

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No. 2012-CP-26-6668

Tommy Toomer, #334825

Appellant,

v.

State of South Carolina,

Respondent

NOTICE OF APPEAL

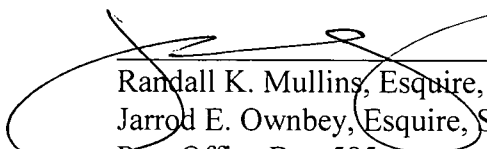
Tommy Tommer, #334825 appeals the Order of Dismissal from the Honorable Steven H. John, filed January 10, 2014 and the Order Denying Applicant's Motion for Reconsideration from the Honorable Steven H. John filed March 5, 2014. Appellant received written notice of entry of this order on March 21, 2014.

March 25, 2014

RECEIVED

MAR 26 2014

S.C. SUPREME COURT


Randall K. Mullins, Esquire, SC Bar # 06466
Jarrod E. Ownbey, Esquire, SC Bar # 75417
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APPEAL FROM HORRY COUNTY
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The Honorable Steven H. John, Circuit Court Judge

Case No. 2012-CP-26-6668

Tommy Toomer, #334825

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PROOF OF SERVICE

PERSONALLY APPEARED before me, Nikki A. Gerald, who after being duly sworn, deposes and states:

1. That she is a paralegal to Jarrod E. Ownbey, Attorney at Law.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance for service by mail.
3. That a copy of the *Notice of Appeal* was served on the below addressees, by depositing same in the United States Post Office at North Myrtle Beach, South Carolina, with the proper address thereon and the proper postage fully paid as follows:

ADDRESSEES:

Joshua L. Thomas, Esquire, Assistant Attorney General
Office of the Attorney General, State of South Carolina
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549
Tommy Toomer, #00334825


Lieber Correctional Institute
PO Box 205
Ridgeville, SC 29472

Robert M. Dudek, Esquire
South Carolina Office of Indigent Defense
P.O. Box 11589
Columbia SC 29211



Nikki A. Gerald

SWORN to and subscribed before me
this the 25th day of March, 2014.



Notary Public for South Carolina
My Commission expires: 6-18-17

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Tommie Toomer,)
Plaintiff(s),)
-vs-)
South Carolina State of,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT
CASE NO.: 2012CP2606668
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

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

It appears Tommie Toomer, 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(b)(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 JARROD OWNBEY 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 released.

(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
September 24, 2012

Melanie Huggins-Ward
 Circuit Judge Clerk of Court

Plaintiff Attorney:

JARROD OWNBEY	
P.O. BOX 585	
NORTH MYRTLE BEACH, SC 29597	

Defendant Attorney:

Alan McCrory Wilson	
Attorney General's Office	
PO Box 11549	
Columbia, SC 29201	

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.secid.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.

CP20 (08/08)
SCCA/267 (03/07)

FILED
HORRY COUNTY
2012 SEP 24 AM 8:36
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Tommy Toomer, #334825,)
)
Applicant,)

Case No. 2012-CP-26-6668.

v.)

**ORDER DENYING APPLICANT'S
MOTION FOR RECONSIDERATION**

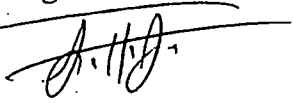
State of South Carolina,)
)
Respondent.)

HORRY COUNTY
14 MAR -5 PM 3:30
HELANE HOSKINS-WARD
CLERK OF COURT

This matter comes before the Court by way of Applicant's "Motion for Reconsideration and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC." The Court has considered the Applicant's Motion, the record, and all other matters in the Clerk of Court's file. The Court finds that oral arguments would not assist it in this matter and that any additional arguments would be redundant and unnecessary. The Court further finds as follows:

I. Trial counsel provided effective assistance of counsel where he based his objection on a specific rule and the evidence was admissible.

