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January 4, 2016

Attn: Janice Johnson
S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: William V. Long # 238950 vs. State of South Carolina
Case No.: 2012-CP-26-9212

Dear Ms. Johnson:

Pursuant to your request, enclosed herewith please find the following documents in connection with the above referenced matter:

1. Order of Dismissal;
2. 10/12/15 correspondence to SC Court Appeals forwarding Notice of Appeal and Certificate of Mailing for filing and return;
3. 10/12/15 correspondence to Horry County Clerk of Court forwarding Notice of Appeal and Certificate of Mailing for filing and return;
4. Copies of clocked Notice of Appeal and Certificate of Mailing filed with the Horry County Clerk of Court; and
4. Order Denying Applicant's Motion to Reconsider

Thank you for your assistance in this matter. If you should have any questions, please do not hesitate to contact us.

With kind personal regards, I am

Sincerely,

R. Scott Joye

RSJ/lnm
Enclosures

cc: Jessica E. Kinard, Office of the SC Attorney General (w/ Enclosures)

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
William V. Long, #238950, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2012-CP-26-9212

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 29, 2012. Respondent made a timely Return on or about March 15, 2013. The Court convened an evidentiary hearing into the matter on February 4, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by R. Scott Joye, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, James C. Galmore, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the return. The Court also had before it the exhibits from Applicant's criminal trial, which were made part of the record of this proceeding by stipulation of the parties. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2007, the Horry County Grand

Jury indicted Applicant for possession of a weapon during the commission of a violent crime (2007-GS-26-868), kidnapping (2007-GS-26-870), carjacking (2007-GS-26-871), and two (2) counts of armed robbery (2007-GS-26-873, -875). James C. Galmore, Esquire ("trial counsel"), represented Applicant. On April 13, 2009, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty of possession off a weapon during the commission of a violent crime and both counts of armed robbery. The jury did not reach a verdict on the carjacking and kidnapping counts, and Judge Cottingham declared a mistrial on those charges. Judge Cottingham sentenced Applicant to consecutive terms of twenty-five (25) years imprisonment for each armed robbery conviction, and a consecutive term of five (5) years imprisonment for the possession of a weapon during the commission of a violent crime conviction.

Applicant filed a timely notice of appeal. Elizabeth A. Franklin-Best, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 7, 2012. State v. Long, Op. No. 2012-UP-166 (S.C. Ct. App. filed March 7, 2012). The Court of Appeals returned the remittitur to the circuit court on March 23, 2012.

II. ALLEGATIONS

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

1. "Due Process Violation"
2. "Probable Cause Violation"
3. "Ineffective Assistance of Counsel Violation"

In an amended application filed July 23, 2013, Applicant alleged the following grounds for relief:

1. "Ground 1 - Perjury - On December 29. 2006, Judge Aaron Butler issued Warrant No.: J316621 for my arrest and probable cause was based on upon a statement in

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the Sworn Affidavit that was false. See Sworn Affidavit Case No. 06115130 and store surveillance video. It doesn't show me committing the robberies. Counsel is ineffective for failing to make a motion to have the video suppressed based upon the false statement in the Warrant Affidavit, and this failure prejudiced the outcome of the case, and the issue wasn't preserved for direct review."

