THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

1400 Laurel Street, Suite 4A
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

April 10, 2017

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

The Honorable Rhonda Dale McElveen
Clerk, Barnwell County
PO Box 723
Barnwell, SC 29812-0723

RE: Demetrius Smalls, #344584 v. State of South Carolina
2015-CP-06-380

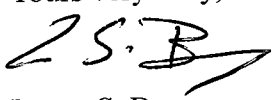
Dear Mr. Shearouse and Ms. McEleveen:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal;
(2) A copy of the Order which is to be challenged on appeal; and
(3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Smalls in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Smalls in this appeal.

Yours very truly,



Lance S. Boozer

cc: Julie A. Coleman, AAG
Office of Appellate Defense
Demetrius Smalls, #344584

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
APR 11 2017
S.C. SUPREME COURT

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Case No. 2015-CP-06-380

Demetrius Smalls, #344584,.....Petitioner,

v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Maite Murphy's Order dated March 1, 2017, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on April 7, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,

Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

April 10, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
APR 11 2017
S.C. SUPREME COURT

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Case No. 2015-CP-06-380

Demetrius Smalls, #344584,.....Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie A. Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 10th day of April, 2017.

Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

M-C

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Demetrius Smalls, #344584,	)	2015-CP-06-380
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 2, 2015. Respondent submitted its return on January 29, 2016. An evidentiary hearing was convened on January 26, 2017, at the Bamberg County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

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 Barnwell County Clerk of Court. Applicant was true bill indicted at the January 2011 term of the Barnwell County Grand Jury for murder (2011-GS-06-00065); Assault and Battery With Intent to Kill (2011-GS-06-00066). Josh Koger, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty of the lesser included offense of voluntary manslaughter and as indicted for assault and battery with intent to kill. Judge Early sentenced Applicant to twenty-five years for voluntary manslaughter and twenty-years for assault and battery with intent to kill, with the sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Smalls, 2015-UP-028 (Ct. App. filed January 15, 2015). The Remittitur was issued on February 2, 2015.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
    a. Failing to contemporaneously object to the alleged indictments in this case.
    b. Failed to request Judge Early recuse himself from presiding over the trial.
    c. Failure to object to the trial court's instruction on mutual combat.
    d. Being found guilty of ABWIK where malice is an element but being found not guilty of murder where malice is an element.
2. Lack of subject matter and personal jurisdiction.

Applicant filed amended applications on August 18 and August 30, 2016, adding the following allegations:

(i) Counsel failed to object, move for mistrial and/or preserve for appellate review the fact that during jury selection, one juror openly stated he had been previously incarcerated with the Applicant. A curative instruction was given, however, counsel failed to contemporaneously object to the instruction.

(ii) Counsel failed to properly cross-examine Agent Green.

(iii) Counsel failed to object to the jury instruction regarding mutual combat as it applied to both alleged victims.

(iv) Counsel failed to object to the jury instruction regarding mutual combat based on the testimony one alleged victim first presented a firearm. State v. Taylor, Op. No. 25637 (S.C. Sup. Ct. filed June 12, 2003).

(v) Counsel failed to properly explain to Applicant what it meant to waive the three (3) day notice requirement regarding the indictment.

(vi) Counsel failed to object, move for mistrial and/or preserve for appellate review a discussion occurring between the trial judge and jury foreperson. See pg. 523.

III. 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. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart , 474 U.S. 52, 106 S.Ct. 366 (1985).

IV. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Trial Counsel, Josh Koger, Esquire.

Applicant testified that he retained Trial Counsel to represent him on these charges. He testified that he met with Trial Counsel five or six times prior to his trial. He stated that their theory of the case was self-defense; he explained that the victims came in search of him and he was defending himself. Applicant stated that he wanted to go to trial, but he would have accepted a reasonable plea offer.

Applicant testified that he waived the three-day notice requirement for his indictments because there was a mistake and he was not indicted until the morning of the trial. He stated that his attorney should have explained to him what it meant to waive this requirement, and had he known what it meant, he would not have waived it and the indictments would have been thrown out. Applicant testified that he was ready to proceed to trial after his Jackson v. Denno hearing, and he told his attorney he wanted to have his trial that day. He stated that he was on notice of the trial and he would not have wanted to wait longer to have his trial.

Applicant testified that during jury selection, a potential juror stood up and announced that he could not serve on the jury because he knew Applicant from when they had served time together in prison. Applicant stated that as soon as the potential juror said this, everyone started whispering, and his comment tainted the jury pool and prejudiced him. He stated that, if the potential juror had not announced this, the jury pool would not have known that Applicant had been convicted of a prior crime.

Applicant testified that he had a prior conviction from 2005 for possession of cocaine. He stated that he told this to the jury during trial when he took the stand to tell his side of the story.