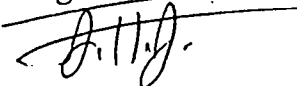
The Court properly found that Applicant's allegation trial counsel was ineffective in failing to preserve an objection to prior bad acts evidence was without merit. Trial counsel clearly stated he was objecting to the introduction of Garret's testimony about the stick under Rule 404(b), SCRE. (Trial Tr. 56:3). The trial judge then heard arguments at the bench before allowing the testimony in over the objection. (Trial Tr. 56:5-8). The Court is aware the South Carolina Court of Appeal found this objection was not properly preserved. However, based on the testimony at the PCR hearing, the Court finds trial counsel's representation was not deficient. Counsel made a specific objection, argued the objection to the trial judge, and the trial judge



made a ruling on the objection. In this case, further action by trial counsel would not have changed the ruling on the admissibility of the testimony. The fact that the substance of the trial judge's ruling was not placed on the record and the Court of Appeal found the objection unpreserved does not equate to a *per se* deficiency. Therefore, the Court finds no error in its order regarding trial counsel's performance.

Even assuming, *arguendo*, that trial counsel's representation was deficient, said deficiency did not prejudice the Applicant. In this case, Applicant must show that the Court of Appeals, had it found the objection properly persevered, would have found the testimony to be inadmissible. However, this Court can discern no grounds under Rule 404(b), SCRE, that would justify such a finding.

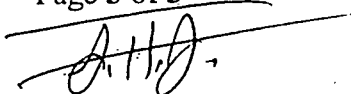
"Evidence of other crimes, wrongs, or acts is generally not admissible to prove the character of a person in order to show action in conformity therewith; however, such evidence may be admissible 'to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.'" State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rule 404(b), SCRE). Furthermore, "evidence which is 'logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused's guilt of another crime.'" Id. (quoting State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996)). Here, the evidence could have been presented under a number of the exceptions in Rule 404(b). The witness's testimony she had been previously hit with the stick shows a motive or intent on Applicant's part to attempt to use the stick to hit her again. The testimony also establishes



Applicant had a scheme or plan to hit the witness with the stick as a form of punishment. Furthermore, the fact Applicant previously used the stick to punish the witness indicated an absence of mistake in swinging the stick at her. Finally, the testimony was ultimately admissible as part of the *res gestae* of the crime because it is "inextricably intertwined" with Applicant's motive for striking the victim during his attempt to strike the witness. See State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 371 (1996) overruled on other grounds by State v. Giles, Op. No. 27353 (S. C. Sup. Ct. filed Jan. 15, 2014) (Shearouse Adv. Sh. No. 2 at 98). Thus, a full examination of the record shows the trial judge's decision was correct for any of the reasons argued by Respondent. Therefore, the Court finds no error in its order regarding the prejudice prong of the ineffective assistance of counsel analysis. See Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (Applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

II. Trial counsel provided effective assistance of counsel during his cross examination of the State's witness.

Although not raised as an allegation in the pleadings, the Court finds the testimony at the PCR hearing indicates trial counsel was not ineffective in his cross-examination of the State's witness. Applicant argues trial counsel was deficient in failing to proffer evidence regarding the witness' multiple social security numbers and the bases of her criminal convictions. Trial counsel explained at the PCR hearing that he believed further exploration of these matters may have further impeached the witness. However, as stated above, the failure to make a proffer for appellate review does not equate to a *per se* deficiency. Under the facts of this case, the Court finds trial counsel acted reasonably in attempting to introduce this evidence, and in complying

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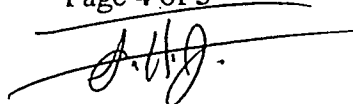
with the trial judge's instructions regarding the limits of cross-examination.

Furthermore, trial counsel acted well within the bounds of professional norms in light of the thorough cross-examination he otherwise presented. Trial counsel elicited testimony about the witness' prior convictions. (Trial Tr. 67-68). He impeached her with her prior written statement. (Trial Tr. 73-81). He also highlighted for the jury the delay between the crime and her report. (Trial Tr. 82-83). In light of this thorough cross-examination, Applicant has not shown he was prejudiced by the lack of testimony regarding other social security numbers and the underlying facts of the witness' convictions. 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 forward.” (citations omitted)). Therefore, the Court finds Applicant has not met his burden of proving he is entitled to relief on these grounds.

