

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS  
HONORABLE BROOKS P. GOLDSMITH

RECEIVED

JUN 23 2016

SC SUPREME COURT

2014-CP-04-1727

JAMARIO QUINTON JONES, #335879

APPELLANT,

vs

STATE OF SOUTH CAROLINA,

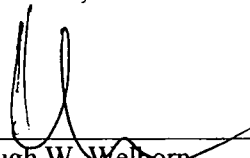
RESPONDENT.

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**NOTICE OF APPEAL**

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Jamario Quinton Jones, #335879 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Brooks P. Goldsmith Circuit Court Judge on February 9, 2016, and Order of Dismissal issued on June 7, 2016 and filed on June 15, 2016. The Appellant received Order of Dismissal on June 20, 2016.



Hugh W. Welborn  
Attorney for the Appellant  
Post Office Box 173  
Anderson, South Carolina 29622  
(864) 226-5787  
Attorney for Jamario Quinton Jones, #335879

Other Counsel of Record:  
Patrick Schmeckpeper  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
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SC SUPREME COURT

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JAMARIO QUINTON JONES, #335879

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VS

STATE OF SOUTH CAROLINA,

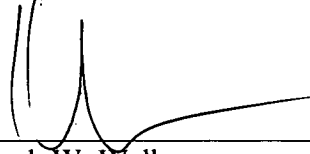
RESPONDENT.

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on June 20, 2016 addressed to its attorney of record Patrick Schmeckpeper, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



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Hugh W. Welborn  
Attorney for the Appellant  
Post Office Box 173  
Anderson, South Carolina 29622  
(864) 226-5787  
Attorney for Jamario Quinton Jones, #335879

Anderson, South Carolina

20 June, 2016

STATE OF SOUTH CAROLINA  
 COUNTY OF ANDERSON  
 Jamario Quinton Jones,  
 Plaintiff(s),  
 -vs-  
 South Carolina State Of,  
 Defendant(s).

**A TRUE COPY**  
 OCT 20 2014  
 Richard D. Phule  
 CLERK OF COURT

IN THE COURT OF COMMON PLEAS  
 JUDICIAL CIRCUIT  
 CASE NO.: 2014CP0401727  
 APPOINTMENT OF COUNSEL OR GAL  
 (Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other: Post Convict Rel 500
- Juvenile
- Abuse and Neglect

It appears Jamario Quinton Jones, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: .

Therefore, it is ordered that Hugh Welborn, hereby is appointed as (Select one.)

counsel     lead counsel (if capital PCR case)     guardian ad litem  
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice,

IT IS SO ORDERED  
 October 17, 2014

*Richard D. Phule*

Circuit Judge     Clerk of Court

Plaintiff Attorney:


Defendant Attorney:

John Walter Whitmire	
PO Box 11549	
Columbia, SC 29211-1549	

FILED-CLERK'S OFFICE  
 OCT 20 12:49  
 JUDICIAL CIRCUIT  
 ANDERSON COUNTY  
 SOUTH CAROLINA

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

) TENTH JUDICIAL CIRCUIT

Jamario Q. Jones,  
S.C.D.C. No. 335879

) C.A. No. 2014-CP-04-1727

) Applicant,

) v.

) State of South Carolina,

) Respondent.

ORDER OF DISMISSAL  
(with prejudice) A TRUE COPY

JUN 15 2016

*Richard X. Kelly*

FILED-CLERK'S OFFICE  
ANDERSON SC  
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COMMON PLEAS  
GENERAL SESSIONS

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 13, 2014. Respondent filed its Return on January 19, 2016. An evidentiary hearing into the matter was convened on February 9, 2016, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the July 2011 term of the Court of General Sessions for Anderson County for Armed Robbery (2011-GS-04-1210), Burglary First Degree (2011-GS-04-1211), and Possession of a Weapon during a Violent Crime (2011-GS-04-1212). Applicant was represented by Donald L. Smith, Esq. Applicant proceeded to trial on February 15, 2012, in which a jury convicted him as indicted. The Honorable R. Lawton McIntosh sentenced Applicant to concurrent terms of twenty

(20) years each for Armed Robbery and Burglary with a sentence of five (5) years for Possession of a Weapon during a Violent Crime to run consecutively to the previous sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Carmen Ganjehsani, Esq. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Jones, No. 2014-UP-040 (filed January 29, 2014). The Remittitur was issued on March 4, 2014.

### **Allegations**

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel, in that;
  - a. Counsel "fail[ed] to properly to object to Applicant right to confrontation",
  - b. Counsel "informed the jury that (Jamario Jones) is a convicted felon,"
  - c. Counsel "fail[ed] to ask for a (In-camera hearing)"
2. Due Process Violation, in that;
  - a. "Confrontation clause."

