Dupree Evans 322078
Perry Correctional Institution
430 Oaklawn Rd
Pelzer, S.C. 29669

Hon. Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box
Columbia, S.C. 29211

11/19/15

RE: Dupree Evans v. State of South Carolina
2010-CP-26-08638

Dear Mr. Shearouse,

Enclosed for filing is a notice of Appeal in the above captioned case. Also enclosed are the following:

1.) Proof of Service of the notice of Appeal on the Judge Defendant-Respondent, and Horry County Clerk of Court
2.) A copy of the Order's [Judgment] which is to be challenged on Appeal
3.) An Affidavit's stating the date's Applicant received the final Order's.
4.) This Appeal is being filed with the South Carolina Supreme Court because S.C.A.C.R. 203

The Applicant a pro se litigant misunderstood S.C.A.C.R Rule 203 B(1) language as staying the time of Appeal until post trial motions have been ruled upon. See last Sentence of S.C.A.C.R Rule 203 B(1):

"When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment

Upon receipt of the final order the Applicant had post trial motions pending awaiting a ruling; which was why the Applicant did not file a notice of Appeal at that time pursuant to S.C.A.C.R 203 B (1), and while awaiting this ruling the Applicant filed several other post-trial motions that have not been ruled upon.

While discussing this matter with more knowledgable layman the Applicant became aware of his misunderstanding surrounding S.C.A.C.R Rule 203 B (1) and now submit's this notice of Appeal with an Interlocutory Appeal on issue's not appearing in the final order.

Sincerely
Dupree Evans

Dupree Evans
Perry Correctional Institution
430 Oaklawn Rd
Pelzer, S.C. 29669

cc: Joshua L Thomas
Asst. Attorney General
Melanie Wand
Horry County Clerk of Court
Hon. Kristi L. Harrington
P.C.R. Judge

The STATE of SOUTH CAROLINA
In The Court of Appeals
In The Supreme Court

Appeal From Horry County
Court of Common Pleas
Kristi L. Harrington, Circuit Court Judge

2010-CP-26-08638

Dupree Evans ..... Applicant - Appellant

v.

State of South Carolina ..... Defendant - Respondent

NOTICE OF APPEAL

Dupree Evans Pro se Applicant Appeals the order [Judgment] of the Hon. Kristi L. Harrington dated ~~Oct 7th~~, 2014. Applicant received written notice of entry of this order [Judgment] on ~~MARCH~~ 25th, 2015.

x Dupree Evans

Dupree Evans
P.C.I
430 Oaklawn Rd
Pelzer, S.C. 29669

Other Counsel of Record

Joshua L. Thomas
Office of The Attorney General
P.O. Box 11549
Columbia, S.C. 29211

The State of South Carolina
In The Court of Appeals
In The Supreme Court

Appeal From Horry County
Court of Common Pleas
Kristi L. Harrington, Circuit Court Judge

2010-CP-26-08638

Dupree Evans — Applicant - Appellant

v.

State of South Carolina — Defendant - Respondent

Proof of Service

I certify that I have served the Notice of Appeal on Joshua L. Thomas, Melanie Ward, and Hon. Kristi L. Harrington by depositing a copy of it along with an Interlocutory Appeals in the United States Mail postage prepaid on 11 19 15 addressed to:

Joshua L. Thomas
P.O. BOX 11549
Columbia, S.C. 29211

Hon. Kristi L. Harrington
300 B California Ave
Moncks, Corner, S.C. 29461

Melanie Ward
Horry County Clerk of Court
P.O. BOX 677
Conway, S.C. 29526

Sincerely
x Dupree Evans
Dupree Evans
Perry Correctional Institution
430 Oaklawn Rd
Pelzer, S.C. 29669

The State of South Carolina
In The Court of Appeals
In The Supreme Court

Appeal From Horry County
Court of Common Pleas
Benjamin H. Culbertson, George C. James & Kristi L. Harrington

2010-CP-26-08638

Dupree Evans ..... Applicant - Appellant

State of South Carolina ..... Defendant - Respondent

NOTICE OF INTERLOCUTORY APPEALS

Dupree Evans Pro se Applicant Appeals the Orders [Judgment] of Benjamin H. Culbertson, George C. James, Kristi L. Harrington (2) See Enclosures.

x Dupree Evans

Dupree Evans
P.C.I
430 Oaklawn Rd
Pelzer, S.C. 29669

Other Counsel of Record
Joshua L. Thomas
Office of The Attorney General
P.O.BOX 11549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Dupree Evans, #322078,)) Applicant,)) v.)) State of South Carolina,)) Respondent.))	Case No. 2010-CP-26-8638 **ORDER DENYING APPLICANT'S "MOTION TO CONFORM PLEADINGS TO EVIDENCE"**

This matter comes before the Court on Applicant's "Notice of Motion and Motion to Conform Pleadings to Evidence" filed September 15, 2015. Respondent filed a reply to Applicant's motion. Applicant's motion appears to ask the Court to amend the pleadings to include a further allegation the trial court lacked subject matter jurisdiction.

The Court finds Applicant's motion is successive and untimely. The Court ruled on Applicant's December 18, 2014, motion to conform to the pleadings on March 30, 2015. Applicant could have raised the issues he raises in his current motion at that time. Because he did not raise them in his initial motion to conform, he cannot raise them now. Furthermore, the Court issued its order denying relief on November 19, 2014. Applicant's current motion is untimely because it was filed over ten months after the Court's final order. See Rutland v. Holler, Dennis, Corbett, Ormond & Garner, 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct. App. 2006) ("The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." (quoting Ex parte Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004))).