2. "Ground 2 - Arrest - On December 28, 2006, Officer Kevin Suggs arrested me. I was walking down Currie Lane and he pulled up behind me. I kept walking because he never indicated to me that I was under arrest. Well, when I went in the woods (a shortcut to where I was going) he and another officer got out of the car and pulled their guns on me, handcuffed and searched me for no reason. See Case Activity Report #06115130. Counsel is ineffective for failing to make a motion to have the evidence seized unlawfully suppressed, and this failure prejudiced the outcome of the case and the issue wasn't preserved for direct review."
3. "Ground 3 - Fingerprints and Conflicting Statements - On March 1, 2007, the grand jurors of Horry County indicted me for two (2) counts of armed robbery and possession of a weapon during the commission of a violent crime. The Cash/Dash, 701 Hwy, 701 N in Loris was robbed December 27, 2006. See Incident Report No. 06115130. The subject wasn't wearing any gloves. He reached in the register and drew $35.00 worth of fuel into his vehicle. Prints were lifted from the pump but not analyzed and the register inside the store was never dusted. Tr. Pg. 214 and 215 Lines 24-25 and Lines 1-7. The vehicle that he was driving was found on Angelwood in Loris. It was requested that this vehicle be dusted for prints but it was never done. Tr. Pg. 202 and 203 Lines 21-25 and Line 1. The victims in this robbery identified their assailant in the initial report as a black male. 5 '8", around 40 years old, 150 pounds, black hooded shirt, white t-shirt, blue jeans, white sneakers and scar below left eye. When the victim's property was given back to them and they were told 'I had been arrested' they picked me out of a photo lineup. See Photo Lineup No. 06115130. This is a photo of me when I was 21 years old. It doesn't display height or weight. There's no scar below my left eve and the color of my clothes aren't known. Counsel is ineffective for failing to make a motion to have the indictment squashed based upon the insufficiency of the evidence, and this failure prejudiced the outcome of the case, and the issue wasn't preserved for direct review."
4. "Ground 4 - In-Court Identification - On April 13-15, 2009, trial counsel made a motion to have the in court identification suppressed because there was testimony I was in a jailhouse uniform Tr. Pg. 102 and 103 Line 25 and Lines 1-3 while the others looked to be wearing t-shirts. Tr. Pg. 108 Line 25, and Pg. 109 Line 1. The courts denied the motion, and told my counsel 'of course, don't mention jailhouse uniform unless it was brought out' Tr. Pg. 108 Lines 16-17. Appellant counsel is ineffective for failing to raise suggestive in-court identification on direct appeal. Suggestive in court identification could have been raised on direct appeal because it was an issue raised and ruled on by the courts. Tr. Pg. 1 07- 1 08 Lines 4-25 and Lines 1-17. This failure prejudiced the outcome of the case and the issue wasn't preserved for direct review."

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5. "Ground 5 - Ineffective Assistance of Appellant Counsel - Counsel failed to raise ineffective assistance of trial counsel on direct appeal. Counsel could have raised ineffective assistance of trial counsel on direct appear because it was an issue raised and ruled on by the courts. Tr. Pg. 4 Lines 18-25. This failure prejudiced the outcome of the case and the issue wasn't preserved for direct review."

At the evidentiary hearing, Applicant proceeded on only the following allegations of ineffective assistance of trial counsel:

1. Failure to review the tape of the incident prior to the expiration of the first plea offer.
2. Failure to challenge the arrest warrant that stated the video clearly shows Applicant, which it does not.
3. Failure to cross-examine the investigating officers on the fact the arrest warrant stated the video clearly shows Applicant, which it does not.
4. Failure to investigate other customers at the store at the time of the incident.
5. Failure to cross-examine witnesses about the discrepancies in the 911 tape.
6. Failure to challenge the lineup as unduly suggestive.
7. Failure to advise Applicant he had a right to address the judge at sentencing.
8. Failure to object to hearsay in Officer Suggs testimony about how he located Applicant.
9. Failure to properly object to the wrong indictment being sent back to the jury.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Generally, the Court finds trial counsel's testimony credible and Applicant's not credible, especially in light of the extensive trial record before the Court. Set forth below are the other relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified trial counsel failed to review the video tape of the incident with him prior to

trial. He also testified he did not see the video before being arraigned and rejecting the State's initial plea offer. He testified if he had seen the video at that time, he would have accepted the plea offer because some angles of the video showed the perpetrator wearing shoes and clothes similar to Applicant's. However, Applicant admitted he did not ask trial counsel to attempt to negotiate a plea deal once he saw the video the day of trial.

Applicant also testified the video contained numerous angles, none of which clearly show his face. Applicant believes the arrest warrant affidavit falsely stated the video clearly shows him. He testified trial counsel should have moved to have the arrest warrant dismissed for lack of probable cause. He also testified trial counsel could have impeached the arresting officer with the fact the video was not clear. He further testified trial counsel should have impeached another investigating officer regarding the video.

