

LAW OFFICE OF



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September 11, 2012

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
Post Office Box 11330  
Columbia, South Carolina 29211-1330

**RECEIVED**

SEP 12 2012

**S.C. SUPREME COURT**

RE: Ronald Cohens, 316306. v. State of South Carolina; 2010-CP-22-1592

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the envelope provided. Although I was retained in this matter, I may be turning this file over to the South Carolina Commission on Indigent Defense, Appellate Division for perfection of this appeal. I believe this client may be indigent. I was retained by his family and my fee agreement expressly excludes representation on appeal. The client has not yet advised me whether he intends to hire me to handle this appeal. I am asking that he and his family make this decision immediately. I will advise the Court within ten days whether I will be remaining on as counsel or requesting to be relieved. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T" and "S".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Salley W. Elliott, Senior Assistant Deputy Attorney General  
Sharon Graham, Legal Services Coordinator, SCCID, Appellate Division  
Ronald Cohens, 316306  
Donald Cohens

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas  
Steven H. John, Presiding Judge

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2010-CP-22-1592

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RONALD COHENS, 316306

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

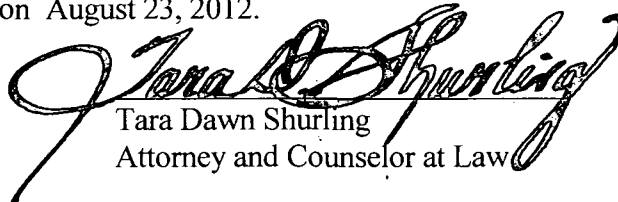
Respondent.

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NOTICE OF APPEAL

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**NOW COMES** the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief Application. The Order of Dismissal was filed with the Georgetown Clerk of Court's Office on August 23, 2012.



Tara Dawn Shurling  
Attorney and Counselor at Law

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(803)738-8622  
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 11<sup>th</sup> day of September, 2012.

Other Counsel of Record:  
Salley W. Elliott, Senior Deputy Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
(803) 734-3737

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas  
Steven H. John, Presiding Judge

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2010-CP-22-1592

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RONALD COHENS, 316306

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

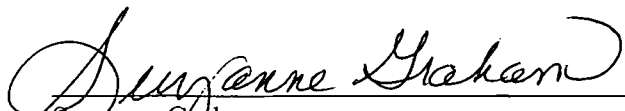
Respondent.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Salley W. Elliott, Senior Assistant Deputy Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 11<sup>th</sup> day of September, 2012.

  
Suzanne Graham  
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 11<sup>th</sup> day  
of September, 2012.

Sharon H. McCallister (L.S.)  
Notary Public for South Carolina  
My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )  
 )  
 Ronald Cohens, 316306, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2010-CP-22-1592

**ORDER OF DISMISSAL**

HORRY COUNTY  
 12 AUG -8 PM 1:08  
 MELANIE HUBBARD  
 CLERK OF COURT  
 CLOCK IN

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 8, 2010, Amended Application filed April 26, 2012, and Second Amended Application dated April 27, 2012. The State made Return on November 8, 2010. Evidentiary hearings into the matter were convened on April 26, 2012 and June 14, 2012, at the Georgetown County Courthouse. The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by Salley W. Elliott, Senior Assistant Deputy Attorney General.

FILED  
 GEORGETOWN COUNTY, S.C.  
 12 AUG 23 AM 10:44  
 ALISA Y. WHITE  
 CLERK OF COURT

The Applicant and his trial attorney, Charles D. Barr, Esquire, testified at the hearing. Also testifying were William Travis Brown, David Robinson, James Allen Britton, and Virginia Gail Johnson. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Horry County Clerk of Court, the briefs, petitions, returns, opinion, and orders from Applicant's direct appeal, and the transcript from the April 2012 evidentiary hearing.

Prior to presentation of testimony, Applicant acknowledged that his post-conviction relief counsel also handled direct appeal matters arising from the convictions and sentences that are the subject of this action. Applicant specifically waived any ineffective assistance of appellate

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counsel claims regarding his counsel pursuant to Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987).

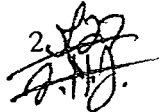
### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Applicant was indicted in April 2006 term of the Court of General Sessions for assault and battery with intent to kill (ABWIK) ( 2006-GS-22-354) and failure to stop for a blue light (2006-GS-22-355). He was represented by Charles D. Barr, Esquire. On June 27-30, 2006, Applicant proceeded to trial before the Honorable Michael Baxley and a jury. Applicant was found guilty as charged and was sentenced to confinement for twelve (12) years for ABWIK and three (3) years, concurrent, for failure to stop for a blue light.

A timely notice of appeal was served and filed on Applicant's behalf and an appeal was perfected on Applicant's behalf by Kathrine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Ronald Cohens, 2009-UP-064 (S.C. Ct. App. filed February 9, 2009). A Petition for Rehearing was submitted on Applicant's behalf by Tara D. Shurling, Esquire. The petition was denied by the South Carolina Court of Appeals by Order dated April 6, 2009. Thereafter, a Petition for Writ of Certiorari was submitted by Tara D. Shurling on Applicant's behalf. The State submitted a Return to the Petition for Writ of Certiorari. The Petition for Writ of Certiorari was denied by the South Carolina Supreme Court by Order dated April 8, 2010. The remittitur was issued on April 12, 2010.