He stated that he had to take the stand in order to further his strategy of claiming self-defense. When asked if the potential juror's comment to the jury pool could have changed the outcome of the trial when the jury was going to hear about his prior conviction anyway, Applicant testified that the potential juror could have been talking about a different time that they were incarcerated, leading the jury to believe that he had more than one conviction.

Applicant testified that Trial Counsel improperly cross-examined the State's Witness, Agent Green. He stated that one of the victims, Zantrell Mays, had two firearms at the scene of the shooting—one on his waist, and the other in his right back pocket. He stated that Agent Green testified at trial that one of Zantrell Mays' firearms had three misfired bullets in it. Applicant stated that Trial Counsel did not bring this up at trial on cross-examination, and he should have.

Applicant testified that, during the trial, the trial judge had an off-the-record conversation with the jury foreperson to which Trial Counsel should have objected. He stated that he was not in the room when the conversation took place, so he does not know what they spoke about, but the conversation was noted in the trial transcript at page 523. He stated that he does not know if they spoke about the trial.

At the evidentiary hearing, Trial Counsel testified that his trial strategy in this case was self-defense. He stated that there had been an incident earlier in the day between the victims and Applicant where the police were called. He stated this was settled around 4:30 that afternoon, and around 6, the victims and their friends all met up at a house where Applicant was hanging out, and they came looking for him.

Trial Counsel testified that Applicant knew that they were going to trial that week because it was set for date certain in January. He stated that he assumed Applicant had been

indicted, but they prepared their case based off the warrants and discovery. He testified that Applicant wanted to go forward with the trial, that he knew about the trial that date and he was ready for it.

Trial Counsel stated that he did not object to the potential juror's comment at the time it was made because he did not want to draw more attention to it. He stated that he objected to it later, outside the presence of the juror, and he believed that his objection was properly made. He stated that the trial court gave a curative instruction, but Trial Counsel moved for a whole new jury, and he thought he was preserving the issue for appellate review at the time. Trial Counsel testified that Applicant took the stand at trial and his prior conviction was going to come out to the jury anyway. He stated that if there had been any other convictions on Applicant's record in addition to the 2005 charge, the Solicitor would have brought it out to the jury on cross-examination of Applicant, as well.

Trial Counsel testified that Applicant's view on the victim carrying two guns to the crime scene had changed since the trial. He stated that, at the time of trial, their explanation to the jury was that the victim pulled out a gun and put it in Applicant's face. He stated that the State's witness, Julius Tilley, corroborated that the victim was reaching in his back pocket for a gun. Trial Counsel stated that when cross-examining Agent Green, he got out the testimony that he wanted, and then he stopped.

Trial Counsel testified that there is a difference between an unfired gun and a misfired gun. He stated that his strategy at trial was to suggest to the jury that the misfired gun could have been the gun that belonged to the other victim, Terrance Mays, and that was the gun turned in a year later by Zantrell Mays. He stated that this theory would have allowed the jury to support his self-defense claim.

Trial Counsel testified that the mutual combat charge was given by the trial court not as a separate instruction but as part of the first element of self-defense. He stated that he believed it was a clarification of "bringing about the fault," because the fight between Applicant and the victims earlier in the day could be seen by the jury as "bringing about the fault" two hours later.

Trial Counsel testified that this confrontation initially began as just a fistfight. He stated that one of the victims produced a weapon and escalated the fight to a new level. He stated that someone then handed Applicant a gun, and Applicant shot the victims.

Trial Counsel testified that he believed that the off-the-record discussion between the trial judge and the jury foreperson was about something unrelated to the trial. He stated he thought that the judge was telling the foreperson that he had eaten macaroni at their mother's house recently. He stated that he did not recall if he spoke to Applicant about the conversation. Trial Counsel stated that he did not feel the need at the time to listen to the conversation or to object to it.

Trial Counsel testified that there was no reason why the General Sessions court would not have had personal or subject matter jurisdiction over Applicant, and there was no legal reason to object on this basis. He stated that he could have moved to dismiss the charges based on the lack of three-day notice of the indictments, but it did not make a difference because jeopardy had not attached, so Applicant could have been re-indicted and tried again.

Trial Counsel testified that he made a motion for a new trial based on the trial judge's facial expressions during the trial. He stated that he thought the voluntary manslaughter conviction was strange, but not in terms of the finding of no malice. He stated that he believed the jury could have found that Applicant had malice toward one victim but not the other victim, which could have been the basis of their finding.

V. 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).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. Each allegation presented at the evidentiary hearing is addressed below.

Failure to object to indictments

Applicant alleges that Trial Counsel was ineffective for failing to object to the indictments in this case. At the evidentiary hearing, Trial Counsel credibly testified that there was no legal reason to object to the indictments in this case. He further testified that, even if he had objected to the indictments being issued less than three days before trial and had them thrown out, jeopardy had not yet attached to Applicant, and he could have been re-indicted and re-tried.

