IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

G. THOMAS COOPER, CIRCUIT COURT JUDGE

2013-CP-40-3226

Taurus Watts,.....Petitioner.

vs

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

NOTICE OF APPEAL

Taurus Watts appeals the Honorable G. Thomas Cooper's March 4, 2016 Order of Dismissal. Undersigned counsel received notice of entry of the order on March 9, 2016. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

Anna R. Good

Anna R. Good
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Attorney for the Petitioner.

March 9, 2016.

OTHER COUNSEL OF RECORD:
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PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, J. Clayton Mitchell, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 9th day of March 2016.

Respectfully submitted,

Anna R. Good

Anna R. Good, Esquire
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2013CP4003226

Taurus #324820 Watts

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

Submitted by: _____ | **Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

FILED
RICHLAND COUNTY
2016 MAR -4 AM 11:18
JEANETTE W. McBRIDE
C.C.P. & G.S.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** 2126 **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of March, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

Taurus #324820 Watts

Anna Rawl Good

James Clayton Mitchell III

Taurus #324820 Watts
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Taurus Watts, #324820,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-03226

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 30, 2013. Respondent filed a Return on January 9, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on December 10, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Theresa N. Johns, Esquire, Former Deputy Weldon Gregory, and Kamaleh Wilson. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted during the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-5913). Theresa Johns, Esquire, represented Applicant. On October 5-9, 12-15, 2009, Applicant

proceeded to a jury trial before the Honorable J. Michelle Childs, where he was convicted as indicted. On October 15, 2009, Judge Childs sentenced Applicant to thirty-five (35) years' imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Katherine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on June 1, 2012. State v. Watts, No. 2012-UP-381 (S.C. Ct. App. June 20, 2012). The Remittitur was issued on August 10, 2012.

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

1. Trial counsel was ineffective in:
    a. Failing to present a defense on Applicant's behalf;
        i. Former Deputy Weldon Gregory;
        ii. Kamaleh Wilson;
    b. Failing to make a motion to sever;
    c. Failing to move to question members of the jury on their impartiality

II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Ineffective Assistance of Trial Counsel

Failing to present a defense on Applicant's behalf

Applicant alleges Counsel was ineffective in failing to present a defense on Applicant's behalf. Specifically, he argues Counsel did not call various witnesses to testify in his case in chief. Applicant also argues Counsel did not form a strategy specific to Applicant's case and just piggy-backed off of codefendant Tremaine Wray's counsel, Jack Swerling's, strategy.

Counsel testified that she decided not to present a defense because doing so would forfeit both defendants' right to last closing argument. She testified she conferred with Swerling who believed it would be best not to put up a defense case. Counsel explained that she now thinks she should have presented a defense. She also testified that she believed at the time that not presenting a defense was in Applicant's best interests.

As an initial matter, this Court can only address whether Counsel was deficient in failing to call witnesses or present evidence when those witnesses and evidence are presented. As discussed below, Applicant failed to produce any witnesses or evidence that would have likely changed the result of the trial. As to deficiency, this Court also finds Applicant's decision not to present a case reasonable under prevailing professional norms. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court recognizes that Counsel now believes that decision to be a mistake, but Counsel made a reasonable strategic decision at the time. While Applicant argues that Counsel put Wray's interests above his own, this Court finds otherwise and concludes that Counsel acted reasonably in all aspects of her representation. It was also not deficient to base the decision on

whether the benefits of putting up a case outweigh the risk of losing last closing argument. See Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (Pieper, J., concurring) (Whether to preserve final closing argument is a strategic decision to be made by trial counsel.)(citation omitted). See also Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The Court will now address both Kamaleh Wilson and Former Deputy Weldon Gregory's testimony and whether it would have likely had an effect on the result of the trial.

Kamaleh Wilson

Next, Applicant alleges Counsel was ineffective for failing to call Kamaleh Wilson to testify in his defense. At the hearing Wilson testified as to what her testimony would have been if she had been called at trial. Specifically, she testified that she was at the club where the shooting took place and did not see Applicant. She testified that she and her friends were at the club partying and drinking that night. She further testified that she saw Ricky Jacobs across the street from the club when the shooting occurred.[1] She testified she did not believe Jacobs was able to see the shooting from his vantage point.

This court finds Wilson's testimony not credible. This Court finds Wilson's testimony does no more than impeach Jacob's testimony. Counsel was able to fully impeach Jacobs on a number of occasions during cross-examination. Wilson's testimony would not have likely changed the result of the trial.

[1] Ricky Jacobs testified at trial that he saw Applicant with a gun in his hand as he was leaving the club. He also identified him and testified that he knew Applicant by name.

Former Deputy Weldon Gregory

First, Applicant claims Counsel was ineffective in failing to investigate and call Deputy Weldon Gregory as a witness in his defense. Gregory testified that he was in law enforcement for thirty (30) years and was with the Richland County Sheriff's Department when the incident took place in this case. He testified he was one of the first officers to arrive and that he was responsible for securing the scene. He also issued a report which was introduced at the hearing. He testified he briefly spoke to Jacobs who told him that two patrons were denied entry into the club. He testified he did not remember the names of those individuals but that they were driving a White Nissan. His report included a description of two vehicles involved in the shooting. He explained that he was not part of the investigation and that his only involvement was that night securing the scene.