### ALLEGATIONS

In his application, amended application, and second amended application, Applicant

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alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that trial counsel:
  - (a) failed to be punctual during trial, resulting in a late cross-examination of the victim and damaging his effectiveness as an advocate by making a negative impressions on the jury;
  - (b) failed to adequately preserve for appellate review his objection to being required to apologize to the jury for being late to court during trial;
  - (c) failed to request a mistrial after the judge required him to apologize to the jury in a manner that irreparably damaged his effectiveness as an advocate for the balance of the trial;
  - (d) failed to object to the lower court not allowing him to go forward with cross-examination of the victim where he arrived in court before the direct examination of the next State witness;
  - (e) failed to object to the jury instructions for the offense of assault and battery with intent to kill which failed to clearly advise the jury that they could not find the Applicant guilty of that offense unless they found that he acted with the intent to kill the victim;
  - (f) neglected to request a jury instruction on the law of proximate causation where under the evidence presented at trial there was some evidence from which the jury could have found that his actions did not cause the wreck involved;
  - (g) failed to ascertain what remarks the Court had made to the jury concerning his absence from the courtroom when the trial convened on the second day of Applicant's trial;
  - (h) failed to object on the record when the trial judge admonished him, in the presence of the jury, concerning his tardiness for court on day two of Applicant's trial;
  - (i) failed to make a motion for mistrial following an exchange with the trial judge which tended to damage defense counsel's image in the eyes of the jury;
  - (j) neglected to request a curative charge after remarks from the bench damaged counsel's image and effectiveness as an advocate in the eyes of the jury;
  - (k) failed to object, on the record, to being required to apologize to the jury before cross-examination of the victim;
  - (l) neglected to object to the State playing State's Exhibit No. 79, an audio tape of the 911 call in the case, during its closing argument where the publication of the tape was cumulative to evidence previously introduced during the State's case in chief, and unduly emphasized the evidence in question thereby prejudicing Applicant;

3/27  
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- (m) neglected to advise witnesses Applicant of his right to present character witnesses as part of his defense at trial;
  - (n) neglected to call character witnesses at trial to present to the jury testimony concerning Applicant's reputation for veracity in the community;
  - (o) made an opening argument to the jury in which he impugned the integrity of his client and thereby called into question his overall character;
  - (p) made an opening argument to the jury in which he impugned the integrity of the victim and thereby created the danger that the defense would be seen by the jury as impugning the character of the victim without foundation thereby inflaming the passions and prejudices of the jury against Applicant;
  - (q) failed to request a jury instruction on the law as it relates to the defense of accident where one reasonable interpretation of the evidence adduced at trial would have supported a finding of that defense;
  - (r) failed to present in closing argument to the jury a summary of the evidence presented at trial which supported Applicant's assertion that the wreck in this case was an accident;
  - (s) failed to argue to the jury in closing arguments that one reasonable interpretation of the evidence presented at Applicant's trial supported a finding that the car wreck involved in this case was accidental;
2. The judgments and sentences against Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

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

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

#### **I.**

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

In a post-conviction relief proceeding, the Applicant bears the burden of proving the

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allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must 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, 286 S.C. at 441. 334 S.E.2d at 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. at 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).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, 466 U.S. at 668. 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. Where counsel articulates a valid reason for employing a particular trial strategy, counsel’s conduct will not be determined ineffective assistance of counsel. Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006). Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (2006). “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decision in the case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007).

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#### A. Tardy Arrival

Applicant contends that he received ineffective assistance of counsel when trial counsel failed to appear in court in a timely manner on the second day of trial resulting in an admonition from the presiding judge, an apology to the jury, and late cross-examination of the victim. He also asserts that he received ineffective assistance of counsel when counsel failed to ascertain the remarks made by the trial judge in his absence and when counsel failed to object and move for mistrial for not being allowed to immediately cross-examine the victim, for being admonished in the jury's presence, and for being required to apologize to the jury for his late arrival. Applicant contends the late arrival damaged counsel's effectiveness as an advocate by making a negative impression on the jury. Applicant further alleges that counsel's exchange with the trial judge and apology to the jury damaged counsel's image and effectiveness in the eyes of the jury and violated Applicant's right to effective assistance of counsel

The trial transcript reflects the State presented the testimony of the 911 operator and direct examination of the victim on the first day of trial. When the trial recessed for the evening the trial court indicated that the trial would resume the following morning at 9:30 a.m. (Tr. p. 117). When the trial resumed the next morning, the trial court inquired of the jury whether any juror had any discussion or contacts about the case and, after confirming the victim's presence for cross-examination, stated that counsel for Applicant was not present to cross-examine the victim. The trial court directed the State to call its next witness. (Tr. pp. 120-121). The State announced its next witness and the trial court explained to the jury that the witnesses were sequestered and would be brought into the courtroom as they were called to testify. The court followed that explanation to the jury with a greeting and inquiry to Applicant's counsel. The trial court stated "we began court at nine-thirty this morning, everyone has been here. Where have

6/27  
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you been?" (Tr. p. 121). Counsel apologized for being late and explained that he "had to stop in Kingstree." (Tr. p. 121). The trial court responded, "Please understand as a courtesy to the jury who is here giving their time when we say we're going to start at a particular time, we begin at that time. We've called another witness." (Tr. p. 121). This colloquy occurred in the presence of the jury. Counsel for Applicant twice approached the trial court for bench discussions. (Tr. pp. 122; 131). Thereafter, an eye-witness testified, followed by the morning break for the jurors.

In the jury's absence and referencing the earlier bench discussions, counsel for Applicant conceded he arrived fifteen (15) minutes late for court, explained the reason for being tardy, and requested permission to cross-examination the victim rather than calling the victim as a defense witness. (146 – 148). The trial court agreed but required counsel to apologize to the jury for being late. (Tr. p. 149). Counsel stated that he would be delighted to apologize to the jury but requested permission to do so during closing arguments. The trial court required a contemporaneous apology. (Tr. p. 149).

