

THE

**GIESE**

LAW FIRM, LLC

November 13, 2015

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

**RECEIVED**

NOV 16 2015

**S.C. SUPREME COURT**

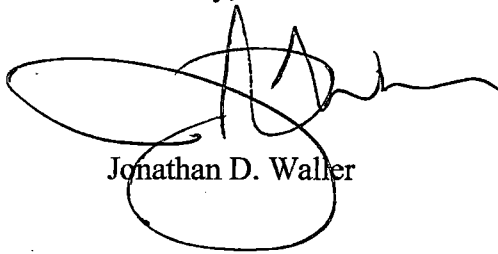
Re: Roosevelt Anthony Reaves vs. State of South Carolina  
C/A No: 2014-CP-40-00562

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. Reaves 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. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Brooks P. Goldsmith, Circuit Court Judge

**RECEIVED**

NOV 16 2015

2014-CP-40-00562

**S.C. SUPREME COURT**

Roosevelt Anthony Reaves, #286377,

Appellant,

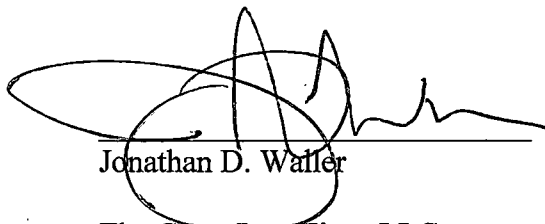
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Roosevelt Anthony Reaves, #286377, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 13, 2015, issued by the Honorable Brooks P. Goldsmith, Presiding Judge, Fifth Judicial Circuit.



Jonathan D. Waller

The Giese Law Firm, LLC  
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 13 day of November, 2015.

Other Counsel of Record:

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

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Brooks P. Goldsmith, Circuit Court Judge

2014-CP-40-00562

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NOV 16 2015

S.C. SUPREME COURT

Roosevelt Anthony Reaves, #286377,

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 13 day of November 2015.

  
Shawn Giese

SWORN TO BEFORE me this 13 day  
of ~~June~~, 2015.

  
Notary Public for South Carolina  
My Commission Expires: 3/25/2023

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4000562

Roosevelt Anthony #286377 Reaves

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.
- 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 PUBLIC 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 |
|---|---------------------------------------|--------------------------------|
|   |                                       | \$                             |
|   |                                       | \$                             |
|   |                                       | \$                             |

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 \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 13 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Roosevelt Anthony A#286377 Jonathan D Waller  
Reaves

Megan Harrigan Jameson

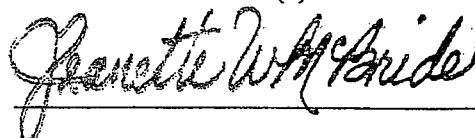
Roosevelt Anthony A#286377  
Reaves

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_



RICHLAND COUNTY  
FILED  
OCT 13 PM 12:35  
JEANETTE W. MCBRIDE  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Roosevelt Reaves, #286377

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2014-CP-40-00562

ORDER OF DISMISSAL


JEANETTE W. McBRIDE  
C.C.P. & C.S.

2015 OCT 13 PM 12:31

RICHLAND COUNTY  
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 27, 2014. Respondent made its Return on June 23, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on April 2, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent. The record was held open to allow the Court to receive testimony from appellate counsel David Alexander, Esquire. A second hearing was convened on April 20, 2015, at the Lexington County Courthouse. The parties waived venue to allow the hearing to proceed.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Charlie W. Cochran, Esquire and appellate counsel David Alexander, Esquire. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the trial transcript.



## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the May 2010 term of the Richland County Grand Jury for Criminal Sexual Conduct in the First Degree (2010-GS-40-1317), and Burglary in the First Degree (2010-GS-40-1305). Applicant was represented by James D. Cooper, III<sup>1</sup>, Esquire, Charlie W. Cochran, Esquire, and Clarke Newton, Esquire. On April 11-13, 2011, Applicant proceeded to a jury trial before the Honorable Clifton B. Newman, where he was convicted as indicted of Criminal Sexual Conduct in the First Degree and acquitted of Burglary in the First Degree. Judge Newman sentenced Applicant to thirty (30) years' imprisonment for Criminal Sexual Conduct in the First Degree.

A Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed his conviction and sentence by unpublished opinion. State v. Roosevelt Reaves 2013-UP-422 (Ct. App. filed November 20, 2013). The Remittitur was sent on December 6, 2013.

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

1. Ineffective assistance of trial counsel in failing to appropriately challenge State's exhibits 17-22 (enhanced photos of CSC victim's injuries).
2. Ineffective assistance of appellate counsel in failing to raise the issue of whether the trial court improperly overruled an objection to the nurse examiner's alleged corroboration testimony.

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<sup>1</sup> Mr. Cooper was deceased at the time of the PCR hearing.



## II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

### Applicant's Testimony

Applicant testified he was living in Atlanta, Georgia when he was charged with these crimes. He was arrested a month and a half after the incident. Anastasia L. Walker, Esquire was first appointed to represent Applicant. James D. Cooper, III, was subsequently appointed and represented Applicant through his trial. Applicant testified he was advised of the charges against him and the penalties that the carried. He testified the case was a "he-said, she-said" case. He testified he was acquitted of the first degree burglary charge. Applicant testified he conceded that the DNA evidence was a match because he claimed the sexual intercourse was consensual.

Applicant testified he spoke to Counsel Alexander and that they mostly discussed the photographs that were entered into evidence. Applicant commended his attorneys for their performance and effort, but noted that he believed there were some issues.

### Counsel Charlie W. Cochran's Testimony

Counsel Cochran testified he is currently a public defender in Charleston County and was previously with the Richland County Public Defender's Office. Counsel Cochran testified the State's theorized that Applicant was lurking outside of the victim's residence. He testified the DNA was negated because Applicant claimed he met the victim earlier and that the sex was consensual. He noted the State sought to introduce various photographs showing the vaginal trauma to support their case that the sex was not consensual. He testified the pictures were extremely graphic and were presented to the jury on a projector after they had been enlarged. He explained that he raised an objection under Rule 403, SCRE and cited case law in support of those objections. He testified both sets of photographs were admitted over his both his pre-trial

and contemporaneous objections under Rule 403, SCRE. He explained that the pictures were done by colposcopy and that a dye was used to emphasize the injuries.

Counsel Cochran testified he also objected to portions of the sexual assault nurse examiner's (SANE) testimony as hearsay. The trial court limited the testimony to the testimony to time and place.

### **Counsel David Alexander's Testimony**

Counsel Alexander testified he was assigned to Applicant's case through his position with the South Carolina Commission on Indigent Defense, Appellate Division. He testified he had around one-hundred twenty (120) open cases currently. He testified it is his standard practice to read the entire record and determine which issues are preserved for appellate review. Counsel Alexander testified he ordered the photographs of the victim's genital to review. He testified that he did raise the trial court's admission of the photographs as an issue on appeal. He also raised the issue of whether the trial court properly allowed the SANE nurse to testify outside the scope of her expertise. He testified he did not raise an issue regarding the nurse's supposed corroboration testimony. (See Trial Trans. p. 300-01). Counsel Alexander testified he does not have a duty to raise all preserved issues and raises the issue(s) he deems strongest and most likely to prevail on appeal. He testified he raised two issues in the brief because he believed they were the strongest.

### **III. APPLICABLE LAW**

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

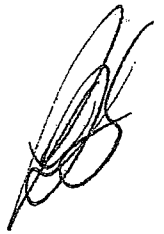
cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.



As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### **Ineffective Assistance of Trial Counsel**

Applicant argues trial counsel was ineffective in failing to object to the graphic photographs under Rule 1002, SCRE. This Court disagrees. Rule 403, SCRE was the most appropriate objection and the one aptly made by trial counsel. The photographs presented a graphic visual of the victim's genitalia which presented a risk of being unduly prejudicial. Trial counsel made the appropriate objection through a motion in limine and contemporaneous objections when the photographs were offered for admission. The objection pursuant to Rule 403, SCRE is the stronger, more applicable objection to the admission of photographs.