On January 29, 2016, Applicant submitted an amended application, through counsel, raising the following additional allegations:

1. Ineffective assistance counsel.
  - a. Counsel failed to object to the picture of the victim, admitted he didn't put hands on her.
  - b. Counsel failed to object to Deangelo Acker as hearsay.
  - c. Counsel failed to ask where alleged stolen property was at.

### **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 reviewed the Clerk of Court records regarding the subject

convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

### Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 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." Id. at 117-18, 386 S.E.2d at 625.

#### **Failure to Object to Hearsay**

With respect to Applicant's allegation that counsel was ineffective for failing to object to hearsay, he has failed to raise any instances of actual hearsay. Applicant said DeAngelo testified that Applicant told him he robbed somebody. Applicant said that this was hearsay because DeAngelo was not at the scene. Applicant said that he told his lawyer that.

This Court finds the statement in question is, by definition, not hearsay. An admission by a party opponent is not hearsay. Rule 801(d)(2). Accordingly, any objection would have been frivolous and overruled. This allegation is therefore denied and dismissed.

#### **Victim's Missing Teeth**

Applicant further alleged that one of the victims, Darcel Taylor, lied under oath in saying her teeth were kicked out during the armed robbery. This Court finds no deficiency as counsel elicited testimony to the jury that called Ms. Taylor's credibility into question. On cross-examination, Daniel Bannister – the officer who initially responded to the scene – testified in response to counsel's questioning that he did not remember seeing any missing teeth from the victims. Tr. p. 77, l. 10-11. Counsel also pointed out that one of the investigating officers – Agent Stallo – did not mention seeing Ms. Taylor's teeth missing when he told the jury which injuries he observed at the scene. Tr. p. 173, l. 15-16. Counsel also elicited testimony from Officer Tommy Johnson that he was initially unaware of the injuries to Ms. Taylor's teeth, and did not actually find out about them until Applicant's preliminary hearing. Tr. p. 343, l. 2-10. Finally, counsel argued to the jury that there was no evidence anything happened to Ms. Taylor's teeth during the robbery. Tr. p. 416, l. 2-3.

In addition, Applicant has not presented any evidence other than his own testimony – which this Court finds not credible – that Ms. Taylor was lying under oath. This Court will not assist Applicant in meeting his burden by engaging in rampant speculation. See generally, Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (speculation not sufficient to support prejudice prong of ineffective assistance of counsel claim). This allegation is therefore denied and dismissed.

### **Informing the Jury Applicant was a Convicted Felon**

Applicant alleged counsel was ineffective for informing the jury that he was a convicted felon. This Court finds Applicant has failed to meet his burden, as counsel acted pursuant to a valid trial strategy. Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Counsel testified at the evidentiary hearing that he informed the jury applicant was a convicted felon as part of a trial strategy. Counsel said there was testimony at trial that Applicant was armed and fleeing from police. Counsel said that telling the jury Applicant was a convicted felon helped to explain why Applicant would be running from police even if he had not committed the armed robbery – because he was in unlawful possession of a weapon.

This Court finds that counsel's testimony is credible, and that his trial strategy here was objectively reasonable. Further, this Court agrees that by revealing Applicant's status as a convicted felon, counsel provided the jury with another possible explanation for fleeing from the police. This allegation is therefore denied and dismissed with prejudice.

### **Failure to Request an In Camera Hearing**

Applicant next alleges counsel was ineffective for failing to request an *in camera* hearing. Applicant said that the judge was referring to lesbians fighting, and that if the jury had heard that the incident was "just a fight between two females," then there would have been a different outcome. Applicant admitted, however, that the jury ultimately got to hear that information.

This Court finds this allegation is without merit. First, Applicant has failed to present any evidence that he was actually entitled to an evidentiary hearing. Following a bench conference, the trial court ruled that any information concerning the relationship-type testimony was to be first elicited in camera or outside the presence of the jury. Tr. p. 196, l. 24 - p. 197, l. 11. To the extent Applicant is to be alleging that as a result of this ruling counsel failed to elicit such evidence, his claim is factually refuted by the record. The record reflects that counsel was able to elicit and argue to the jury that the victim, Ms. Bentley, and Applicant's co-defendant, were lesbians. Tr. p. 225, l. 16-17. There was testimony that Applicant's co-defendant went over there for a fight rather than to rob anyone. Tr. p. 366, l. 1-4. Further, Applicant stated in argument that this was "some sort of squabble and a fight" between "two studs." Tr. p. 411, l. 5-6. As there is no evidence in the record to support the factual basis of this allegation, it is denied and dismissed.

### **Failure to Object to the Picture of the Victim**

Applicant also alleges counsel was ineffective in failing to object to pictures of Ms. Bentley's injuries, when she said Applicant did not "lay hands on her." This Court finds Applicant has failed to meet his burden, where the pictures were admissible to corroborate the victim's story and as part of the *res gestae* of the burglary and armed robbery.