When the jury returned to the courtroom, the trial court explained that counsel requested cross-examination of the victim so that the jury would not be deprived of facts counsel might elicit during his examination. (Tr. p. 150). Counsel thereafter apologized to the jury for his tardiness and stated that he did not believe in making excuses but explained that he was late and was sorry. (Tr. p. 151). Counsel then cross-examined the victim.

At the post-conviction relief hearing, Applicant testified that he did not know his attorney would be late for court and that he did not receive any messages from counsel about counsel's tardiness. Applicant stated that he was not questioned by the trial court about his attorney's absence. Applicant testified that he had little confidence in his attorney after the tardy arrival and now wishes his attorney had moved for a mistrial or requested curative instructions but was

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not presented with the options by counsel. Applicant testified that, upon his arrival in the courtroom, counsel inquired about the proceedings to which Applicant responded that court started a few minutes before counsel's arrival.

At the post-conviction relief hearing, trial counsel testified that the morning of the second day of trial, he drove to his office in Kingstree to obtain material from the prior family court proceeding between Applicant and the victim for use in cross-examination of the victim and that doing so caused him to arrive approximately fifteen (15) minutes late for court. Counsel testified that he did not try to contact his client or the court to advise that he might arrive late because counsel did not have a cellular telephone at the time and did not want to expend additional time searching for a telephone to make the call. Instead, counsel traveled as fast as he could with the hope that he would not be late. Counsel testified that the prosecutor was in the process of calling a witness when he arrived, that the witness was being brought up, that examination of the witness had not begun, and that he ascertained from the prosecutor what transpired in the courtroom prior to his arrival. Counsel stated that he requested a bench conference during which he asked permission to cross-examine the victim. Counsel rejected the idea of making an objection on the record because cross-examination of the victim had already been delayed by the evening recess and he knew he could call the victim as a defense witness if he needed to do so; however, he was provided the opportunity to cross-examine the victim after an intervening witness. Counsel also determined that he was not absent from the courtroom during the presentation of testimony or other evidence, and did not want to cause negative consequences for Applicant by objecting or further highlighting the matter for the jury and trial court. Counsel also did not object, move for mistrial, or request a curative instruction in response to the trial court's comments about his tardiness or for being required to apologize to the jury because he did not find the comments or

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timing of the apology to be sufficiently objectionable, and because most of the discussion about the tardiness and all of the discussion about the apology occurred outside the jury's presence. Counsel also did not want a mistrial at that point in the trial because he felt the jury composition was favorable to Applicant. Instead, counsel employed a trial strategy to present an apology to the jury for his tardiness in which he accepted responsibility for his actions in order to develop a rapport with the jury and to put an early end to the matter. Counsel did not request a curative instruction because he did not want to draw additional attention to the issue. Counsel stated that was not hindered in any way in his ability to cross-examine the victim or other witnesses, make motions and objections, or to present a defense for Applicant.

The trial court is vested with wide discretion in the conduct of a trial. State v. DeBerry, 250 S.C. 314, 157 S.E.2d 637 (1967). However, the trial court must act with impartiality in the performance of its judicial duties. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999); State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994). References by a judge to an attorney's age, gender, or competence are improper and constitute reversible error upon a showing of prejudice. Id.

This Court finds trial counsel was expected to be present for court on the second day of trial at 9:30 a.m. but arrived fifteen (15) minutes later than the time designated by the trial court. Contrary to Applicant's contention, this Court finds that counsel inquired and determined what transpired in the courtroom prior to his arrival. Counsel determined that the trial court made an initial inquiry of the jury and directed the State to call its next witness when counsel was not present for cross-examination of the victim. Counsel also determined that no testimony or evidence was presented before he arrived. This Court finds that no testimony or other evidence was presented before counsel arrived and that the trial transcript reflects what occurred in counsel's absence. After his arrival, counsel engaged in a bench discussion with the trial court

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during which he requested permission to cross-examine the victim. After the intervening witness testified, counsel requested permission to cross-examine the victim but did not object to being prohibited from doing so immediately upon his arrival in the courtroom. Trial counsel also did not object or move for mistrial for being questioned about his tardy arrival in the jury's presence or when he was required to apologize to the jury because counsel was allowed to cross-examine the victim and concluded the matter and treatment of the issues by the trial court was not erroneous. Counsel also did not object or move for mistrial because counsel did not want to exacerbate matters with the jury or the trial judge to the disadvantage of Applicant and because it was counsel's strategy to use the timing of the victim's cross-examination and apology to the jury to Applicant's advantage at trial.

Although counsel was tardy for trial as alleged and elected not to object, move for mistrial or request curative instructions, this Court finds that Applicant failed to establish the requisite prejudice from counsel's tardy arrival or for failing to object to the comments made in the jury's presence about counsel's absence, for being required to apologize and for not demanding immediate cross-examination of the victim. Because Applicant failed to establish the necessary prejudice, it is not necessary for this Court to address whether counsel's performance respecting these matters was deficient. See Edmond v. State, 341 S.C. 340, 347, 534 S.E.2d 682, 686 (2000) ("[A] PCR applicant must show both error and prejudice to win relief in a PCR proceeding.").

Also, this Court finds that the matter of counsel's tardiness, the comments by the trial court, apology respecting the late arrival, and the timing of the victim's cross-examination were minor incidents occurring during a four day trial that included the presentation of overwhelming evidence against Applicant. This Court finds that counsel's absence did not occur during a

critical stage of trial and Applicant failed to establish it had an adverse impact on the verdict or the jury's perception of counsel or Applicant. No substantive rights of Applicant were affected. See McKnight v. State, 465 S.E.2d 352 (1995)(stating counsel's absence during cross-examination of victim constituted denial of right to counsel for which prejudice will be presumed). Applicant enjoyed full, extensive cross-examination of the victim and all other witnesses and had the advantage of hearing the testimony of the intervening eye-witness before he cross-examined the victim.