Further, Applicant has failed to prove prejudice. Applicant must show that an objection under Rule 1002, SCRE, would have been successful. This Court finds that it is likely that objection would have been overruled. "The question of whether to admit evidence under [Rules 1001 to 1004, collectively known as the best evidence rule,] is also addressed to the discretion of the trial court." State v. Mitchell, 399 S.C. 410, 421, 731 S.E.2d 889, 895-96 (Ct. App. 2012) citing State v. Halcomb, 382 S.C. 432, 443-44, 676 S.E.2d 149, 154-55 (Ct.App.2009) (parentheticals in original). Therefore, Applicant cannot prove that it is likely the result of the trial would have been different had trial counsel made an objection under Rule 1002, SCRE.

#### **Ineffective Assistance of Appellate Counsel**

Applicant further argues appellate counsel was ineffective in failing to challenge the trial court's decision in allowing the nurse examiner to testify to statements made by the victim. (See

Trial Trans. p. 300-01). This Court finds Applicant failed to meet his burden in proving counsel was deficiency and in proving the requisite prejudice entitling him to relief. This allegation must be denied and dismissed with prejudice.

Relevant Law

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

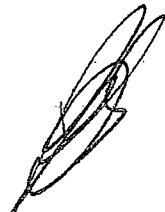


reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel 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)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

“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).

#### Analysis

Here, Counsel Alexander testified he briefed what he believed to be the two strongest issues. Applicant has failed to show otherwise. First, this Court finds that Applicant has failed to show that Counsel Alexander's performance was deficient, where there is no standard requiring counsel to raise every preserved issues and where he raised two stronger issues on Applicant's behalf. Counsel's testimony as to his preparation and strategy is credible and persuasive to this Court. The issues raised were potentially meritorious issues that were clearly preserved.



Second, this Court finds that Applicant has failed to establish prejudice, as there is no reasonable likelihood that he would have prevailed on appeal had this issue been raised. Counsel Alexander's testimony is persuasive in that he raised the issues he believed at the time to be strongest. This Court will not second guess that very reasonable decision.

This Court finds the trial court properly admitted the statements made by the nurse examiner. "The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." State v. Foster, 354 S.C. 614, 620, 582 S.E.2d 426 (2003). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id at 621, 582 S.E.2d at 429. To warrant reversal, an appellant must show not only an alleged error, but also resulting prejudice. State v. Fulton, 333 S.C. 359, 363-64, 509 S.E.2d 819, 821 (Ct. App. 1998). The trial court properly admitted the nurse's testimony as a statement for purposes of medical diagnosis or treatment. See Rule 803(4), SCRE. The trial court ruled: "The witness can testify to information gathered for purposes of her services." (Trial Tr. 301, lines 7-9). The victim was giving information to the nurse examiner pertinent to the diagnosis and treatment of her injuries sustained during the rape. It is not likely that an appellate court found find the trial court abused its discretion in admitting the statement.

In addition, the trial court could have admitted the statement as a prior consistent statement. See Rule 801(d)(1)(B), SCRE. Applicant questioned the victim on whether she reviewed her testimony with the solicitor's office prior to the trial. (Trial Tr. P. 131, line 17 - p. 132, line 20). The State was then allowed to present the prior consistent statements to combat Applicant's implied allegation of improper influence or coaching. See State v. Jeffcoat, 350 S.C. 392, 565 S.E.2d 321 (Ct. App. 2002) (holding that the testimony of victim's mother and therapist was properly admitted to rebut a charge of improper influence on victim's testimony).

SCANNED

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

#### **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.

#### **V. 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. Applicant failed to demonstrate counsels’ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

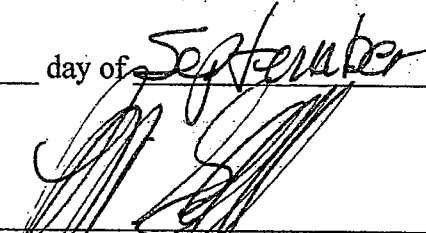
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Page 10 of 11  
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appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of September, 2015.

  
\_\_\_\_\_  
BROOKS P. GOLDSMITH  
Presiding Judge

\_\_\_\_\_, South Carolina

THE

**GIESE**

LAW FIRM, LLC

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Columbia, SC 29201

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