III. CONCLUSION

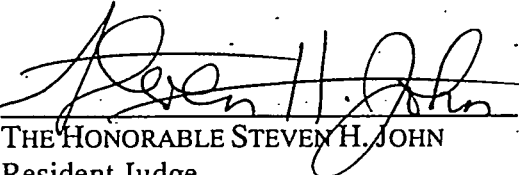
Based on the foregoing, the Court finds and concludes Applicant has not established any errors or deficiencies in the prior Order of Dismissal. Therefore, Applicant's "Motion for Reconsideration and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCF" must be denied and his application for post-conviction relief denied.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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

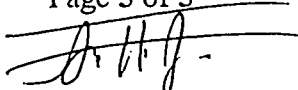
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post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. It is therefore

ORDERED that Applicant's Motion for Reconsideration and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP is denied.


THE HONORABLE STEVEN H. JOHN
Resident Judge
Fifteenth Judicial Circuit

March 5, 2014
Conway, South Carolina



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Tommy Toomer, #334825,)

Case No. 2012-CP-26-6668

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

ORDER OF DISMISSAL

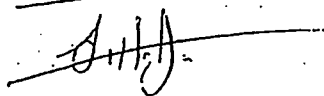
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CLARENCE HUGHES-WARD
CLERK OF COURT
HORRY COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 28, 2012. Respondent made its Return on or about December 17, 2012. The Court convened an evidentiary hearing into the matter on December 18, 2013, at the Horry County Government and Judicial Complex. Applicant was present at the hearing and represented by Randall K. Mullins, Esquire, and Jarrod E. Ownbey, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, James C. Galmore, III, Esquire, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In July 2005, the Horry County



Grand Jury indicted Applicant for murder (2005-GS-26-2531). Applicant was represented by James C. Galmore, III, Esquire ("trial counsel"). On May 18, 2009, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted. Judge Cottingham sentenced Applicant to incarceration for a period of thirty (30) years.

Applicant filed a notice of appeal and Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on July 18, 2012. State v. Toomer, 2012-UP-439 (S.C. Ct. App. filed July 18, 2012). The remittitur was returned to the circuit court on August 3, 2012.

II. ALLEGATIONS

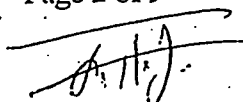
In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Counsel was ineffective in that counsel failed to object to the trial judge admitting statement regarding prior bad act."

At the PCR hearing, Applicant proceeded on the allegation in his application as well as an allegation trial counsel was ineffective for failing to request a voluntary manslaughter charge.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court reviewed the record in its entirety and heard the testimony and arguments presented at the PCR hearing. Further, the Court had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. The Court weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).



A. Summary of Testimony

Trial counsel testified he became a public defender in 1998. He recalled the victim in Applicant's case died as a result of blunt force trauma to the head suffered at a house owned by Applicant. Applicant never confessed to the crime and always maintained he was asleep when the victim died. Trial counsel also recalled the only people allegedly in the house were Wanda Garrett ("Garrett") and a man named "Red." Trial Counsel recalled filing Rule 5/Brady motions in July 2005. He recalled receiving an incomplete response initially but did not remember exactly what was missing. Trial counsel testified he did not file a supplemental discovery request, but he did recall the State eventually turned over everything prior to trial. Trial counsel testified he would not have proceeded to trial if the discovery had not been complete. He did not have an investigator go to the scene of the crime, but trial counsel did visit the ^{site} ~~house~~ before trial. *J.H.J.*

By the time trial counsel visited, the house was torn down.

Trial counsel recalled the State's entire case was based on the testimony of Garrett. He testified Garrett had several aliases and had numerous prior arrests. However, trial counsel testified he never represented Garrett on any charges, and she was not being represented by anyone employed by the public defender's office at the time of trial. Trial counsel recalled Garrett's statement indicated she was in a relationship with Applicant and lived in his house. Trial counsel testified Applicant denied being in a relationship with her, but admitted she was at his house frequently. Trial counsel also testified Garrett disappeared for some time between Applicant's arrest and trial. Trial counsel testified he did no investigation to find her because Applicant's case benefitted from her absence. He also did not investigate "Red" or any other

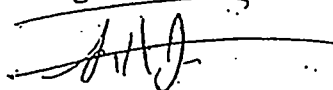
J.H.J.

potential witnesses because he had no information, other than names, that could be used to track them down.