IT IS THEREFORE ORDERED that Applicant's "Motion to Conform Pleadings to Evidence" is hereby **DENIED.**

10/2/15

Applicant is advised the Court's March 30, 2015, order constituted the Court's final ruling in this action. Applicant is admonished that the Court will not entertain any further motion filed in this matter, and should Applicant file any further motions the Court may issue a rule to show cause why he should not be held in contempt.

IT IS SO ORDERED this 2nd **day of** October **, 2015.**

THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge

Marietta, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Dupree Evans, #322078, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2010-CP-26-8638 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 14, 2010. Respondent made a timely Return on or about October 12, 2010. The Court convened an evidentiary hearing into the matter on August 25, 2014, at the Horry County Courthouse. Applicant was present at the hearing representing himself *pro se*.[1] Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Testifying at the evidentiary hearing were: Orrie E. West, Esquire; Heather von Herrmann, Esquire; Paul Sheets; and Dale Long. Applicant also testified on his own behalf. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the appellate records, the application for post-conviction relief and amendment, the return, and the exhibits entered during the hearing. The Court finds as follows:

[1] By order dated April 24, 2014, the Honorable George C. James, Jr., granted Applicant's motion to relieve counsel and proceed *pro se*.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In July 2005, the Horry County Grand Jury indicted Applicant for murder (2005-GS-26-1319). Orrie E. West, Esquire ("trial counsel"), represented Applicant. Heather von Herrmann,[2] Esquire ("the solicitor"), represented the State. On May 21-22, 2007, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted. Judge Cottingham sentenced Applicant to life imprisonment without the possibility of parole.

Applicant filed a timely notice of appeal, and Wanda H. Carter, Esquire ("appellate counsel"), of the Office of Appellate Defense, perfected the appeal with the filing of an *Anders*[3] brief. Applicant filed a *pro se* response to the *Anders* brief. The South Carolina Court of Appeals dismissed Applicant's appeal on February 24, 2010. *State v. Evans*, Op. No. 2010-UP-142 (S.C. Ct. App. filed February 24, 2010). The Court of Appeals denied Applicant's *pro se* motion for reconsideration on April 22, 2010, and the South Carolina Supreme Court denied Applicant's *pro se* petition for writ of certiorari on May 27, 2010. The remittitur was returned to the circuit court on June 1, 2010.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Trial Counsel"

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[2] Since the trial, Ms. von Herrmann has married and changed her name. She is referenced in the transcript as Heather S. Tolar.

[3] *Anders v. California*, 386 U.S. 738 (1967).

2. "Ineffective Assistance of Appellate Counsel"
3. "Violation of Due Process Rights"

Applicant, through counsel, filed an "Amended Application for Post-Conviction Relief" on October 26, 2012. In that amendment, Applicant raised the following grounds for relief:

1. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to conduct an independent investigation."
    a. "Criminal Defendants are entitled to effective assistance of counsel as guaranteed by the Sixth Amendment. Applicant was facing the serious charge of murder. Trial Counsel failed to conduct any investigation into the details or facts of the murder of Amido Nallo. No witnesses were interviewed and trial counsel offered no case at trial despite witness statement indicating a fight between the victim and the Applicant had occurred. This evidence indicates a self-defense and/or mitigating circumstances argument that was necessary to the Applicant's defense. Trial counsel's failure was deficient because professional norms at the time required counsel to conduct an independent investigation. Counsel's deficient performance prejudiced Applicant."
2. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to thoroughly and properly examine crucial prosecution witnesses."
    a. "Criminal Defendants are entitled to effective assistance of counsel as guaranteed by the Sixth Amendment. The Solicitor called four witnesses that claimed to be present at the Leone Inn the night of the murder. Their testimony was extremely damaging to the applicant, but the credibility of these witnesses was suspect. These witnesses gave conflicting testimony both in their statements to the police and during trial. Demettrice Holloway, Anthony Grissett, John Josh Timmons, and Jamie Jefferson told the police they were present at the Leone Inn the night of the shooting. Their testimony was inconsistent and conflicting. Their statements and testimony differed concerning the level of the music, what they were doing there that night, how the Applicant left the area, and where they placed the victim after the shooting. Despite the disparity in their statements, these statements were not used to attack the credibility of the only witnesses that could place Applicant at the scene the night of the incident. Trial counsel's failure was deficient because professional norms at the time required counsel to thoroughly and properly cross examine crucial prosecution witnesses. Counsel's

deficient performance prejudiced Applicant."

3. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to thoroughly and properly impeach crucial prosecution witnesses."

    a. "Criminal Defendants are entitled to effective assistance of counsel as guaranteed by the Sixth Amendment. The Solicitor called to testify two witnesses, Anthony Grissett and John Joshua Timmons. These witnesses claim to be at the Leone Inn the night of the shooting. Their testimony was extremely damaging to the applicant, but the credibility of these witnesses was suspect. These two witnesses had extensive criminal histories that called their credibility into question. Anthony Grissett was convicted of shoplifting, larceny, and manufacturing or possession of drugs; all crimes that call his character into question. John Joshua Timmons was convicted of drug charges as well as two charges involving a firearm. These crimes call his credibility into question, especially as a witness to a crime involving a firearm. Trial counsel's failure was deficient because professional norms at the time required counsel to thoroughly and properly impeach crucial prosecution witnesses. Counsel's deficient performance prejudiced Applicant."

4. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to object to inadmissible evidence concerning the applicant's statements during a prior encounter."

    a. During the trial, the victim's father testified to prior incidents involving the Applicant. During his testimony inadmissible hearsay was admitted and not objected to by trial counsel. The victim's father states that the Applicant said, "bitches, I will kick your asses and I will blow your heads off." He also testifies that during another incident the Applicant said, "Why didn't you bitches run wait? I will blow your head off." This is inadmissible hearsay under Rule 802. SCRE 802. Further, this evidence is unduly prejudicial and inadmissible under Rule 403. SCRE 403. Trial counsel's failure was deficient because professional norms at the time required counsel to properly object to hearsay and unduly prejudicial evidence. *Strickland*, *supra*. Counsel's deficient performance prejudiced Applicant. *Id.*"

5. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to properly object to inadmissible character evidence concerning alleged prior bad acts of the applicant."

    a. "During the trial, the victim's father testified to two prior incidents between himself and the Applicant. He testified that the Applicant

came to the hotel, threatened his and his son's life, and damaged his vehicle. He also testified that the Applicant came to the hotel with a weapon and threatened to kill both of them. These incidents were prior bad acts and evidence of these incidents is inadmissible under South Carolina law. *State v. Braxton*, 343 S.C. 629, 634; 541 S.E. 2d 833 (2001); *State v. Lyle*, 125 S.C. 406, 1 18 S.E. 803 (1923). Further, even if, arguendo, there was a link between these incidents with the victim's father, the evidence should have been excluded as it was unduly prejudicial, in violation of Rule 403. SCRE 403. Trial counsel's failure was deficient because professional norms at the time required counsel to properly object to prior bad act evidence. *Strickland, supra.* Counsel's deficient performance prejudiced Applicant. *Id.*"

6. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to object to inadmissible photographs of the crime scene."
    a. During the trial, the prosecution submitted two photographs of the outside of the motel into evidence. These two photographs were taken at a later date than the incident. They were admitted with no objection from trial counsel. However, these photographs were substantially different than the motel on the night of the incident. At the time of the incident, there were tall bushes outside the windows of the lounge of the motel. Photographs admitted as State's Exhibits 6 and 7 do not depict these tall bushes. These bushes are important because a witness from the scene claims to have looked out of the window of the lounge and seen the Applicant and the victim talking directly before the shooting. The prosecution admits that there are differences in the bushes. Despite this disparity in the photographs, trial counsel did not object to their admission into evidence. Trial counsel's failure was deficient because professional norms at the time required counsel to object to admission of the photographs. Counsel's deficient performance prejudiced Applicant."
7. "Applicant's right to a fair trial guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of the misconduct of the police with regards to the pants evidence and admission of evidence lacking a proper chain of custody."
    a. "The Applicant's pants were the only physical evidence admitted at trial against the Applicant. These pants were admitted despite an objection to the chain of custody by trial counsel. The pants were initially collected by Officer Reist of the North Myrtle Beach Police Department. The pants were given by him to Officer Bordner of the Atlantic Beach Police Department. Bordner

transferred them to Roderick Green of SLED who stored them in an evidence room for a few months. No trace evidence testing was performed on the pants at the time. They were then given back to Michael Bordner from SLED employee Butler on December 14, 2004. There is a break in the chain of custody at this point. SLED received them again from Dale Long of the Horry County Police Department. There is no indication of where the pants were between December 14, 2004 (when given from SLED to Bordner) and over a year later on December 15, 2005 when Dale long submitted them to SLED for testing. They were then tested and gunshot residue was found on a portion of the pants. The pants were admitted into evidence and were the only physical evidence presented at trial against the Applicant."

8. "Applicant's right to due process of law as guaranteed by the Fifth Amendment to the United States Constitution and South Carolina Law was violated as a result of the Prosecution's knowing use of perjured testimony."
    a. "During the trial, Ila Simmons testified that Roderick Green of the SLED crime scene unit submitted the pants to the trace evidence department to be tested. This is untrue. The prosecution should have known this to be untrue as she and/or SLED was in possession of the chain of custody. Applicant claims there were other uses of perjured testimony throughout the trial."
9. "Applicant's right to due process of law as guaranteed by the Fifth Amendment to the United States Constitution and South Carolina Law was violated as a result of the Prosecution's withholding of material evidence."
    a. "Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of good or bad faith of the prosecution. *State v. Taylor*, 333 S.C. 159, 508 S.E.2d 870 (1998). Prior to the trial, trial counsel made a request pursuant to *Brady v. Maryland*. Despite this, the prosecution withheld material evidence. Only one page of the statement given by Joe Nallo was given to the defense. The second page was material because it contained allegations of prior incidents between the Applicant and the victim's father that were testified to at trial. A 911 tape was also never produced to the Applicant. Further, there were indications that the Solicitor's file on the Applicant was as large as three boxes. Less than half a box was produced to the Applicant prior to trial. Failure to provide this evidence constitutes a Brady violation and a violation of the Applicant's due process rights."
10. "Applicant's right to due process as guaranteed by the Fifth Amendment of the United States and South Carolina law as well as his right to a properly established grand jury guaranteed by the South Carolina Constitution was violated as a result of

the illegally convened Grand Jury that true-billed Applicant's indictment."

a. "The Applicant's indictment was true billed by an illegal convened Grand Jury. The term of court listed on the indictment is April of 2005. The indictment was not true billed until July 28, 2005. The Terms of Circuit Court Schedule indicates there was no General Session term of court on July 28, 2005."

