the Goodman letters or to the admission of Applicant's statements, but Appellate Counsel reiterated he picked the issues he thought had the best chance on appeal.

After thorough review of the record and testimony presented at the PCR hearing, this Court finds Applicant has failed to show either deficiency or any resulting prejudice from Appellate Counsel's performance. At the time he handled Applicant's case, Appellate Counsel was an experienced Appellate Defender, and at the PCR hearing he did not have any trouble articulating his strategy and explaining why he chose to focus on the jury charge issue. In this Court's opinion, the issues raised by Appellate Counsel were stronger issues than those he did not raise. Furthermore, this Court finds it highly unlikely the unraised issues would have changed the outcome of Applicant's appeal, had they been raised to the appellate court. Counsel is neither required nor expected to raise every non-frivolous claim. In this Court's opinion, it is far more detrimental to a client when counsel raises every possible claim, rather than using professional judgment to select the issues which have the greatest likelihood of success. Such practice only serves to muddy the waters and detract from the legitimacy of those claims which may potentially have merit. Accordingly, this Court finds Applicant has failed to show deficiency or prejudice, and the allegation of ineffective assistance of appellate counsel is without merit.

3. GARY BOSTIC

Applicant has raised numerous allegations concerning Gary Bostic. Not only has Applicant alleged that Trial Counsel was ineffective for failing to interview Gary Bostic and call

him as a witness, but Applicant has also alleged prosecutorial misconduct with regard to an interview that allegedly took place between Bostic and Lieutenant Compton.

At the PCR hearing, Applicant presented testimony from Gary Bostic that he is currently incarcerated at the Marion County Prison Farm.⁸ Bostic testified he is serving ten years for assault and distribution convictions. Bostic testified he was represented on those charges by Johnny Etheridge, Esquire and Scott Suggs, Esquire. Bostic further testified he knows Applicant, and that he was contacted about the murder by Lieutenant Compton. Bostic testified he spoke with Compton at the Florence County Courthouse about the murder, and Compton asked him how well he knew Applicant and whether he paid Applicant to kill Victim. Bostic testified he told Compton he was not involved in the killing of Victim. Bostic testified he never gave a written statement, and he was surprised he was not called to testify at Applicant's trial. Bostic further testified he was never contacted by Trial Counsel, but that he would have spoken with Trial Counsel had he been contacted. Bostic testified he was contacted by Applicant's PCR Counsel last year, and he signed an affidavit which was admitted as an exhibit at the PCR hearing.⁹

On cross-examination, Bostic testified he never met with law enforcement regarding the charges for which he is currently incarcerated. Bostic admitted he pleaded to an ABHAN charge for shooting at Corey Byrd (Victim) on a separate occasion. However, Bostic insisted that he was only alleged to have shot at Victim. Bostic would not admit to actually shooting at victim, even

⁸ Bostic was represented at the PCR hearing by Jonathan Waller, Esquire.

⁹ The affidavit, dated September 15, 2014, states the following: 1. I affirm that I was interviewed by law enforcement regarding the murder of Corey L. Byrd on September 5, 2008, 2. I affirm that I was not contacted by Jack Lawson, Esquire, or anyone on behalf of Gregory D. Daniels prior to the trial held on April 12-16, 2010, 3. I affirm that I was not notified about the trial held on April 12-16, 2010 nor was I transported as a witness to the Florence County Courthouse, 4. I affirm that I am willing to testify to the above information.

though he testified he previously pled guilty to doing so. Bostic testified he received probation for that conviction.

At the PCR hearing, Johnny Etheridge, Esquire, testified he represented Gary Bostic at the time of Victim's murder on unrelated charges. He recalled being contacted by law enforcement who wanted to interview Bostic, but that law enforcement never mentioned Applicant's name. Etheridge testified he knew the interview was in relation to a violent crime, but he did not know with any specificity what it was. Etheridge testified he arranged for a meeting to take place, and he gave law enforcement Bostic's phone number. Etheridge testified he was not present at the meeting. Etheridge testified he assumed the meeting took place, but he was not sure because he was not present. Etheridge testified he did not remember which officer he spoke with, and he testified he did not recall meeting with Bostic after the alleged meeting took place.