After reviewing the entire record and testimony presented, this Court finds Applicant has failed to establish any deficiency of Counsel in failing to call Gregory. Counsel testified law enforcement officers are not usually helpful to defendants based on her experience. This Court finds Counsel was able to adequately cross examine Jacobs without calling Gregory as a witness. This Court finds Jacobs was thoroughly impeached during his testimony by Counsel and Swerling. This Court finds that Gregory's testimony added very little to the overall presentation and likely would have had no impact on the result of the proceeding. As discussed above, Counsel challenged the State's eyewitness Jacobs on virtually every aspect of his recollection. This Court is not convinced that testimony from Gregory would have had any impact on the jury's view of Jacobs or his credibility, much less the result of Applicant's trial. This allegation is denied and dismissed.

Failing to make a motion to sever

Applicant also alleges Counsel was ineffective in failing to move to sever Applicant's case from his codefendant Tremaine Wray. "Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." State v. Dennis 337 S.C. 275, 281, 523 SE2d 173, 176 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). "Charges can be joined in the same indictment and tried together where they 1) arise out of a single chain of circumstances; 2) are proved by the same evidence, 3) are of the same general nature; and 4) no real right of the defendant has been prejudiced." State v. Beekman 405 S.C. 225, 229, 746 S.E.2d 483, 486 (2013). A court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." Id. at 282, 523 S.E.2d at 176.

This Court finds Counsel was not deficient in her decision to not move for a severance. Counsel testified that in hindsight, she believed she should have moved to sever the cases. Such self-proclaimed admissions, as made by Counsel, have been regarded with skepticism. Counsel's self-serving statements (I didn't research the law) need not be accepted as true. Dows v. Wood, 211 F.3d 480, 486 (9th Cir. 2000). Such hindsight opinions run afoul of the rule of contemporary assessment; Counsel certainly did not believe it at the time of trial. Hendricks v. Calderon, 70 F.3d 1032, 1039 (9th Cir. 1995). See also Rhoades v. Henry, 611 F.3d 1133, 1138 n.1 (". . .it is all too easy" for counsel or a court "to conclude that a particular act or omission of counsel was unreasonable in the harsh light of hindsight," citing Bell v. Cone, 535 U.S. 685, 702, 123S.Ct. 1843, 1854, 152 L.Ed.2d 914 (2002); Eberts v. Gaetz, 610 F.3d 415 (7th Cir. 2010) (an

attorney's reflection about what should have been done after the fact is irrelevant to the question of ineffective assistance, which is why there is a presumption of reasonable, professional assistance); Miller v. Champion, 161 F.3d 1249, 1286 (10th Cir. 1998) (that counsel would have done something different in "hindsight" is unhelpful because that is the wrong test). The Supreme Court has held that an objective standard of reasonableness applies:

> After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind.

Harrington v. Richter, 131 S. Ct. 770, 790, 178 L. Ed. 2d 624 (2011).

This Court further finds no specific trial right was violated by trying Applicant and co-defendant Wray together. Furthermore, the incident clearly arose out of the same circumstances, the charges were proved by the same evidence, and the charges are of the exact same nature. Therefore, Applicant was not prejudiced by the joint trial with Wray. A cautionary instruction as to multiple defendants is sufficient to protect each co-defendant from prejudice that might result from a joint trial. See State v. Holland, 261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973). Here, the trial court gave an instruction on the jury's duties regarding multiple defendants. (Trial Tr. Vol. XII, p. 156, lines 9-23). These instructions negated any prejudice that may have resulted from the joint trial. Furthermore, Applicant has failed to show that a motion for severance would have been successful. Accordingly, Applicant has failed to prove prejudice from Counsel's decision not to move for a severance. This allegation is denied and dismissed.

Failing to move to question members of the jury on their impartiality

Finally, Applicant alleges Counsel was ineffective in failing to question members of the jury on their impartiality after a juror was removed from the panel. At trial, Juror Number 89

came forward and told Judge Childs that she overheard another juror saying that he would convict the defendant while on his cell phone. (Trial Tr. Vol. I, p. 50-67). The suspected juror was Juror Number 36. Judge Childs questioned him, and he denied using his cell phone. Judge Childs then inspected his cell phone and was unable to find any evidence of a call being received or made. (Trial Tr. Vol I, p. 63, lines 17-18). While speaking to Judge Childs, the juror admitted that he remembered hearing about this case in the news. The juror was then struck by Judge Childs and replaced with a newly selected juror.

This Court finds that Counsel's objection to the juror remaining on the panel was proper. However, Judge Child's questioning of Juror Number 36 was sufficient to relieve any concerns of whether any other jurors overheard the alleged exchange. In any event, Applicant has failed to provide the Court with any evidence that any juror did in fact hear Juror Number 36 or that they acted impartially. This allegation rests on speculation because no testimony was produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). This allegation is denied and dismissed.

All Other Allegations

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

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.

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

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

IT IS THEREFORE ORDERED THAT:

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

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3rd day of March, 2016.

G. Thomas Cooper, Jr.
Presiding Judge

Columbia, South Carolina