11. "The Court lacked subject matter jurisdiction as a result of the incomplete and/or illegally true billed indictment."
    a. "The Applicant's indictment was true billed by an illegal convened Grand Jury. The term of court listed on the indictment is April of 2005. The indictment was not true billed until July 28, 2005. The Terms of Circuit Court Schedule indicates there was no General Session term of court on July 28, 2005. Further, the indictment was not immediately filed with the Clerk of Court."
12. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of Trial counsel's failure to request impanelment documents."
    a. "Trial counsel made a motion to quash the indictment based on errors in the indictment. However, she did not request the impanelment documents that would have supported her position that the indictment was inconsistent with applicable law."
13. "Trial counsel was ineffective for failing to call expert testimony relevant to the defense."
14. "Trial counsel was ineffective for failing to ask/or a curative instruction on her objections to the Solicitor's remarks made during her closing argument."
15. "Trial counsel was ineffective for failing to motion for a mistrial when the trial judge's body language and demeanor throughout the proceedings was not in accordance with that of an impartial Tribunal."
16. "Appellate Counsel was ineffective for submitting a brief pursuant to *Anders* based on an inconclusive transcript."
17. "Appellate Counsel was ineffective for failing to brief meritorious issues on appeal."
    a. "Appellate Counsel filed a brief pursuant to *Anders*. However, Appellate counsel did not appeal the failure of the state to produce an oral statement of a crucial witness. Appellate counsel also did not appeal the admission of the pant evidence or inadmissible character evidence that were admitted over trial counsel's objection."
18. "Appellant's right to a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution and South Carolina law was violated as a result of the Appellant being arrested on September 29, 2004 and his trial not taking place until May 21, 2007."
19. "Trial counsel was ineffective for giving erroneous legal advice."

At the evidentiary hearing, Applicant went forward on the grounds included in his amended

application, and made an oral amendment to include the following grounds:

20. Prosecutorial misconduct for withholding a chain of custody.
21. Due process violation for the solicitor appearing before the grand jury.

Where practical, the Court has combined issues in the below analysis for ease of disposition.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Trial counsel testified she was the public defender appointed to Applicant's case. She recalled filing for discovery from the State. She testified she prepared for trial based on the evidence provided to her by the State. Trial counsel recalled receiving a written statement from Anthony Grissett. She also recalled objecting to the introduction of a second, oral, statement from Grissett. Trial counsel testified she received a statement from Mr. Nallo, but did not recall specifically if she received a second page to the statement. However, she did recall having copies of several incident reports involving Mr. Nallo and Applicant. Trial counsel could not recall if John Timmons gave an audio statement, but would have reviewed it if one had existed. Trial counsel also testified she had an investigator assigned to the case and personally visited the scene in preparation for trial. She testified she was sufficiently prepared to try the case.

Trial counsel testified she reviewed all the evidence with Applicant. She recalled the State's evidence was mostly circumstantial, but substantial nonetheless. Trial counsel did not recall receiving a 911 tape. She further testified she explained to Applicant the evidence included witness statements and physical evidence. Trial counsel testified she received a chain

of custody on some evidence, and did not believe the chain was inaccurate. She also testified she objected to the introduction of the pants evidence based on an incomplete chain of custody.

Trial counsel recalled making a pre-trial motion for a speedy trial. She also recalled making a pre-trial motion to quash the indictment before the Honorable Clifton B. Newman. She also renewed the motion before Judge Cottingham. Trial counsel testified Applicant was adamant about raising indictment issues, but she explained to him those issues were not likely to be successful. She testified Applicant's indictment was scheduled for the April grand jury term, but was not presented until July. Trial counsel also testified she objected to the introduction of any evidence of prior bad acts by Applicant toward the victim.

Dale Long testified he was employed by the Solicitor's Office at the time of Applicant's trial. He testified he collected some pants from the Atlantic Beach Department of Public Safety and delivered them to the State Law Enforcement Division for testing. Paul Sheets testified he is employed by the North Myrtle Beach Police Department, but had no involvement in this case. He did, however, recall having information a member of the Atlantic Beach Department of Public Safety offered a reward for information in Applicant's case.

The solicitor testified she provided a full discovery response to trial counsel. She recalled Grissett giving an oral statement, but denied that statement was ever reduced to writing. She recalled trial counsel objecting to the chain of custody on the pants evidence. The Solicitor testified her review of the chain of custody did not show any breaks that were not addressed in trial. She testified consistent with trial counsel regarding the indictment process in this case. She also denied appearing before the grand jury to present the indictment. The solicitor vividly recalled several pre-trial hearings regarding the indictment.

The solicitor maintained she turned over all the evidence she had. Specifically, she did not recall any written statements that were not provided to trial counsel. She testified no 911 tape existed in this case.