This Court also finds that the timing of the victim's cross-examination did not have an adverse impact upon the jury's verdict. A break between the victim's direct examination and cross-examination had already occurred as a function of the evening recess and Applicant was able to gain the benefit of hearing and cross-examining of one of the eye-witnesses before conducting cross-examination the victim in this case. Other than pure speculation, Applicant failed to show that he was prejudiced by the timing of counsel's cross-examination of the victim.

As to the comments about counsel's momentary absence from the courtroom on the second day of trial, this Court finds that the jury was not aware of any discussions about counsel's tardiness other than the initial comment by the trial court when counsel arrived. The jury was also unaware of any of the discussions between counsel and the trial judge about counsel's apology to the jury. Applicant failed to show that the remarks of the trial judge that occurred in the jury's presence impugned the credibility of counsel or diminished him in the eyes of the jury. It is reasonable for the trial court to make some comment about counsel's obvious absence and any additional comment by the trial court occurred outside the jury's presence. Obviously, comments made outside the jury's presence had no influence on the jury. Graves v. State, 309 S.C. 307, 442 S.E.2d 125 (1992).

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Also, unlike in State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994) and State v. Simmons, 229 S.E.2d (1976), the trial court's acknowledgement of counsel's obvious absence from the courtroom did not constitute an improper personal comment about counsel, was not hostile or threatening in nature, did not tend to impugn counsel's credibility, and did not insinuate a lack of skill or professionalism in counsel's representation of Applicant. The comments made by the trial judge to counsel were not such as would have influenced the jury and would have been prejudicial to Applicant. Further, counsel was clearly uninhibited by his interaction with and comments made by the trial court about his tardiness. Counsel specifically testified that his subsequent performance was not influenced by the judge's comments and that he vigorously defended Applicant by way of objections, motions, examinations, and cross-examination as planned.

While the Court of Appeals determined the issue of the trial court proceeding in counsel's absence was not preserved for appellate review, counsel's continued pursuit of the matter at trial in order to preserve the issue for appeal might have caused counsel to lose the opportunity to cross-examine the victim and the necessity to call the victim as a witness at a time when the decision whether to forego defense witnesses in favor of the last argument had not yet been made. As was acknowledged by Applicant in his Petition for Writ of Certiorari, further pursuit of objections to preserve these matters for appeal could come at the risk of further damage to Applicant. This Court agrees. Counsel had the option of persisting with the objections and motions now raised by Applicant and taking the chance of making matters worse for Applicant at trial to preserve issues that ultimately would have been of little merit on appeal but made a strategic decision not to pursue the objections or motions. This Court concludes that counsel's decisions were reasonable. See Simpson v. Moore, 367 S.C. 587, 603, 627 S.E.2d 701, 709-710

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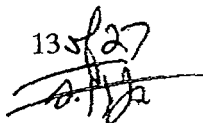
(2006) (stating where counsel articulates a valid reason for employing a particular trial strategy, counsel's conduct will not be determined ineffective assistance of counsel); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) (same). McLaughlin v. State, 352 S.C. 476, 483-484, 575 S.E.2d 841, 844-845 (2003) (same). The trial court would not have granted a motion for mistrial and a curative instruction would have emphasized the matter for the jury. Any prejudice is speculative and is insufficient to establish ineffective assistance of counsel. There is simply no showing that the actions and inactions as alleged by Applicant had an adverse impact or that counsel effectiveness was damaged in the eyes of the jury, particularly in view of the overwhelming evidence of Applicant's guilt.

This Court finds the Applicant failed to meet his burden of establishing that he received ineffective assistance of counsel. These allegations are denied and dismissed.

#### B. Character Witnesses

Applicant also asserts that he received ineffective assistance of counsel for counsel's failure to advise him of the right to present character witnesses as part of his defense at trial and for failing to present character witnesses to testify as to his reputation for veracity in the community. Applicant presented four witnesses at the evidentiary hearing in support of these allegations. The character witnesses generally testified that Applicant's reputation for veracity was positive. Testimony was also presented describing Applicant as calm person and as a good employee and good person.

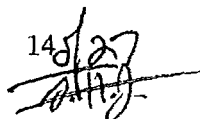
Counsel testified that he did not specifically discuss the possibility of using character witnesses at trial with Applicant because it was his understanding that, based upon the relationship established with Applicant, Applicant relied upon counsel to make such decisions respecting trial strategy. At the post-conviction relief hearing, Applicant did not refute counsel's

135/27  


understanding that Applicant relied upon him to make decisions about the defense as counsel thought best without discussion with Applicant. This Court finds that the relationship established between Applicant and counsel was one in which Applicant relied upon counsel to make strategic decision respecting presentation of the defense, therefore, it was reasonable for counsel to make the decision respecting the presentation of character witnesses. Moreover, Applicant never testified that he would have insisted that counsel present character witnesses had counsel advised against it. This Court finds that counsel's failure to discuss the possibility of calling character witnesses with Applicant was neither deficient nor resulted in the requisite prejudice to Applicant as is discussed more fully below.