Applicant testified trial counsel failed to investigate other customers that were at the store the day of the incident. He also testified trial counsel failed to explore the fact the 911 tape indicated the perpetrator was driving a grey car, not a green one. Applicant testified trial counsel should have objected to testimony from Officer Suggs regarding conversations he had with members of the community while looking for Applicant. Applicant believes this testimony was improper hearsay.

Applicant further testified trial counsel failed to challenge the victim's identification as tainted by an unduly suggestive lineup. He believes the fact he was in prison clothes in the lineup caused the victim to pick him out of the lineup. Applicant testified trial counsel also failed to review the indictments before sending them to the jury, which resulted in the jury viewing an indictment that he was not on trial for. He further testified trial counsel improperly acquiesced to the trial judge's curative instruction regarding the indictment. Applicant also testified trial counsel failed to advise him

he had a right to address the judge at sentencing.

Trial counsel testified he has been a public defender since 1998. He was appointed to Applicant's case in December 2007. He recalled several meetings with Applicant. Trial counsel testified he attempted to share discovery with Applicant during these meetings, but Applicant was generally non-cooperative. Trial counsel recalled having Applicant evaluated prior to trial. He also recalled Applicant rejecting the State's eighteen (18) year plea offer. He recalled Applicant wanting a ten (10) year plea offer, but being unable to get the State to make such an offer. Trial counsel recalled Applicant being arraigned in February 2009 and rejecting the State's plea offer at that time. He did not recall Applicant requesting to plea after watching the video immediately before trial.

Trial counsel testified he visited the crime scene as part of his investigation. He further testified Applicant did not give him any further leads to investigate. He also testified the incident reports did not mention the names of any other customers in the store at the time of the incident. Trial counsel recalled Applicant filling a grievance against him. However, he continued to represent Applicant after discussing the grievance with his supervisor and the Office of Disciplinary Counsel. Trial counsel testified Applicant did not discuss the case with him despite his numerous visits to the detention center. Trial counsel identified at least two (2) occasions where he showed the video of the armed robbery to Applicant: March 2008 and April 2009. Trial counsel admitted the video showed the robbery from numerous angles, and he may have only shown Applicant a few of them. However, he recalled reviewing all angles of the incident with Applicant immediately before trial.

Trial counsel testified he did not see any issues with the probable cause in the arrest warrant. He also testified that merely having an arrest warrant dismissed does not prevent the State from indicting defendants. Trial counsel recalled cross-examining the investigating officers on the video

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from the store. He also recalled cross-examining the robbery victim about her identification of Applicant. Trial counsel testified he challenged the photo lineup based on Applicant's picture showing him in a jail uniform. He also testified he did not object to Officer Suggs' testimony regarding his conversations with members of the community because such testimony was not hearsay, but was testimony about why Officer Suggs conducted his investigation.

Trial counsel testified he did not know what Applicant would testify to at trial because Applicant refused to share that information beforehand. However, he recalled Applicant having numerous discussions on the record with Judge Cottingham about how Applicant should not mention his other pending charges at trial. He also recalled Applicant mentioning these other charges during his testimony. Trial counsel testified an indictment from one of Applicant's other kidnapping charges was inadvertently sent to the jury room instead of the indictment for the kidnapping Applicant was tried for. However, he recalled the State did not present any evidence regarding that charge, and Judge Cottingham issued a curative instruction after his motion for a mistrial.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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 Applicant alleges ineffective assistance of trial counsel as a ground for relief, he 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. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S.at 687; Turner v. Bass,