Deputy Solicitor John Jupertinger testified at the PCR hearing that he spoke with multiple witnesses prior to proceeding to trial. He testified that he never spoke with Gary Bostic. Jupertinger further testified that to the best of his knowledge no one from the State ever interviewed Bostic about Corey Byrd's murder. Jupertinger did testify that he felt Bostic probably hired Applicant to kill Victim, but he felt he did not need Bostic because his case against Applicant was overwhelming. Jupertinger testified that based on all of the other evidence, to include the phone records, the Goodman letters, and Gass's testimony, he had no doubt that Applicant was the shooter. Jupertinger acknowledged he could possibly have tried Bostic as a co-conspirator in Victim's death, but at the time his main focus was on convicting Daniels as the person who actually pulled the trigger.

Lieutenant Compton testified at the PCR hearing that he was the State's lead investigator

in the murder of Victim. Compton testified he has been employed with the Florence Police Department for thirty-one years. Compton testified that as the lead investigator on the case, all of the other officers who worked the case reported to him. As such, he testified there were no witness statements he did not know about. Compton testified if anyone interviewed Bostic regarding the case, he would have known about it. Compton testified he never interviewed Bostic, nor did anyone else working the case. Compton testified he wanted to interview Bostic, but he was never able to get in touch with him. He testified he did not feel he had enough evidence to bring charges against Bostic with regard to Victim's murder. Compton testified he believes Bostic hired Applicant to shoot Victim, but he could never develop any concrete evidence against Bostic. Compton testified that in preparation for the PCR hearing he went back and made sure no one from law enforcement ever spoke with Bostic prior to Applicant's trial, and he found nothing indicating Bostic had ever been interviewed. Compton testified there was never any written, verbal, or taped statement. Compton testified he had no doubt Applicant was the shooter.

This Court has had the opportunity to review the record pertaining to Gary Bostic's alleged involvement in this case and has heard all of the testimony given at the PCR hearing. As an initial matter, this Court finds the testimony of Etheridge, Jepertinger, and Compton to be credible. This Court further finds the testimony of Bostic not credible. This Court finds it extremely difficult to believe Bostic would have been eager to speak with law enforcement about Victim's murder considering his history with Victim.

A. Ineffectiveness of Trial Counsel

With regard to any alleged ineffectiveness on the part of Trial Counsel for not speaking with Bostic or calling him as a witness, Applicant has presented no evidence that Counsel did not

attempt to contact Bostic. Furthermore, this Court is unpersuaded that any potential testimony rendered by Bostic would have benefited Applicant. At the PCR hearing, Bostic did not give any substantive testimony regarding his actions or whereabouts on the night of the murder; rather, his testimony was brief and self-serving. Undoubtedly, Bostic's goal was to attempt to influence the outcome of Applicant's PCR hearing without offering anything substantive that could implicate him in a future prosecution. As such, Bostic's testimony was largely worthless. This Court finds it equally hard to believe that Jack Lawson, an extremely experienced trial attorney, would have any interest in presenting testimony from a witness who allegedly hired his client to shoot the victim. This Court fails to see how such testimony would have shifted the blame away from the person who actually pulled the trigger, and all of the evidence and testimony before this Court, other than Applicant's self-serving testimony which is not credible, indicates Applicant was the shooter. While this Court cannot read the mind of Trial Counsel, it is not hard to imagine he felt any testimony from Bostic would likely hurt Applicant's case rather than help, especially since Bostic would be subject to cross-examination by the State. While Counsel was unfortunately unavailable to testify, this Court presumes his strategy for not calling Bostic as a witness was valid. See Section 1 Supra. As such, this Court finds Applicant has failed to show Trial Counsel was ineffective for not utilizing Gary Bostic, and Applicant has failed to show any resulting prejudice. Therefore, the allegation is without merit.