Applicant testified his due process rights were violated by the State withholding favorable evidence. He maintained Ila Simmons committed perjury when she testified to the source of the pants evidence. Applicant alleged statements were withheld and the 911 tape was destroyed. He alleged the withholding of evidence prejudiced him in that he was unable to prepare for trial. Applicant also testified there are no documents indicating his indictment was true billed by the grand jury and the grand jury was not authorized to meet on the dates listed in the indictment. Applicant also maintained there was no evidence linking him to the murder.

B. Allegations of Ineffective Assistance of Trial 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, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions

in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the 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 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." *Id.* at 117-18, 386 S.E.2d at 625.

1. Erroneous advice and failure to conduct an independent investigation.

The Court finds Applicant failed to meet his burden of proving counsel failed to conduct an independent investigation. He also failed to meet his burden of showing trial counsel gave erroneous legal advice. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here Applicant has presented no evidence of what a further investigation would have uncovered. Trial counsel testified she thoroughly reviewed all witness statements and police reports, visited the scene, and was not surprised by any developments at trial. She further testified she had lengthy discussions with Applicant about the State's evidence. The Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in her preparation.

2. Failure to examine and impeach witnesses.

The Court finds Applicant failed to meet his burden of showing trial counsel was ineffective in her representation at trial. The transcript reveals trial counsel thoroughly cross-examined the State's witnesses and challenged the introduction of evidence. She challenged the credibility of witnesses regarding their prior convictions and any pending charges they may have had. She also impeached the witnesses with inconsistencies between their testimony and their prior statements. Furthermore, trial counsel highlighted the inconsistencies in her closing arguments. Applicant has not shown trial counsel was deficient in her questioning of the State's witnesses.

3. Failure to challenge evidence of a prior bad act.

The Court finds Applicant failed to meet his burden to show trial counsel was ineffective for failing to challenge evidence relating to a prior encounter between Applicant and the victim. The record shows trial counsel objected to the introduction of any evidence of this prior encounter. Any challenge to the introduction must have been raised on direct appeal. *See* S.C. Code Ann. § 17-27-20(b) (Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."); *see also Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.").

Furthermore, Applicant raised the introduction of this evidence in his *pro se* response to appellate counsel's *Anders* brief. Thus, this Court must presume the Court of Appeals reviewed this issue before dismissing Applicant's appeal. *See McHam v. State*, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) ("Under the *Anders* procedure, an appellate court is required to review the

entire record, including the complete trial transcript, for any preserved issues with potential merit." (citing *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991))). The Court cannot now address the introduction of this evidence in collateral review. Regardless, the Court finds this testimony was clearly admissible as evidence of a prior bad act tending to show Applicant's motive for murdering the victim. *See* Rule 404(b), SCRE; *State v. Ford*, 334 S.C. 444, 452, 513 S.E.2d 385, 389 (Ct. App. 1999).

4. Failure to object to photographs of the crime scene.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective in failing to object to the introduction of photographs of the crime scene. Trial counsel testified she visited the crime scene and reviewed the State's evidence. At trial, the witnesses testified the photos were accurate representation of the scene with the exception of some trees that were no longer there. This identification is sufficient to render the photos admissible. *See State v. Campbell*, 259 S.C. 339, 344, 191 S.E.2d 770, 773 (1972) ("Normally it is sufficient to justify admittance of photographs into evidence if a person familiar with the scene can say that the pictures truly represent the scene involved."). An investigator testified the trees would not have obscured the witness's view of the murder based upon his statements about where everyone was located. In light of the evidence presented at trial, trial counsel had no viable objection to the introduction of the photographs. Trial counsel was not ineffective for failing to lodge an objection to their introduction.

5. Failing to call expert.

The Court finds Applicant failed to meet his burden of proof to demonstrate trial counsel ineffective for failing to call an expert in his case. The Court notes no evidence was presented as

to what type of expert Applicant alleges should have been called. Furthermore, trial counsel thoroughly cross-examined the State's firearms and medical experts. *Lorenzen v. State*, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008) ("[C]ounsel's failure to procure expert witnesses did not render her representation deficient given she vigorously cross-examined the State's witnesses and attacked the accuracy of the evidence." (citing *Frasier v. State*, 306 S.C. 158, 410 S.E.2d 572 (1991))). Applicant presented no expert testimony at the evidentiary hearing. *Id.* at 530, 657 S.E.2d at 776-77 (finding no prejudice where "it is merely speculative that these allegedly favorable expert witnesses would have aided in [the applicant's] defense." (citing *Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005))). The Court finds Applicant has not shown how any further experts would have changed the outcome of his case.

6. Failing to request curative instruction.

The Court finds Applicant failed to meet his burden to prove trial counsel ineffective for failing to request curative instruction on her objections to the solicitor's remarks made during her closing argument. Trial counsel objected to the solicitor's statement that Applicant had intimidated a witness. However, Judge Cottingham did not sustain the objection. Rather, he allowed the solicitor to continue with her argument and stated he would "let the jury decide" whether the statement was correct. Judge Cottingham did not sustain the objection. Because the objection was not sustained, trial counsel could not request a curative instruction. City of Columbia v. Myers, 278 S.C. 288, 289, 294 S.E.2d 787, 788 (1982) ("[I]t would be both futile and nonsensical for counsel to request curative instructions from a trial court which has already ruled an argument to be proper."). Trial counsel was not deficient in this regard.