Trial counsel testified his trial strategy was to discredit Garrett and attempt to get the jury to believe Applicant's story. Trial counsel recalled impeaching Garrett with her prior record and with her multiple aliases. He also recalled his attempt to delve into her other aliases was limited by the trial judge. He recalled her story involved Applicant becoming angry upon learning Garrett was leaving Applicant for the victim. He recalled advising Applicant this was a "credibility case." He also recalled advising Applicant to decline a plea offer, which Applicant ultimately did decline.

Trial counsel candidly admitted Garrett's story supported a charge of voluntary manslaughter. However, Applicant maintained he was asleep the whole night and awoke to someone telling him the victim fell off the porch and hit his head. Trial counsel had Applicant testify to attempt to convince the jury he never struck the victim. Trial counsel admitted Applicant's version of events did not support a manslaughter charge. He further admitted his trial strategy was to get the jury to believe Applicant's story and to find the Applicant did not kill the victim, regardless of the nature of the homicide charged. Therefore, trial counsel discussed with Applicant the possibility of only seeking a jury instruction on murder, and omitting the manslaughter instruction. He also recalled discussing with Applicant the elements of voluntary manslaughter. However, they ultimately decided the best strategy was to attempt to convince the jury Applicant he did not kill the victim.

Trial counsel also recalled objecting to Garrett's testimony about Applicant hitting her

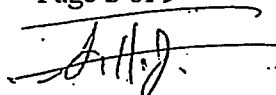
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with a stick on previous occasions. However, Trial counsel could not recall the specifics of the bench conference held on this objection. He did recall stating the specific rule under which he was objecting. He also recalled the trial judge overruling his objection at the bench conference. On cross-examination, he admitted the evidence could have been introduced to show intent, absence of mistake, or a common plan.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his 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 the application alleges ineffective assistance of counsel as a ground for relief, the applicant 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 (1984)).

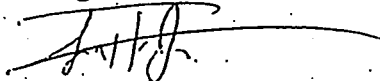
The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (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.

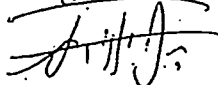
The Court finds Applicant failed to meet his burden of proving counsel ineffective. The Court finds trial counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. The Court also finds the allegation that trial counsel was ineffective in failing to preserve an objection to prior bad acts evidence is without merit. Trial counsel clearly stated he was objecting to the introduction of Garret's testimony about the stick under Rule 404(b), SCRE. (Trial Tr. 56:3). The trial judge then heard arguments at the bench before allowing the testimony in over the objection. (Trial Tr. 56:5-8). The Court finds trial counsel was not deficient because he performed reasonably under the circumstances. Cherry, 300 S.C. at 117, 386 S.E.2d at 625.

Regardless, Applicant cannot show he was prejudiced by the form of trial counsel's objection because the testimony was clearly admissible. Evidence of prior bad acts "may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rule 404(b), SCRE). Garrett's testimony she had been previously hit with the stick

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intimates Applicant intended to use the stick to hit her again. Her testimony also showed Applicant did not accidentally or mistakenly hit the victim. Finally, the testimony demonstrates Applicant commonly used the stick as a weapon. Because Garret's testimony was "logically relevant to establish a material element of the offense charged[,] the trial judge properly admitted it over trial counsel's Rule 404(b) objection. Id. (citing State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973)).