As to presentation of character witnesses in Applicant's defense at trial, counsel testified that he considered the use of character witnesses and made a decision not to use character witnesses as a matter of trial strategy in this case. Counsel stated that he rarely uses character witnesses at trial because the evidence is viewed skeptically by jurors, is usually of minimal probative value and could open the door to admission of evidence detrimental to the defense. It was counsel's experience that character evidence of the sort offered by Applicant at the post-conviction relief hearing is not persuasive and counsel does not use character evidence unless absolutely necessary and only when special circumstances are present which did not exist in this case. Counsel also testified that he would not have used the character witnesses to testify as they did at the post-conviction relief hearing. Counsel voiced concern that presentation of the character witnesses would have opened the door to admission of evidence about the Applicant's previous domestic assaults upon the victim in this case. This Court finds that counsel's trial strategy regarding the use of character witnesses to be reasonable.

First, this Court finds that the character witnesses would have added little to Applicant's

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defense and that counsel's strategy in electing not to present character witnesses was reasonable in light of the questionable foundation for the character witness testimony, the friendships and relationships between Applicant, Applicant's family and the character witnesses, the unpredictable nature of domestic violence of the sort involved in this case, and the overwhelming evidence against Applicant, including two eye-witnesses who observed the actions of Applicant and the victim at the time of the incident.

This Court notes that, in addition to offering testimony about Applicant's reputation for veracity, the character witness testimony presented at the post-conviction relief also included statements that Applicant was "calm" and "a good man," thereby creating the impression that Applicant possessed a peaceful character such that he would not have acted violently toward his estranged wife. While acts of criminal domestic violence might be unrelated to Applicant's reputation for truthfulness, State v. Grace, 350 S.C. 19,564 S.E.2d 331 (Ct. App. 2002); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999), the State would have been entitled to offer evidence as to incidents of Applicant's prior violence toward the victim to correct what might be considered a misimpression created for the jury as to Applicant's character for being a good law-abiding and peaceful man. See State v. Major, 301 S.C. 181, 391 S.E.2d 235 (1990) (stating that when an accused offers evidence of his good character, the prosecutor may cross-examine him as to particular bad acts or conduct for the traits focused on by the defendant); U.S. v. Giese, 597 F.2d 1170, 1191 (9<sup>th</sup> Cir. 1979) ("Justice would not have been served had the jurors been left with only the one-sided impressions created by [defendant's testimony respecting character evidence]). By eliciting this testimony, Applicant opened the door to evidence about prior violence committed by Applicant upon the same victim and perhaps the prior conviction for failure to stop for a blue light as the State's response to Applicant's evidence that he possesses a

15/27  
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non-violent character. See State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (1991) (stating prosecutor may elicit evidence about defendant's failure to pay child support in response to testimony describing defendant as a "good worker" and a "good man," implying defendant was a good, reliable law abiding person). Applicant acknowledged at the post-conviction relief hearing that he had been accused of committing prior violence upon the victim and trial counsel expressed concern that this information could find its way to the jury. See State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976) (stating by testifying that, despite being a habitual criminal, he had not committed acts of force so as to harm anyone, defendant placed his good character and propensity for non-violence in issue and was subject to cross-examination on his credibility as a witness and on the specific character trait covered by the charge); State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984); State v. Doby, 273 S.C. 704, 258 S.E.2d 896 (1979) (stating that testimony respecting defendant's passiveness and lack of sexual desire opened door to cross-examination about defendant's prior instances of trespass into women's restrooms); State v. Gibert, 196 S.C. 306, 12 S.E.2d 451 (1941) (stating where defendant voluntarily places his good character in issue and has made it an issue in the case, he may be cross-examined as to the particular acts or conduct derogatory to his good character but the examination must be limited to the nature of the charge against him); see also State v. Taylor, 333 S.C. 159, 508 S.E.2d 870 (1998) (stating defendant opened door to impeachment with prior conviction for criminal domestic violence when defendant opened door about his relationship with his wife). When the defendant opens the door to admission of evidence of prior conduct, the issue whether convictions are admissible to impeach the defendant's credibility under Rule 609, SCRE is not applicable. State v. Dunlap, 353 S.C. 539, 579 S.E.2d 318 (2003); State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984); compare State v. Young, 378 S.C. 101, 661 S.E.2d 387 (2008) (defendant's

16/27  
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testimony that he hated to see a woman cry did not open door for admission of prior CDV and CSC convictions because defendant was not offering evidence of a specific character trait but was relating the events that occurred on the night in question).

Moreover, this Court questions whether the Applicant's reputation for veracity would have been admissible when the charges the Applicant faced at trial were assault and battery with intent to kill and failure to stop for a blue light. Our Court of Appeals determined that a "defendant does not have an automatic right to introduce evidence of his character for truthfulness simply because he has testified." State v. Weaverling, 337 S.C. 460, 472, 523 S.E.2d 787, 793 (1999), citing State v. Mizzell, 332 S.C. at 280, 504 S.E.2d 338 (Ct. App. 1998). However, "evidence of a defendant's truthful character can become admissible when his character for truthfulness has been attacked." Id. Merely taking the witness stand and being subjected to cross-examination does not mean the State challenged the defendant's character for truthfulness. Id. Otherwise, in order for a defendant's character for truthfulness to be admissible, truthfulness must be 'a trait pertinent to the offense charged.'" Id.; see also Rule 404(a)(1), SCRE (stating that a defendant may introduce evidence that he possesses a "pertinent trait of character and the prosecution may introduce evidence of the defendant's character trait when offered to rebut the defendant's character evidence). There must be a relationship between the particular trait offered and the elements of the charge. "The reason for this rule is that character evidence is, at best, of little probative value." Id.

As in Weaverling, although Applicant took the stand at trial, his character for truthfulness was not attacked nor was evidence of Applicant's character for truth and veracity admissible as pertinent to failure to stop for a blue light or assault and battery with intent to kill. Therefore, the evidence Applicant complains should have been discussed with him by counsel and presented at

trial was likely not admissible.