7. Failing to motion for a mistrial.

The Court finds Applicant has not shown counsel was ineffective in failing to move for a mistrial based upon Judge Cottingham's body language and demeanor. Trial counsel testified she did not believe Judge Cottingham's demeanor was in any way improper. Accordingly, the Court finds trial counsel had no basis for making such a motion. The Court also notes trial counsel mentioned in her closing argument that Judge Cottingham had a back problem and was uncomfortable during trial.

C. Allegations of Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). "However, 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)). 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 ineffective assistance of counsel. *Griffin v. Aiken*, 775 F.2d 1226, 1235 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. *Thrift*, 302 S.C. at 537, 397 S.E.2d at 526; *Strickland*, 466 U.S. at 687. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Furthermore, the applicant must prove prejudice by showing "there is a reasonable

probability he would have prevailed on appeal." *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted).

The Court finds Applicant failed to meet his burden of showing ineffective assistance of appellate counsel for filing an *Anders* brief instead of a merits brief. Initially, the Court notes Applicant failed to present any testimony from appellate counsel on that issue. As such, the Court cannot speculate as to why certain issues were not briefed. *Cf. Dempsey*, 363 S.C. at 370, 610 S.E.2d at 815 (finding that, without a witness's testimony, "any finding of prejudice is merely speculative").

The Court find Applicant has not proven there was an irregularity in the Court of Appeals *Anders* procedure such that he would be entitled to a new trial. In *State v. McKennedy*, 348 S.C. 270, 559 S.E.2d 850 (2002), the South Carolina Supreme Court outlined the *Anders* procedure as follows:

> "[A]ccording to *Anders*, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under *Anders* is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal."

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. A presumption of regularity attaches to judicial proceedings, and this presumption should extend to the Court of Appeal's review under the *Anders* procedure. *See Pringle v. State*, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citing *State v. Britt*, 235 S.C. 395, 111 S.E.2d 669 (1959); *State v. Jones*, 211 S.C. 319, 45 S.E.2d 29 (1947); *State v. Waring*, 109 S.C. 52, 95 S.E. 143 (1918)). This Court must presume

the Court of Appeals reviewed the issues of the State's failure to produce an oral statement of a witness, the admission of the pant evidence, and the admission of the prior bad acts evidence.[4] *McHam*, 404 S.C. at 475, 746 S.E.2d at 46. This Court also notes Applicant raised all of these issues in his *pro se* response to the *Anders* brief. The Court of Appeals' compliance with the *Anders* procedure here creates a presumption of regularity, which the Court finds has not been rebutted by Applicant.

Applicant has not demonstrated he would have been successful had appellate counsel challenged the admission of this evidence. *See Smith v. Robbins*, 528 U.S. 259, 287 (2000) ("[I]n most cases in which a defendant's appeal has been found, pursuant to a valid state procedure, to be frivolous, it will in fact be frivolous."). The witness's oral statement was not required to be disclosed in discovery. Rule 5(a)(2), SCRCrimP ("[T]his rule does not authorize the discovery or inspection of [...] statements made by prosecution witnesses or prospective prosecution witnesses[.]"). As a non-fungible item, the pants evidence was admissible without establishing a strict chain of custody. *State v. Glenn*, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (Ct. App. 1997) ("While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence-that is, evidence that is unique and identifiable-the establishment of a strict chain of custody is not required[.]"); *see also State v. Wells*, 336 S.C. 223, 230, 426 S.E.2d 814, 817 (Ct. App. 1992) *overruled on other grounds by Burgess v. State*, 329 S.C. 88, 495 S.E.2d 445 (1998) (allowing admission of clothes evidence despite defects in chain of custody). As stated above, the testimony regarding Applicant's prior encounters with the victim was also properly allowed into evidence. Rule 404(b), SCRE; *Ford*,

[4] Each of these issues was objected to and preserved for appellate review by trial counsel.

334 S.C. at 452, 513 S.E.2d at 389. Accordingly, Applicant has not shown he would have been successful on appeal if any of these issues had been raised. *Anderson*, 354 S.C. at 434, 581 S.E.2d at 835.

D. Due Process Violations Relating to the State's Evidence

The Court finds Applicant failed to meet his burden to show his due process rights were violated by the State's withholding of evidence or presentation of perjured testimony. The solicitor testified she turned over every piece of evidence in her possession. Trial counsel testified that the only evidence she was unaware of prior to trial was a witness's oral statement, to which she strenuously objected.

As noted above, there was no need to demonstrate a chain of custody for the pants evidence. *Glenn*, 328 S.C. at 305, 492 S.E.2d at 395; *Wells*, 336 S.C. at 230, 426 S.E.2d at 817. Thus, there could be no misconduct by the State in failing to provide trial counsel with a chain of custody on these items. Trial counsel was clearly aware of the chain witnesses for the pants evidence, as she objected when certain witnesses were not produced. Applicant has not presented evidence there was any chain of custody other than the one the State provided in discovery. Accordingly, Applicant has not demonstrated a *Brady*[5] violation in this regard.

Applicant has likewise failed to demonstrate there was any other evidence withheld from him before trial. Despite his allegations to the contrary, the testimony at the hearing indicates the State disclosed all material evidence to trial counsel prior to trial. Applicant alleges the State withheld part of a statement of the victim's father, but trial counsel testified she was aware of all of the prior incidences the father testified about. Applicant also alleged the State failed to

[5] Brady v. Maryland, 373 U.S. 83 (1963).

disclose a 911 tape, but no evidence has been produced indicating such a tape ever existed. Finally, the Court finds Applicant has not demonstrated the testimony of Ila Simmons was untruthful in any way. The Court finds Applicant has not demonstrated any actions of the State violated his due process rights.