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753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this strong presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, 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. Failure to review the tape of the incident prior to the expiration of the first plea offer.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to review the video with him prior to the expiration of his first plea offer. Regarding this specific allegation, the Court finds trial counsel's testimony credible, and Applicant's not credible. Trial counsel's records indicate he reviewed the videos with Applicant in March 2008. The record indicates Applicant was arraigned on October 7, 2008, and again on March 13, 2009. (Trial Tr. p. 22, lines 1-2; lines 18-25). Applicant was aware of the content of the videos when he declined the State's plea offers. Although there may have been angles of the incident Applicant had not seen at that time, he was fully aware the State planned to argue those videos showed him committing the armed robberies. The Court does not find credible his testimony that seeing further angles of the video would have

caused him to accept the State's offer. Cf. Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012) (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he "was fully aware of the inculpatory nature of the [evidence] throughout the negotiations"). Furthermore, Applicant did not request trial counsel attempt to secure a plea deal after viewing the video on the eve of trial. Accordingly, the Court finds Applicant has not demonstrated he would have accepted the State's offer even with further review of the video. See, e.g., Lafler v. Cooper, __U.S. ___, 132 S. Ct. 1376, 1385 (2012) (in the context of ineffective assistance of counsel regarding plea bargains, defendant must show he "would have accepted the plea" to show prejudice).

2. Failure to challenge the arrest warrant.

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective for failing to challenge the arrest warrant. The Court finds trial counsel's testimony on this issue credible, and finds Applicant's testimony neither credible nor legally accurate. Applicant alleges trial counsel should have challenged the arrest warrant because the affidavit stated the video clearly shows Applicant, which it does not. Trial counsel candidly admitted the video did not provide the best picture of Applicant. However, he also admitted there were no other grounds to challenge the validity of the warrant. The Court agrees with trial counsel's assessment. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Although the video may not "clearly show" Applicant, the officer could have reasonable determined it was Applicant on the video based on his investigation. Accordingly, Applicant has not demonstrated trial counsel was deficient where he would not have any proper grounds to object to the issuance of the arrest warrant. See Palacio v. State, 333

S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments").

Regardless, an unlawful arrest does not preclude the court from exercising jurisdiction over Applicant where he was later indicted by the grand jury. See State v. Holliday, 255 S.C. 142, 146, 177 S.E.2d 541, 543 (1970) (citing State v. Waitus, 226 S.C. 44, 83 S.E.2d 629; State v. Swilling, 246 S.C. 144, 142 S.E.2d 864; Thompson v. State, 251 S.C. 593, 164 S.E.2d 760). Because the State could have properly secured a conviction at trial even if trial counsel had successfully challenged the arrest warrant, Applicant has not demonstrated he was prejudiced by trial counsel's failure to challenge the arrest warrant.

3. Failure to cross-examine the investigating officers regarding the video.

The Court finds Applicant failed to demonstrate trial counsel was ineffective in failing to further cross-examine the investigating officers on the video's depiction of Applicant. The record demonstrates trial counsel cross-examined Detective Boyd on whether the victim was able to identify Applicant on the video. (Trial Tr. p. 217, line 14-p. 218, line 24). Applicant has failed to show how further exploration of this issue would have changed the result of his trial. Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (court will not "speculate whether a 'better' cross examination would have helped" the applicant). Furthermore, Applicant personally argued to the jury that the person on the video did not resemble him. (Trial Tr. p. 284, line 23-p. 285, line 1; p. 287, lines 1-21). Therefore, further examination of Detective Boyd on this issue would have been merely cumulative to the information already before the jury. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("[W]here evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it

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forward." (citations omitted)). The Court finds Applicant failed to demonstrate trial counsel's conduct was unreasonable or that he was prejudiced by trial counsel's conduct.

4. Failure to investigate other customers at the store at the time of the incident.

The Court finds Applicant failed to meet his burden to proof on the allegation trial counsel failed to investigate other individuals who may have been at the store at the time of the incident. Regarding this allegation, the Court finds credible trial counsel's testimony he was not provided the names of any other persons at the store. Because he did not have these names, trial counsel had no reason to believe an investigation was warranted. Therefore, the Court finds the decision to not further investigate these individuals was a strategic one. Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

Furthermore, 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 presented no evidence of what information could have been discovered had trial counsel been able to ascertain the identity of these other individuals. Applicant also failed to present any of these individuals at the evidentiary hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (applicant must present testimony of a favorable witness at evidentiary hearing in order to establish prejudice (citations omitted)). Accordingly, the Court finds Applicant failed to demonstrate trial counsel was ineffective in this regard.