This Court finds counsel articulated a reasonable strategy for electing not to present character witnesses and that Applicant failed to demonstrate counsel's performance in this regard was deficient or that he suffered the requisite prejudice. See Simpson v. Moore, 367 S.C. 587, 603, 627 S.E.2d 701, 709-710 (2006) (stating where counsel articulates a valid reason for employing a particular trial strategy, counsel's conduct will not be determined ineffective assistance of counsel); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) (same). McLaughlin v. State, 352 S.C. 476, 483-484, 575 S.E.2d 841, 844-845 (2003) (same). This Court finds the suggestion that counsel was ineffective for failing to present character evidence in this case to be a clear example of second-guessing counsel's trial strategy after learning the defense strategy used for trial was not successful. This Court will not engage in an exercise of second-guessing the reasonable strategy used in this case, particularly in light of the overwhelming evidence of Applicant's guilt.

#### C. 911 Recording

Applicant contends his attorney provided ineffective assistance for neglecting to object when the State played State's Exhibit No. 79, an audio recording of the victim's 911 call, during the State's closing argument. Specifically, Applicant alleges that publication of the 911 recording during the closing argument was cumulative to evidence previously introduced during the State's case-in-chief was inflammatory in nature and unduly emphasized the evidence in question. He does not challenge the admissibility of the recording but asserts he was prejudiced when the State played the recording for a second time during the State's closing argument.

The solicitor's closing argument must be tailored so as not to appeal to the personal bias of the jurors or be calculated to arouse the passion and prejudice of the jurors. State v. Finklea,

18/2/27  
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388 S.C. 379, 697 S.E.2d 543 (2010). The Applicant has the burden of showing error during the State's closing argument deprived him of a fair trial. Id. The relevant inquiry is whether the prosecutor's action so infected the trial with unfairness as to make the resulting conviction a denial of due process. Id. In making the determination, the reviewing court must review the argument in the context of the entire record. Id.

The trial transcript reflects that the recording of the victim's 911 call was introduced without objection during the testimony of the 911 operator, (Tr. pp. 82-83), and published to the jury during the victim's testimony. (Tr. p. 108). The recording was later replayed for the jury during the State's closing argument and was made available to the jury during deliberations as an exhibit introduced into evidence at trial. In fact, the jury specifically requested equipment to use to listen to the recording during deliberations. (Tr. pp 395, 414, 417). Trial counsel testified that he did not object to the prosecutor's use of the 911 recording because the recording was properly admitted as evidence, it was not unduly prejudicial, and he had no basis to object when the prosecutor used it to argue the evidence and suggest reasonable inferences the jury should draw. This Court agrees.

The purpose of closing argument is to direct the jury's attention to relevant evidence and to suggest reasonable inferences that might arise from the evidence. Replaying the 911 recording which was properly admitted as evidence at trial during the prosecutor's closing argument was not improper in this case and counsel had no basis for objection. The prosecutor did not unduly exploit the 911 recording but used it for demonstrative purposes in the same manner he would have used a photograph or chart or otherwise refer to admitted evidence presented at trial during summation. Applicant failed to show that use of the exhibit was excessive or used to suggest a verdict on an improper basis. See State v. Finklea, 388 S.C. 379,

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697 S.E.2d 543 (2010)(stating prosecutor's use of a lighted match-shaped fire starter in closing argument as he described defendant lighting victim on fire was proper for demonstrative purposes and not unduly prejudicial); State v. Shuler, 353 S.C. 176, 577 S.E.2d 438 (2002) (finding that solicitor did not unduly exploit a properly admitted 911 tape by playing it during summation); see also State v. Kendell, 723 N.W.2d 597 (MN 2006); People v. Jackson, 689 N.E.2d 191 (IL 1997).

Further, this Court finds that Applicant failed to show that counsel's failure to object resulted in the requisite prejudice. The 911 recording, although present in the courtroom, was not offered by Applicant as evidence at the post-conviction relief hearing. Therefore, any claim of prejudice is purely speculative. See Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) (stating any finding of prejudice is purely speculative in a claim counsel was ineffective for failing to present an expert witness at trial where the applicant fails to present the testimony of the expert at the post-conviction relief hearing); see also Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (same); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993) (same). Without more, this Court finds that Applicant failed to establish that simply playing the 911 recording one additional time was unduly cumulative or prejudicial when the recording had already been admitted as evidence at trial, was a proper matter for comment by both parties during closing argument, and was available to the jury for review as many times as the jury desired during deliberation and when the evidence of Applicant's guilt was overwhelming. "In a post-conviction relief action, the Applicant "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective." Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701, FN 2 (2006). This Court refuses to engage in speculation and finds this claim to be without merit.

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D. Counsel's Opening and Closing Argument References to Applicant and Victim

Applicant also alleges counsel was ineffective for purportedly impugning the integrity of Applicant and the victim during his opening and closing arguments to the jury. He contends that the comments called his character into question and that his references to the victim inflamed the passions and prejudices of the jury against Applicant.

The purpose of the opening argument is to inform the jury generally of the nature of the charges so that the jury will be better able to understand the case and the significance of evidence as it is presented during trial. 75 Am Jur 2d Trial, Section 429. During closing argument the parties may argue the evidence presented at trial and its reasonable inferences. State v. Navy, 370 S.C. 398, 635 S.E.2d 549 (2006); State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996).

Applicant testified that he was surprised by counsel's opening and closing argument references to Applicant, the victim and their marriage and expressed concern that the victim might have taken the comments personally and reacted negatively.