E. Issues relating to the indictment

The Court finds Applicant has failed to meet his burden of showing a deficiency in the indictment process renders his conviction invalid. Again, the record shows trial counsel moved to quash the indictment before two separate judges. Accordingly, any challenge to these rulings must have been raised on direct appeal. S.C. Code Ann. § 17-27-20(b); *Simmons*, 264 S.C. at 423, 215 S.E.2d at 885. Likewise, Applicant raised this issue in his *pro se* response to appellate counsel's *Anders* brief as well as his motion for rehearing. Accordingly, the Court cannot address in collateral review any issues regarding the indictment.

Regardless, Applicant's allegation the grand jury was illegally convened is wholly without merit. A grand jury may meet at any time ordered by a circuit judge. *See* S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. *See State v. Jeffcoat*, 26 S.C. 114, 1 S.E. 440, 441 (1887) ("[M]erely changing the time for holding the court did not make the grand jury illegal."). Furthermore, a presumption of regularity attaches to proceedings in the Court of General Sessions. *Pringle*, 287 S.C. at 411, 339 S.E.2d at 128. Absent evidence to the contrary, the court must presume a properly returned indictment is valid. *State v. James*, 321 S.C. 75, 472

S.E.2d 38, 40 (Ct. App. 1996) (citing *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995); *State v. Thompson*, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991).

Applicant's indictment is valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. *Id.* at 75, 472 S.E.2d at 40. Likewise, the indictment is stamped "True Billed" and signed by the foreman. *Pringle*, 287 S.C. at 410, 339 S.E.2d at 128. Both trial counsel and the solicitor testified the discrepancy in dates on the indictment was due to the grand jury passing over the indictments during the intervening terms. Thus, trial counsel was not ineffective for failing to request grand jury impanelment documents. The Court also finds credible the solicitor's testimony that the indictment was presented by law enforcement, and she did not appear before the grand jury. Thus, the Court finds Applicant failed to demonstrate a defect in the indictment process invalidates his murder indictment.

Likewise, the allegation of lack of subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear a particular class of cases. *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). However, "subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts[.] *Id.* at 101, 610 S.E.2d at 499. An indictment is a notice document and any insufficiency in the indictment does not deprive the circuit court of jurisdiction. *Id.* at 102, 610 S.E.2d at 500. The circuit court "obviously [has] subject matter jurisdiction to try criminal matters." *Id.* at 101, 610 S.E.2d at 499. Applicant's murder trial involved a criminal charge in General Sessions Court. Therefore, this Court finds the circuit court had subject matter jurisdiction and this allegation is without merit.

F. Speedy Trial

The Court finds Applicant failed to prove his right to a speedy trial was violated as a result of the delay between his arrest and trial. The record shows trial counsel moved to quash the indictment for a violation of Applicant's right to a speedy trial. Accordingly, any challenge to the denial of this motion must have been raised on direct appeal. S.C. Code Ann. § 17-27-20(b); *Simmons*, 264 S.C. at 423, 215 S.E.2d at 885. Accordingly, post-conviction relief is not the appropriate forum to address this claim.

G. Overwhelming Evidence of Guilt

Independent of the above analysis, the Court finds Applicant has not demonstrated he was prejudiced by the actions of trial counsel, appellate counsel, or the solicitor because there was overwhelming evidence of his guilt. Applicant had prior difficulties with the victim. Witnesses observed Applicant and victim leave a building together moments before the victim was shot. One witness testified to actually observing Applicant shoot the victim. When authorities approached Applicant shortly after the murder he fled. He was apprehended attempting to change out of clothes that ultimately tested positive for gunshot residue. In light of this overwhelming evidence, the Court finds Applicant has not demonstrated trial counsel was ineffective in any way. *See Harris v. State*, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (no prejudice where there is overwhelming evidence of guilt). Nor has he demonstrated appellate counsel would have been successful in securing a new trial on appeal. *See State v. McLeod*, 362 S.C. 73, 85, 606 S.E.2d 215, 221 (Ct. App. 2004) (harmless error in admitting evidence where there is overwhelming evidence of guilt). He has likewise not demonstrated the State withheld any material evidence that would have militated against his guilt. *See State v. Geer*, 391 S.C.

179, 192, 705 S.E.2d 441, 448 (Ct. App. 2010) (*Brady* violation only where allegedly withheld evidence creates a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different" (citing *United States v. Bagley*, 473 U.S. 667 (1985))).

IV. CONCLUSION

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

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7th day of October, 2014.

THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge

Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP2608638

Dupree Evans	South Carolina State of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by: CLERK OF COURT	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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:

The Undersigned hereby grants the State's motion to schedule the PCR Hearing.
The PCR hearing is hereby set for Monday, August 25, 2014 at 10:00am before the Honorable Kristi Lea Harrington.
The Plaintiff will not be allowed to subpoena Melanie Huggins-Ward, R. J. Warner, or Judge Steven John.
Formal order to follow by Atty Josh Thomas.