Applicant's allegation regarding the voluntary manslaughter charge is likewise without merit. Trial counsel and Applicant were clearly attempting to convince the jury to believe Applicant's story and not Garrett's. Based on the facts and evidence in this case, the Court finds this to be a reasonable trial strategy. 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))); see also State v. Walker, 605 S.E.2d 647, 654 (N.C. Ct. App. 2004), overruled on other grounds, 695 S.E.2d 750 (N.C. 2006) ("The record indicates defendants' counsel were employing an 'all or nothing' strategy, hoping the jury might find one element of the crime charged to be missing ... and thus, find their clients not guilty. ... The fact that it failed does not mean that defendants were deprived of effective assistance of counsel."). If the jury were to believe Applicant's version, there were no facts from which it could convict him of voluntary manslaughter. A manslaughter conviction would have required the jury to believe Garrett's testimony that Applicant struck the victim when Applicant became enraged. However, the stated trial strategy was to have the jury believe none of Garrett's story. A request



for a manslaughter charge would have been inconsistent with Applicant's defense theory that he was not even awake when the victim was killed. Because Applicant wanted his story to be believed, a charge on manslaughter would have been contradictory to trial counsel's stated trial strategy.¹ Therefore, the Court finds trial counsel was not ineffective in this regard. See McCray v. State, 317 S.C. 557, 560, 455 S.E.2d 686, 688 (1995) (counsel not ineffective for not pursuing a certain defense where applicant denied any involvement in crime).

C. All Other Allegations

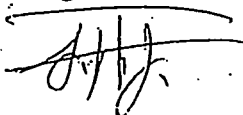
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

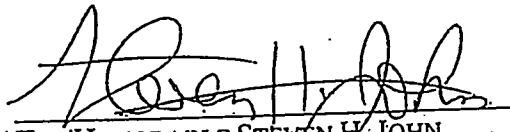
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

¹ The Court notes it is the trial judge's responsibility, not trial counsel's, to ensure the applicable law is charged to the jury. Correspondingly, trial counsel is limited to asking the judge to include a certain charge or objecting when a charge is not included. Although there were facts from which to the trial judge could have decided a voluntary manslaughter charge was appropriate, trial counsel was not ineffective for failing to object to the trial judge's failure to include a manslaughter charge.

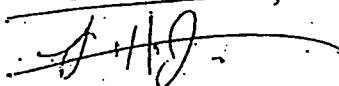


appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, 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. Therefore, it is

ORDERED that the Application for Post-Conviction Relief is denied and dismissed with prejudice and the Applicant is remanded to the custody of the Respondent.


THE HONORABLE STEVEN H. JOHN
Resident Judge
Fifteenth Judicial Circuit

January 10, 2014
Conway, South Carolina



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March 25, 2014

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

MAR 26 2014

S.C. SUPREME COURT

Re: *Tommy Toomer vs. State of South Carolina*
Case No.: 2012-CP-26-6668
Appellate Case No.: 2009-129146
MLF File No.: 2012-367

Dear Clerk Shearouse:

Please find enclosed an original and one copy of the Notice of Appeal for filing on behalf of Mr. Toomer, who is an inmate at Lieber Correctional Institute. Mr. Toomer was court-appointed to this firm. As such, please find enclosed the September 24, 2012 Order of Appointment for Post Conviction Relief. Therefore, I have not enclosed the filing fee for the same.

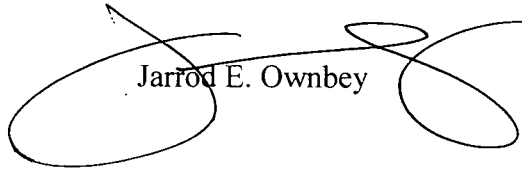
I have also enclosed a copy of the Order of Dismissal, and a copy of the Order Denying Applicant's Motion for Reconsideration which I received March 21, 2014. I am by copy this correspondence serving opposing counsel on Joshua L. Thomas Esquire, Assistant Attorney General.

It is my understanding that the Office of Appellate Defense will assume representation in this matter while on appeal. I am by a copy this correspondence notifying all Mr. Toomer's prior Appellate Counsel of my filing with this Court.

With warmest regards, I remain

Very truly yours,

MULLINS LAW FIRM, P.A.



Jarrod E. Ownbey

JEO/ng

Enclosures

cc: Tommy Toomer

Joshua L. Thomas, Esquire, Assistant Attorney General

Robert M. Dudek, Esquire

Mullins Law Firm, PA
PO Box 585
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The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
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