Trial counsel testified that the portions of his opening and closing arguments about which Applicant complains was his effort to portray Applicant and the victim as a couple married for some time and who had a history of separations and reconciliations. Counsel stated that he was portraying Applicant and the victim as a couple engaged in a continued domestic dispute arising from their marital separation – a husband and wife who had lost their way - rather than a defendant engaged in criminal conduct. Counsel disputed that he maligned the victim but, as a matter of strategy, was portraying the victim and Applicant on equal footing and attempting to humanize them and the situation in which they found themselves.

Based upon counsel's testimony and a review of counsel's opening and closing arguments in view of the record as a whole, including the evidence before the jury and

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arguments of the prosecutor, this Court finds that trial counsel's strategy was reasonable. Applicant failed to establish deficient performance and/or prejudice. Applicant is merely second-guessing counsel's strategy and defense through hindsight after an adverse verdict. The allegations are denied and dismissed as being without merit.

E. Jury Charges and Counsel's Failure to Argue Accident

Applicant claims trial counsel provided ineffective assistance of counsel for failing to request jury charges on proximate causation and accident. He also asserts he received ineffective assistance of counsel for counsel's failure to argue facts that support the theory that the wreck was an accident. This Court finds the allegations to be without merit.

"The law to be charged to the jury must be determined by the evidence presented at trial." State v. Harris, 382 S.C. 107, 114, 674 S.E.2d 532, 535 (2009). "A jury charge is correct, if, when read as a whole, it contains the correct definition and adequately covers the law." State v. Commander, 396 S.C. 254, 270, 721 S.E.2d 413, 422 (2011). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). When a jury instruction provides the proper test for determining the issues, the failure to give a requested instruction is not prejudicial. State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000), *overruled on other grounds by* Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009). When considering the trial court's refusal to provide an instruction requested by a defendant, the appellate court must consider the evidence in the light most favorable to the defendant. State v. Commander, 396 at 422, 721 S.E.2d at 422. "Failure to give a requested jury instruction is not prejudicial error where the instructions given afford the proper test for determining issues." State v. Harris, at 114, 674 S.E.2d at 536.

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“Harm caused to another, including death, cannot entail criminal responsibility for the actor if the harm was accidentally inflicted without intent to harm and without recklessness or negligence.” MCAinch, Fairey, and Coggiola, *THE CRIMINAL LAW OF SOUTH CAROLINA* (5<sup>th</sup> Ed. 2007), citing State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945); State v. McDaniel, 68 S.C. 304, 47 S.E. 384 (1904). “Accident is not an affirmative defense because the existence of the mens rea, be it intent to kill or criminal negligence, is an element of the offense which must be established by the state by proof certain beyond a reasonable doubt.” Id., citing State v. McDaniel, at 316-17, 43 S.E. at 388-89. “In South Carolina, the defense of accident requires showing the harm caused was unintentional, the defendant was acting lawfully at the time of the incident, and due care was exercised . . . .” Id. at 114, 674 S.E.2d at 537.; see also State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945).

Proximate cause is the immediate cause. State v. Clary, 222 S.C. 549, 73 S.E.2d 681 (1952). It is defined as “that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.” State v. DeChamps, 126 S.C. 416, 416, 120 S.E. 491, 492 (1923). “But that doctrine is more broadly, rather than more narrowly, applied against the wrongdoer in a criminal prosecution than against a tort-feasor in a civil action. Thus, in a criminal action, the wrongdoer whose crime has resulted in injury to another will not be absolved on the ground that the wrongful act of negligence of the person injured contributed to the injury as a proximate cause.” State v. DeChamps, 126 S.C. 416, 416, 120 S.E. 491, 492 (1923); see also State v. Hanahan, 111 S.C. 58, 96 S.E. 667 (1918); see also State v. Badget, 87 S.C. 543, 70 S.E. 301 (1911)(stating if intervening acts were the result of defendant’s negligence, the intervening acts do not prevent the result from being attributed to defendant). Additionally, the intervening act which was

23 8/27  
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reasonably foreseeable by the defendant does not absolve the defendant of the original wrong.

Id.

Trial counsel testified that the theory that the wreck was an accident did not comport with the Applicant's version of the facts as explained by Applicant, with the evidence presented at trial or strategy developed for the defense. Counsel stated that he did not argue to the jury facts supporting the theory of accident because Applicant denied that he committed any act that caused the wreck; rather, Applicant insisted that the victim hit his car while he was driving in his lane and he did nothing wrong. Counsel did not request a charge on the law of accident because the instruction was not warranted based upon the evidence presented at trial and in view of the charges Applicant faced and the instructions given to the jury. Counsel testified that he also did not request an additional instruction on proximate cause because the charge given properly addressed the matters in issue for the jury as the issues related to assault and battery with intent to kill.

This Court agrees. Considering the testimony in the light most favorable to Applicant, this Court finds that the evidence presented at trial did not support a charge on accident. State v. Glover, 27 S.C. 602, 4 S.E. 564 (1888). The evidence presented at trial fails to disclose any contention by Applicant that he committed an act accidentally; on the contrary, Applicant specifically denied that his vehicle struck the victim's when the wreck occurred. Instead, Applicant testified that the victim drove her vehicle into his lane of travel and struck him while she was attempting to make a lane change and thereafter traveled off of the highway. The evidence also reflects that Applicant was driving his vehicle in excess of the posted speed limit and admitted at trial that he intentionally sped up between the first and second collisions to catch the victim before the second impact. Applicant committed an intentional act, was not exercising

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due care and was not acting in a lawful manner. An instruction on the law respecting accident was not warranted based upon the evidence presented at trial. It is also clear that counsel did not entertain the view that accident was applicable at the time of trial and counsel's argument to the jury was consistent with Applicant's testimony and Applicant's version of the events and did not constitute ineffective assistance of counsel.

