

STATE OF SOUTH CAROLINA  
Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Case Nos. Indictment Numbers: 2010-CP-40-02933

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Louis Sanders,....., Appellant.

v.

State of South Carolina,..... Respondent

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**NOTICE OF APPEAL**

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Louis Sanders appeals the dismissal of his Post Conviction Relief Hearing that was held on May 21, 2012 in the County of Richland. The denial with prejudiced was order for the Honorable Judge L. Casey Manning and is evident by an order signed into effect in March 7, 2016

March 22, 2016



Nicole L. Singletary  
The Law Offices of Nicole L. Singletary  
4511 North Main Street  
Columbia, S.C. 29203  
(803) 201-8933  
Attorney for Appellant

Other Counsel of Record:

Assistant Attorney General Clayton Mitchell  
Office of the Attorney General  
PO Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

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MAR 22 2016  
SC SUPREME COURT

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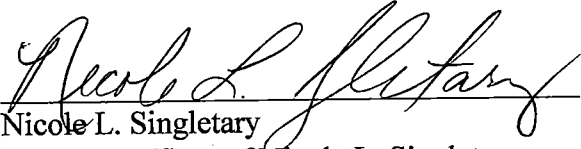
v.

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel by via United States Postage same this date to his office at the Office of the Attorney General, PO Box 11549, Columbia, South Carolina 29211.

March 22, 2016

  
Nicole L. Singletary  
The Law Offices of Nicole L. Singletary  
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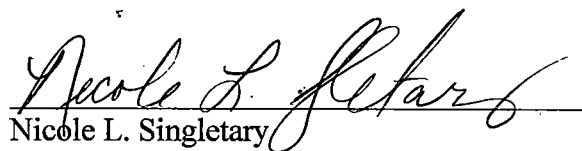
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**STATEMENT OF BASIS FOR APPEAL FROM  
POST-CONVICTION RELIEF PURSUANT TO RULE 203(d)(1)(B)**

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Pursuant to South Carolina Appellate Court Rule 203(d)(1)(B), the Defendant was dissatisfied with his sentence and insisted in appealing. I am of the opinion that if the client insists on appealing, I am constrained to file an appeal. *Weathers v. State*, 319 S.C. 59, 459 SE.2d 838 (1995).

March 22, 2016



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The Law Offices of Nicole L. Singletary  
4511 North Main Street  
Columbia, S.C. 29203  
(803) 201-8933  
Attorney for Appellant

Other Counsel of Record:

Assistant Attorney General J. Clayton Mitchell  
Office of the Attorney General  
PO Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Louis Sanders, #164301,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

**2010-CP-40-02933**

**ORDER OF DISMISSAL**

### **PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed May 4, 2010. An evidentiary hearing into the matter was convened on Monday, May 21, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Nicole Singletary, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former trial attorneys, Camille Guthrie (née Everhart), Esquire, and Casey Secor, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the documents related to Applicant's direct appeal and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that 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 at the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-06002). He was represented by Camille Guthrie (née Everhart), Esquire, Casey Secor, Esquire, and Deon O'Neil, Esquire, on the charge. On July 28,

2008, Applicant proceeded to jury trial before the Honorable G. Thomas Cooper, Jr., at the Richland County Courthouse. After five (5) days of trial, the jury found Applicant guilty of the charge as indicted and he was sentenced to life imprisonment without the possibility of parole.

A notice of appeal was filed and an Anders brief was submitted on Applicant's behalf by Tricia Blanchette, Esquire. By order filed January 27, 2010, the South Carolina Court of Appeals granted appellate counsel's request to be relieved and dismissed the appeal. The remittitur was issued February 12, 2010.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. Failure to Investigate and Prepare for Trial
  - b. Failure to Advise of the Ability to Impeach Witnesses at Trial; and
  - c. Failure to Advise Applicant of His Rights to Testify.

#### **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 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption 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. 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, 385 S.E.2d at 625 (citing Strickland). 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.

#### ***Failure to Properly Investigate and Prepare for Trial***

Applicant testified he was not sure how many times counsel met with him at the jail prior to trial to discuss the charges and approaching trial, but estimated about five (5) or six (6) times. He noted the meetings ranged in length from twenty (20) minutes to the longest being about one (1) hour. During the course of those meetings, Applicant said that he told counsel he was not guilty of the charges as they were reviewing the statements included in the discovery materials.

Applicant testified counsel did hire a private investigator to assist in trial preparation, whom Applicant had the opportunity to speak with. Applicant said during that discussion, he gave the investigator the names of Ms. Caples, his younger brother (Dante Sanders) and "Twan"

as potential witnesses to investigate. Applicant testified Caples gave a verbal statement to law enforcement as an eye witness to the murder. She was coming from the emergency room with her husband when she saw two people arguing next to a car accident. Applicant alleged Caples would have been able to testify that she saw one man turn to walk away from the argument before turning and firing a shot which dropped the victim to the ground, and that the suspect then fired a second shot at victim before climbing into a dark vehicle.<sup>1</sup> Applicant also testified Caples would have been able to identify the individual who fled the scene after the shooting, who Applicant alleged was Justin Green.

Applicant went on to testified that counsel never located or discussed the case with "Twan" prior to trial and because Twan was killed prior to the start of trial, he was not available to testify. Applicant alleged he told counsel about Twan prior to trial and said he told counsel the owner of the club where the altercation began could direct her to Twan. He also testified he had a potential alibi defense that counsel failed to investigate as he was with his baby's mother, Lashonda Downing, on the night of the incident. Applicant noted Downing would be able to testify that he was with her at the time of the incident, thus providing an alibi defense<sup>2</sup>.