B. Prosecutorial Misconduct

With regard to the allegation that the State committed prosecutorial misconduct by failing to turn over the alleged statement given by Bostic, this Court finds the issue to be without merit. A *Brady* violation is one type of prosecutorial misconduct. Gibson v. State, 334 S.C. 515, 528, 514 S.E.2d 320, 326 (1999). An individual asserting a *Brady* violation must demonstrate that

evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70 (2006).

Here, Applicant has failed to prove even a single prong of the *Brady* analysis. As an initial bar to the claim, Applicant has failed to show that any alleged statement by Gary Bostic exists at all. The **only** evidence offered by Applicant is Gary Bostic's testimony, which this Court finds to be not credible. Assuming *arguendo* that such a statement did exist, Applicant has still failed to provide any evidence of the content of the alleged statement to show it would be either favorable to Applicant or material to his guilt or innocence. The testimony from both Jepertinger and Compton makes it clear that Bostic was never interviewed about Applicant's case. Furthermore, Jepertinger explained his reasoning by testifying he felt the evidence against Daniels was strong enough that it was unnecessary to use Gary Bostic. Compton testified he was unable to reach Bostic.¹⁰ Finally, in order for this Court to grant Applicant PCR on this ground, this Court would have to find that both the solicitor and the lead investigator who handled Applicant's prosecution not only withheld evidence at the trial stage, but this Court would have to find their testimony at the PCR hearing was not only not credible but perjurious. After observing and listening to the testimony rendered by Jepertinger and Compton, this Court is unwilling to make such a finding. As such, Applicant has presented no credible evidence that such a statement was ever made, or that the State committed any *Brady* violations. Therefore, this Court finds all of Applicant's allegations concerning Gary Bostic to be without merit.

ALL OTHER ALLEGATIONS

¹⁰ A letter from Etheridge to Compton was entered as an exhibit by Applicant at the PCR hearing. However, this Court does not find the letter dispositive that a meeting between Compton and Bostic ever took place; rather, it merely bolsters the testimony given by Etheridge and Compton that Compton attempted to interview Bostic.

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 sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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, as set forth in the statement of facts Supra. 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).

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Trial counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

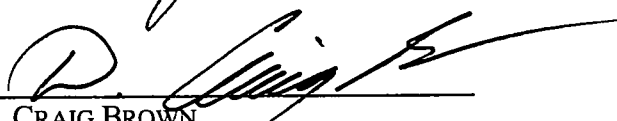
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, 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:

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

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



 D. CRAIG BROWN
 Presiding Judge
 Twelfth Judicial Circuit

Florence, South Carolina

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 CONNIE REEL-SHEARIN
 CCOP & GS
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
 CLERK OF COURT C.R. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Gregory D. Daniels, #297449,)

Case No. 2013-CP-21-0280

RECEIVED

Applicant,)

SEP 28 2015

v.)

ORDER

S.C. Supreme Court

State of South Carolina,)

2015 AUG 24 AM 11:29
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

Respondent.)

This matter comes before this Court by way of a post-conviction relief (PCR) application filed by Gregory Daniels (Applicant) on February 1, 2013. The State (Respondent) made its return on September 17, 2013. An evidentiary hearing in to the matter was convened on April 14 and 17, 2015, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office. This Court issued an Order filed June 10, 2015, denying the application for post-conviction relief.

Applicant filed a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, in which he asks this Court to alter or amend its order dismissing his PCR application. Respondent made its return to the motion, requesting this motion be dismissed.

Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds oral argument would not aid in the reconsideration of the original judgment. The Order of Dismissal issued by this Court


*PCR
P. 10/2*

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Cristie Kayl-Spencer
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion be denied and dismissed.

AND IT IS SO ORDERED this 5 day of August, 2015.


D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

2015 AUG 24 AM 11:29
CORRIE REEL-SHEARIN
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, SC

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Florence, South Carolina

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Corrie Reel-Shearin
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.

*D. CB
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