Moreover, the jury charge given by the trial judge made it clear to the jury that Applicant could only be found guilty of assault and battery with intent to kill if the State showed beyond a reasonable doubt that Applicant possessed the requisite criminal intent in conjunction with an act or omission. The jury was charged that the State was required to prove beyond a reasonable doubt that Applicant committed an unlawful act of violent nature with malice aforethought. The instruction given also specifically made clear that Applicant could not be found guilty if the act committed was accidental or involuntary but must have been committed with evil intent on the part of the accused and with the intent that the result occur.

This Court finds that the charge given to the jury properly instructed the jury as to the issues for consideration as presented by the evidence and that additional charges on the law of proximate cause or accident were not warranted based upon the evidence adduced at trial and the charges the Applicant faced. Applicant failed to establish deficient performance on the part of counsel or prejudice.

#### F. Charge on Intent

At the post-conviction relief hearing, Applicant specifically stated that he would not pursue the allegation that counsel was ineffective for failing to object to the jury instruction for ABWIK because it did not include a statement indicating that he could not be found guilty unless

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the jury found he acted with intent to kill the victim. Based upon Applicant's statements, this Court finds the allegation was specifically waived.

II.

### CONCLUSION

This Court finds as to each claim raised, that Applicant wholly failed to establish prejudice arising from counsel's conduct such that there is a reasonable probability the outcome of the trial would have been different. This Court finds trial counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant's complaints concerning counsel are without merit and are denied and dismissed.

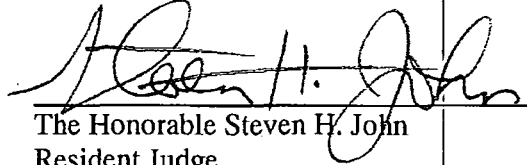
Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that a notice of appeal must be served and filed within thirty (30) days after receipt of written notice of entry of this Order to secure the appropriate appellate review. The Applicant's attention is also directed to South Carolina Appellate Rules for appropriate procedures after notice has been timely served and filed.

260/27  
A. H. J.

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.



The Honorable Steven H. John  
Resident Judge  
Fifteenth Judicial Circuit

July 30 2012  
At Chambers, South Carolina

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S.H.J.

STATE OF SOUTH CAROLINA )  
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COUNTY OF GEORGETOWN )  
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RONALD COHENS, #316306 )  
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Applicant, )  
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vs )  
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STATE OF SOUTH CAROLINA, )  
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Respondent. )  
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IN THE COURT OF COMMON PLEAS

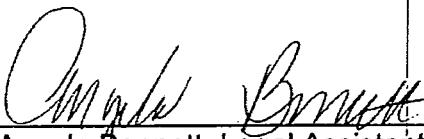
2010-CP-22-1592

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Order of Dismissal** in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

**Tara D. Shurling, Esquire**  
**3614 Landmark Dr., Suite A**  
**Columbia, South Carolina 29204**

DATED this 13<sup>th</sup> day of August, 2012

  
\_\_\_\_\_  
Angela Bennett, Legal Assistant  
For Respondent

FILED  
GEORGETOWN COUNTY, S.C.  
2012 AUG 23 AM 10:45  
ALMA Y. WHITE  
CLERK OF COURT

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: [tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

September 11, 2012

Salley W. Elliott  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
P. O. Box 11549  
Columbia, S. C. 29211

RE: Ronald Cohens, 316306. v. State of South Carolina; 2010-CP-22-1592

Dear Ms. Elliott:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was retained in this matter and I am awaiting the client's decision as to whether he and his family will be hiring me for the appeal. I have notified the South Carolina Commission on Indigent Defense, Office of Appellate Defense, that it may be a couple of weeks before the file is turned over to them should this client seek representation by their office. I have advised my client and his family that a decision concerning representation in this Post-Conviction Relief action needs to be made quickly. I will keep you informed of the client's decision. Thank you. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

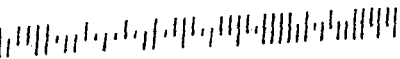
Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina  
Ronald Cohens, 316306  
Donald Cohens

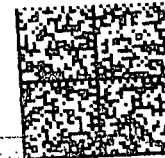
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**S.C. SUPREME COURT**



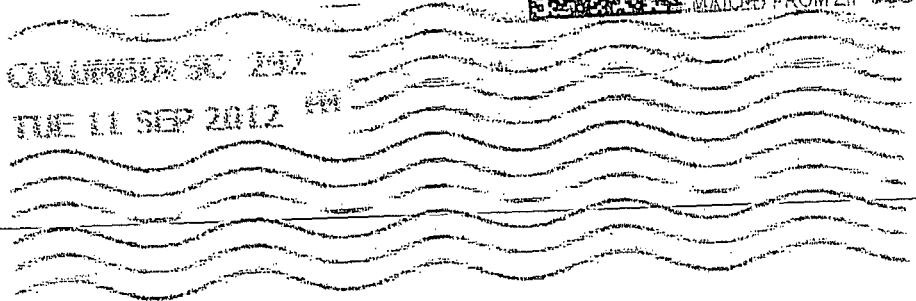
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*Ronald  
Peters*

Law Office of  
**TARA DAWN SHURLING, PA**  
 3614 LANDMARK DRIVE, SUITE D  
 COLUMBIA, SOUTH CAROLINA 29204

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The Honorable Daniel E. Shearouse  
 South Carolina Supreme Court Clerk  
 Post Office Box 11330  
 Columbia, South Carolina 29211-1330