Camille Guthrie, (hereafter "Counsel"), testified she was lead counsel and Deon O'Neil and Casey Secor, (hereafter "Co-Counsel") acted as second and third chairs on the case. Counsel stated Co-Counsel was assigned as third chair in order to get trial experience and did not actually meet with Applicant. Counsel testified she met with Applicant nine times in the thirteen months she represented him. Counsel testified she hired a private investigator that took pictures of the scenes and interviewed the witnesses Applicant asked them to investigate. Counsel testified they

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<sup>1</sup> Respondent objected to this testimony on hearsay grounds. This Court allowed the testimony as to what Applicant alleges Caples would have said as trial, but notes that without Caples' testimony at the PCR hearing this Court cannot consider the alleged testimony for the truth of the matter asserted.

<sup>2</sup> Downing would testify at trial but on the State's behalf against Applicant.

could not find the witness, Twan, who Applicant claimed was an alibi witness. Counsel testified she did not hire a ballistics expert because it was not necessary. Counsel testified she did not present any evidence on Applicant's behalf as a strategic decision in order to preserve last closing argument. Counsel also testified they did not want to present Applicant's brother because his testimony would be able to connect Applicant with a gun.

Counsel testified she developed a defense for Applicant after looking at all the evidence. Counsel testified their defense centered on eye witnesses failing to properly identify Applicant, since he had cornrows and no one identified a man with cornrows at the scene. Counsel successfully moved for a severance of Applicant's trial from his co-defendant, Justin Green. Justin Green would later testify against Applicant, and Counsel testified Deon O'Neil pointed out how Justin Green's charges were dropped in light of his testimony. Counsel also moved for a continuance during pretrial motions as a result of a firearms trace summary report being presented. Counsel's motion was unsuccessful.

Based on a thorough review of the record and testimony presented, this Court finds the current allegation must be denied and dismissed. First, this Court finds counsel's performance was not deficient or objectively unreasonable in any way relating to this claim. Counsel testified she had conducted a thorough investigation and prepared for trial. As a matter of general impression, this Court finds that Applicant was not deprived of effective assistance of counsel. This Court finds counsel's testimony credible and Applicant's testimony not credible. This Court finds counsel's investigation to have been objectively reasonable and wholly sufficient. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the

reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Id., 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case." Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), aff'd, 828 F.2d 670 (11th Cir.1987) (emphasis in original). Counsel conducted a reasonable and proper investigation into the witnesses Applicant hoped to have called in his defense. Accordingly, counsel was not deficient in this regard.

Further, this Court finds Applicant has failed to prove resulting prejudice from counsel's alleged deficient investigation and preparation for trial. Applicant failed to present any evidence or witness testimony to show what he claims would have been discovered had counsel conducted some further investigation. "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." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Therefore, Applicant has failed to prove resulting prejudice. Accordingly, this allegation must be denied as Applicant has failed to meet either of the two necessary prongs for ineffectiveness under Strickland v. Washington.

***Failure to Advise of the Ability to Impeach Witnesses at Trial***

Applicant's also raised a claim through this action that counsel was ineffective for failing to advise him of the ability to impeach witnesses at trial. Applicant testified he did not believe Counsel used all of the available information to impeach the State's witnesses. Applicant

specifically alleges Counsel did not bring out that co-defendant's, Justin Green, charges were dropped in return for his testimony against Applicant.

Counsel testified she cross-examined all of the State's witnesses. Counsel testified she attempted to cross examine Lashanda Downing, but Downing was so hysterical at trial it was very difficult to cross effectively. Downing was a witness Applicant told Counsel could be used as an alibi witness. At trial Downing testified on the State's behalf, and was not a supportive witness for Applicant. Counsel testified she moved for a mistrial after Downing's testimony because she was so difficult to cross examine. Counsel also testified she cross examined Kim Bowers and Keith Eubanks on the inconsistencies in their statements. Counsel stated there was an in camera hearing held on Bowers identifications of Applicant, and the Judge ruled them admissible.

This Court finds Applicant's PCR testimony outlining "his version" of the incident to be wholly not credible. Counsel testified and the record reflects the detailed cross-examination conducted on each witness. Moreover, Counsel moved for a mistrial when she did not feel she did not have the proper opportunity to cross examine Downing, which the Court denied. Therefore, this Court finds no deficiency in counsel's representation. Applicant has also failed to show any other more effective strategy in handling and impeaching these witnesses. Thus, Applicant has failed to meet his burden in proving both deficiency and prejudice.

***Failure to Properly Advise Applicant of His Rights to Testify***

Applicant testified he wanted to testify at trial, but Counsel advised against him doing so. Applicant testified he did not voluntarily make the decision not to testify. However, Applicant also testified he responded to the judge's questions negatively when asked if he wanted to testify.

Applicant also testified he understood the questions asked to him about his rights to testify by the Judge.

Counsel testified she believed Applicant to make a voluntary and intelligent decision not to take the stand. Counsel testified he told Applicant she would prefer if he did not testify, but that it was his right to do whatever he wanted. This Court finds counsel was not ineffective in this regard. Counsel plainly noted she believed Applicant was aware of his rights and voluntarily choose not to testify. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (“A defendant's decision to testify or not must be made with knowledge of the consequences of either choice”). Therefore, this Court finds no deficiency in counsel’s representation.

Having found all allegations raised by Applicant at the PCR hearing to be wholly without merit, this Court finds the current application for post-conviction relief must be denied and dismissed with prejudice.

### 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), SCRPC, 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 7 day of March, 2016.

  
L. CASEY MANNING  
Presiding Judge  
Fifth Judicial Circuit

Columbia South Carolina