5. Failure to cross-examine witnesses about the discrepancies in the 911 tape.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to cross-examine witnesses regarding the 911 tape. Applicant has not demonstrated how the description of the victim's car was relevant to the ultimate issue of his guilt or innocence. The record

clearly indicates the victim's car was green. (Trial Tr. p. 192, lines 11-14; p. 226, lines 21-23; p. 269, lines 10-14). Any testimony regarding the color of the vehicle, even if some witness had described the car as "grey" and not "green" would have been cumulative and irrelevant. Edwards, 392 S.C. at 459, 710 S.E.2d at 66 (no prejudice from failing to introduce cumulative evidence). Furthermore, a copy of a 911 recording was not entered into evidence at the trial or at the evidentiary hearing. Thus, Applicant has not demonstrated to the Court that the 911 recording is inconsistent with the witnesses' testimony about the color of the car. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (finding of prejudice cannot be based on "pure conjecture"). Accordingly, the Court finds Applicant has not demonstrated trial counsel was ineffective.

6. Failure to challenge the lineup as unduly suggestive.

The Court finds Applicant failed to meet his burden of proof on his allegation trial counsel was ineffective in challenging the photo lineup. Trial counsel made a pre-trial motion to suppress the witnesses' identification from the photo lineup. (Trial Tr. p. 147-163). During that motion, trial counsel argued the lineup was unduly suggestive because Applicant appeared in prison clothes. Judge Cottingham disagreed, and denied trial counsel's motion. The issue of whether Judge Cottingham properly admitted the identification could have been raised in Applicant's direct appeal. Accordingly, Applicant cannot challenge that ruling in post-conviction relief. 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.").

Regardless, the Court finds the photo lineups and in-court identifications were properly admitted. The testimony at the suppression hearing demonstrates the lineups used photographs of comparable size and composition, with subjects of similar characteristics, and the officers did not expressly or implicitly suggest which photograph to select. State v. Patterson, 337 S.C. 215, 230, 522 S.E.2d 845, 852 (Ct. App. 1999). The lineup was not unduly suggestive simply because the picture may show Applicant in a prison uniform. State v. Ford, 334 S.C. 444, 449-50, 513 S.E.2d 385, 387-88 (Ct. App. 1999); see also State v. Miller, 258 S.C. 573, 576, 190 S.E.2d 23, 25 (1972) (lineup admissible where defendant made "no showing that the clothing selected could have reasonably given the impression that those in the lineup were being held on any charge other than that being investigated"). Furthermore, the in-court identification of the victims was not tainted by the identification because the testimony also indicates the victims had ample opportunity to view Applicant during the incidents, the lineups were viewed shortly thereafter, and the victims immediately recognized Applicant. Patterson, 337 S.C. at 230-31, 522 S.E.2d at 853. Because the lineups and identification were admissible evidence, Applicant has failed to demonstrate how trial counsel was ineffective in further challenging their admission. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

7. Failure to advise Applicant he had a right to address the judge at sentencing.

The Court finds Applicant failed to demonstrate trial counsel failed to advise him he could address the judge before sentencing. Applicant has no constitutional right to allocution before a sentencing judge. See Hill v. United States, 368 U.S. 424, 428 (1962) ("The failure of a trial court to ask a defendant represented by an attorney whether he has anything to say before sentence is imposed [...] is an error which is neither jurisdictional nor constitutional."). Because Applicant has no constitutional right to address the sentencing judge, trial counsel was under no duty to advise him in

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this manner. Furthermore, the record indicates trial counsel presented a thorough statement in mitigation. (Trial Tr. p. 372-375). Applicant has not articulated how a further presentation would have altered Judge Cottingham's ultimate sentence. Clark, 315 S.C. at 388, 434 S.E.2d at 267 (1993) (finding of prejudice cannot be based on "pure conjecture"). Accordingly, the Court finds Applicant has not shown trial counsel ineffective in advising Applicant regarding the sentencing proceeding.