FILED
HORRY COUNTY
14 JUN 19 PM 4:13
CLERK OF COURT

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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.**

Benjamin H. Culbertson	2148	6/19/2014
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

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

Dupree Evans 322078
P.C.I.
430 Oaklawn Rd
Pelzer, SC 29669

ATTORNEY(S) FOR THE PLAINTIFF(S)

Henry Dargan McMaster PO Box 11063 Columbia, SC 29211

Josh Turner P O Box 11549 Columbia SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins-Ward

Court Reporter Grace Hurley

Melanie Huggins-Ward - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Dupree Evans, #322078, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2010-CP-26-8638 **SCHEDULING ORDER**

This matter came before the Court for a scheduling conference on June 19, 2014, pursuant to Respondent's Rule 16(e), SCRCP, motion. Applicant appeared *pro se*, and Joshua L. Thomas, of the South Carolina Attorney General's Office, appeared on behalf of Respondent. After hearing the arguments of both parties, the Court finds as follows:

I. Date Certain

Respondent requested this matter be set for a date certain during the August 25, 2014, term for post-conviction relief cases. Considering the age of this case, and the need for Applicant to have advanced notice of the date of the hearing, the Court finds Respondent's motion should be granted. Therefore, this matter is set for a date certain on August 25, 2014. The evidentiary hearing shall be set to begin at 10:00am, and shall be the only matter to be brought before the court on that date. No further continuance should be granted in this case ~~without a showing of good cause~~ except by order of the Chief Administrative Judge presiding over PCR cases. (BHC) (BHC)

II. Subpoenas

Respondent also requested the Court prohibit Applicant from issuing certain subpoenas. The Court finds Applicant shall be entitled to issue subpoenas to compel the appearance of the following persons at the evidentiary hearing:

1. Paul Sheets
2. Dale Long
3. Orrie E. West, Esquire
4. Wanda H. Carter, Esquire

5. Roderick Green
6. Martha Thompson
7. Joey Sinclare
8. Bradley Vitale
9. Demetrious Holloway
10. David Reist
11. Mike Bordner
12. Heather S. von Herrmann, Esquire
13. Lavina Jackson
14. Illa Simmons

Applicant shall be allowed to issue subpoenas to only those persons listed above. The Court finds Applicant shall not be permitted, under any circumstance, to issues subpoenas of any sort to the following persons:

1. The Honorable Melanie Huggins-Ward
2. R.J. Warner
3. The Honorable Steven H. John

Pursuant to Rule 45(a)(3), upon request of Applicant, the Horry County Clerk of Court shall issue him a sufficient number of subpoenas, "signed but otherwise in blank." However, Applicant is solely responsible for the proper service of said subpoenas. Applicant's failure to properly subpoena his witnesses does not constitute good cause to continue the hearing past the August 25, 2014, date certain.

IT IS THEREFORE ORDERED THAT:

1. This matter shall be heard on August 25, 2014, at 10:00am in the Horry County Courthouse, and shall not be continued absent a showing of good cause.

2. Applicant is granted leave to issue subpoenas to compel the appearance of only the fourteen (14) witnesses listed above.

AND IT IS SO ORDERED this 20th **day of** June **, 2014.** (BHC)

The applicant's request for discovery has heretofore been ruled upon by the court.

Benjamin H. Culbertson

THE HONORABLE BENJAMIN H. CULBERTSON
Resident Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Earlena Bonenberger (Server) as his duly authorized agent for the purpose of making service of the signed Order Ruling On Final Two Outstanding Motions on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF)

AFFIDAVIT OF PERSONAL SERVICE

On this 12th day of August, **2015**, I served the signed **Order Ruling On Final Two Outstanding Motions** on ***Inmate Dupree Evans, #322078*** by delivering personally and leaving a copy of the same at Perry Correctional Institution, Pelzer, South Carolina Deponent is not a party to this action.

s/ Earlena Bonenberger
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 12th day of August, 2015

Patricia Zuberman (L.S.)
Notary Public for South Carolina

My Commission Expires 04-26-2020

ADMISSION OF SERVICE

Service of a copy of the signed Order Ruling On Final Two Outstanding Motions is admitted at the S.C. Department of Corrections, Perry Correctional Institution, Pelzer, Greenville County, South Carolina, this 12th day of August, *2015.*

s/ Dupree Evans
Inmate Signature
SCDC No. 322078

2010-CP-26-8638

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Earlena Borkenberger (Server) as his duly authorized agent for the purpose of making service of the signed Order on the below named individual.

STATE OF SOUTH CAROLINA) **AFFIDAVIT OF PERSONAL SERVICE**
COUNTY OF)

On this 25th day of March, **2015**, I served the signed **Order** on ***Inmate* Dupree Evans, #322078**, by delivering personally and leaving a copy of the same at **Perry Correctional Institution**, Pelzer, South Carolina. Deponent is not a party to this action.

s/ Earlena Borkenberger
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 25th day of March, **2015**
Patricia Luciano (L.S.)
Notary Public for South Carolina

My Commission Expires 04-26-2020

ADMISSION OF SERVICE

Service of a copy of the signed Order is admitted at the S.C. Department of Corrections, **Perry Correctional Institution**, Pelzer, Greenville County, South Carolina, this 25th day of March, ***2015.***

s/ Dupree Evans
Inmate Signature
SCDC No. 322078

2010-CP-26-8638

Dupree Evans 322078
Perry Correctional Institution
430 Oaklawn Rd
Pelzer, S.C. 29669

Mr. Daniel E. Shearouse, clerk
The Supreme Court of South Carolina
P.O. BOX
Columbia, S.C. 29211