The *res gestae* theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Evidence of other crimes which supplies the context of the crime, or is intimately connected with and explanatory of the crime charged, is admissible as *res gestae* evidence. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009).

This Court finds the testimony regarding the assault of the victim by Applicant's co-defendant was "necessary and relevant to a full presentation of the evidence in this case." See State v. Wood, 362 S.C. 520, 528, 608 S.E.2d 435, 439-40 (Ct. App. 2004). The photographs of Ms. Bentley's injuries corroborated her testimony, in which she described Applicant going back and forth between searching for drugs and money, and holding her at gunpoint while his co-defendant repeatedly kicked her. Tr. p. 210, l. 9-12. It was relevant to show the complete, whole, unfragmented story regarding the armed robbery. See Id. Accordingly, the photographs were admissible, and any objection by Applicant would have been overruled. Applicant has therefore failed to meet his burden with respect to this allegation.

In any event, Applicant has failed to show prejudice. At the evidentiary hearing, Applicant testified that the robbery was actually "just a fight between two females." The pictures were consistent with this version of events. Further, Applicant has failed to produce the photographs at the evidentiary hearing. Without the opportunity to view the photographs, this Court has no way of determining what the actual impact on Applicant's case would be. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Accordingly, this Court

finds Applicant has failed to meet his burden to show a reasonable likelihood that they contributed to the verdict.

#### **Failure to ask where Stolen Property went**

Applicant also alleges counsel was ineffective in failing to ask where the stolen property went. This allegation is entirely without merit. A review of the record indicates that counsel made a substantial issue out of what happened to the property Applicant stole from the victims. According to the testimony presented at trial, Applicant stole approximately three hundred and fifty dollars from the victims. Tr. p. 337, l. 21-22. Upon apprehension, very shortly after the robbery, Applicant was found with only two hundred and two dollars on his person. Tr. p. 338, l. 3-4.

On cross-examination, counsel elicited testimony from law enforcement that they could not definitively link the money recovered from Applicant to what was stolen from the victims. Tr. p. 338, l. 10-12. Counsel also pointed out that police did not know what happened to the missing money – the difference between the amount reportedly stolen and the amount in Applicant's possession – and could not explain how Applicant got rid of it in such a short amount of time. Tr. p. 345, l. 21 - p. 345, l. 3. Counsel emphasized both of these points to the jury during his closing arguments. Tr. p. 414, l. 6-15. As the record entirely refutes Applicant's allegation, this Court finds he has failed to meet his burden. This allegation is therefore denied and dismissed.

#### **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 allegations.

### CONCLUSION

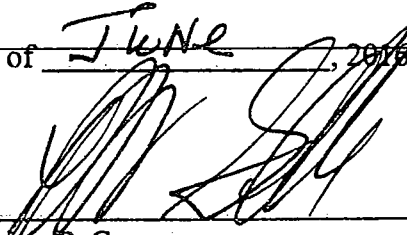
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

### IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7 day of JUNE, 2016.

  
BROOKS P. GOLDSMITH  
Presiding Judge  
Tenth Judicial Circuit

Greenwood, South Carolina

COMMON PLEAS AND  
GENERAL SESSIONS

2016 JUN 14 PM 12:32

FILED-CLERK'S OFFICE  
ANDERSON SC

*Hugh W. Welborn*

Attorney at Law  
Post Office Box 173  
913 Carolina Circle  
Anderson, South Carolina 29622

Office Telephone:  
(864) 226-5787

Fax:  
(864) 224-3738

June 20, 2016

South Carolina Office of Appellate Defense  
P. O. Box 11589  
Columbia, South Carolina 29211-1589

In RE: Jamario Quinton Jones, #335879 vs. State of South Carolina  
Case #: 2014-CP-04-1727

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Order and Proof of Service. I ask that your office assume representation of this indigent Applicant.

Very truly yours,



Hugh W. Welborn

HWW/sba  
Enclosures

cc: South Carolina Supreme Court  
Court of Appeals  
Office of Attorney General

*Hugh W. Welborn*

Attorney at Law  
Post Office Box 173  
913 Carolina Circle  
Anderson, South Carolina 29622

Office (864) 226-5787  
Fax: (864) 224-3738

email to:  
hughwelborn@bellsouth.net

June 20, 2016

**RECEIVED**

JUN 23 2016

South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**S.C. SUPREME COURT**

In RE: Jamario Quinton Jones, #335879 vs. State of South Carolina  
Case #: 2014-CP-04-1727

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Walt Whitmire, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba  
Enclosures

cc: Office of the Appellate Defense  
Office of the Attorney General  
SC Court of Appeals  
Client

Hugh W. Welborn  
Attorney At Law  
P.O. Box 173  
Anderson, SC 29622

South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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