8. Failure to object to hearsay in Officer Suggs' testimony.

The Court find Applicant failed to meet his burden to show trial counsel ineffective for failing to object to hearsay in Officer Suggs' testimony about how he located Applicant. Applicant alleges trial counsel should have lodged a hearsay objection to Officer Suggs testimony regarding information he received from a third-party that caused him to search for Applicant. (Trial Tr. p. 177, lines 3-14). Testimony is not objectionable hearsay unless it is offered to prove the truth of the matter asserted. State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (citing State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)). Thus, testimony "is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." Id. (citing United States v. Love, 767 F.2d 1052 (4th Cir. 1985)). Officer Suggs testified he received word from a third-party that Applicant had a "little bit of money" and was staying in a mobile home. The record indicates the third party's statements Officer Suggs repeated were not entered for the truth of what the third party said – that Applicant had money and was in a mobile home. Instead, they were introduced to show why Officer Suggs was in the area when he encountered Applicant walking on the side of the road. Thus, the third-party's statements were merely offered to show why Officer Suggs wanted to stop and investigate Applicant on the day he was apprehended. See State v. Thompson, 352 S.C. 552, 559, 575 S.E.2d 77, 81 (Ct. App. 2003) ("In the instant case, the officers' testimony regarding statements made by the

bystander were not entered for their truth but rather to explain and outline the officers' investigation and their reasons for going to the Thompsons' home."). Because this testimony was not objectionable on hearsay grounds, trial counsel was not deficient for failing to lodge an objection. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

9. Failure to properly object to the wrong indictment being sent back to the jury.

The Court finds Applicant failed to meet his burden of proof to show trial counsel ineffective for failing to properly object to the jury being provided with a kidnapping indictment that the State had not proceeded to trial on. Trial counsel initially moved for a mistrial based on the wrong indictment being sent back. (Trial Tr. p. 343, lines 19-23). The Court of Appeals addressed whether "the trial court erred in denying [Applicant's] motion for a mistrial when the wrong indictment was inadvertently sent back to the jury." Long, Op. No. 2012-UP-166. Because this very issue was raised in his direct appeal, Applicant cannot re-raise this issue in a collateral proceeding. S.C. Code Ann. § 17-27-20(b); Simmons, 264 S.C. at 423, 215 S.E.2d at 885.

Regardless, the Court finds Applicant was not prejudiced by the incorrect indictment being sent to the jury. The incorrect indictment referenced a kidnapping charge. Because the jury could not reach a verdict on the kidnapping charges properly before them, there is no indication the introduction of an unrelated kidnapping charge caused them to believe Applicant was predisposed to commit kidnappings. Furthermore, the fact Applicant had other pending charges was already before the jury. Applicant himself testified he had seven pending armed robbery charges despite being warned against such testimony by Judge Cottingham. (Trial Tr. p. 288, lines 10-18). Because any adverse inference to be drawn from the indictment was cumulative to Applicant's trial testimony, he was not prejudiced by its introduction. Likewise, there was no evidence presented regarding the facts of the other

indictment. See State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ([A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes." (citations omitted)). Finally, Judge Cottingham issued a thorough instruction for the jury to disregard the incorrect indictment. State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999) ("Generally, a curative instruction is deemed to have cured any alleged error." (citations omitted)). Therefore, the Court finds Applicant has not demonstrated he was prejudiced by trial counsel's lack of a further objection to the incorrect indictment being sent to the jury room.

10. 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 because there is overwhelming evidence of Applicant's guilt. The kidnapping victim identified Applicant as the person who stole his car. Surveillance video of the armed robberies shows Applicant driving the kidnapping victim's car. The armed robbery victims identified Applicant as the assailant. When approached by officers, Applicant fled. When officers apprehended Applicant, he was in possession of the kidnapping victim's car keys and an armed robbery victim's watch. 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) (applicant cannot prove prejudice where there is overwhelming evidence of guilt).

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such

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allegations.

IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

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

AND IT IS SO ORDERED this 31 day of March, 2015.

G. Thomas Cooper

THE HONORABLE G. THOMAS COOPER, JR.
Presiding Judge

Columbia, South Carolina

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