The indictments were properly true-billed and signed by the foreman of the grand jury. There was nothing on their face to indicate that the indictments were objectionable for any reason. Furthermore, Applicant and Trial Counsel both testified that they were on notice of the trial. "An indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005). Since Applicant was on notice of the trial when he received the indictments, he cannot

prove prejudice. As Trial Counsel testified, if the indictments had been objected to and thrown out, Applicant would have been re-indicted and tried at a later date. Therefore, there is no resulting prejudice from the lack of any objection.

This Court finds that there was no legal reason to object to the indictments in this case, and Trial Counsel cannot be ineffective for failing to do so. This Court further finds that Applicant has failed to prove that he was prejudiced in any way by this lack of objection. Because Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failure to explain waiver of three-day notice requirement for indictments

Applicant alleges that Trial Counsel failed to explain to him what it meant to waive the three-day notice requirement on the morning of his trial, and if he had explained it, he would not have waived the requirement but instead moved to have the indictments thrown out. This allegation is meritless.

Applicant has failed to prove that Trial Counsel did not explain to him what it meant to waive this requirement. Furthermore, Applicant has failed to show any prejudice resulting from this waiver. Trial Counsel credibly testified that both he and Applicant were on notice of the charges well in advance of the trial. He stated that they knew the trial was set for date certain in January, and Applicant came to court that day ready and willing to go to trial. Applicant testified that he wanted to have the trial that week to get it over with, and he was on notice that they would go forward.

Even if Applicant had challenged the indictments, he could have bene re-indicted and tried at a later date. Therefore, Applicant cannot prove that the result of the proceeding would

have been any different. This Court finds that Applicant has failed to meet his burden of proving either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to object to potential juror's comments

Applicant alleges that Trial Counsel was ineffective for failing to object to a potential juror's comments about being "locked up" with Applicant during jury selection, which led the jury to hold his prior conviction against him. This allegation is meritless.

Trial Counsel gave a valid strategic reason for choosing not to object at the time the comment was made. He credibly testified that he chose not to draw the jury pool's attention to the comment by objecting. He objected immediately once he was outside the presence of the jury, he requested a new trial, and the trial court denied his motion but gave a curative instruction. Because Trial Counsel strategically chose not to object and made the appropriate objections once outside the presence of the jury, this Court finds that Trial Counsel was not deficient in his actions.

Furthermore, Applicant can show no prejudice in the lack of contemporaneous objection because the jurors heard about Applicant's prior convictions later in the trial. Applicant had a prior cocaine conviction from 2005 which was brought to the jury's attention as admissible impeachment evidence when he took the stand to testify, which he had to do in order to advance his strategy of self-defense. This Court finds that, because the jury knew about the conviction anyway, Applicant has not shown any prejudice from the comment made by the potential juror.

Therefore, since Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failure to properly cross-examine Agent Green

Applicant alleges that Trial Counsel was ineffective for failing to properly cross-examine the State's witness, Agent Green. This allegation is meritless.

Trial Counsel offered a valid trial strategy for his line of questioning in the cross-examination of Agent Green. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. 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). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Furthermore, Applicant has failed to meet his burden of proving prejudice because he did not present the proper cross-examination of Agent Green at the evidentiary hearing. The South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what

the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant did not present any testimony from Agent Green to show how Trial Counsel should have properly cross-examined him, thus he has not proven prejudice.

Because Applicant has failed to show deficiency or prejudice, this allegation is denied and dismissed with prejudice.

Failure to object to mutual combat instruction

Applicant alleges that Trial Counsel was ineffective for failing to object to the trial court's mutual combat jury instruction. This allegation is meritless.

According to the trial transcript and the testimony presented at the evidentiary hearing, in the case at hand, Applicant was involved in a fist-fight between himself and the two victims in this case, which followed a confrontation that took place earlier in the day. During the fight, one of the victims, Zantrell Mays, pulled out a gun, cocked it, and waved it in Applicant's face. Applicant then turned away, grabbed a gun from a friend in the group of onlookers, and shot both victims, killing one and injuring the other.

In its jury charge, the trial court gave the following instruction:

> If the defendant voluntarily participated in mutual combat, a fight, for purposes other than protection, the killing of the victim would not be self-defense. This is true even if, during the combat, the defendant feared death or serious bodily injury... For mutual combat, there must be a mutual intent and willingness to fight. This intent must be shown by the acts and conduct of the parties and the circumstances surrounding the combat.

Trial tr. pg. 515, ll. 11-15; ll. 20-23. Trial Counsel did not object to this instruction.

Jury charges must be based on the evidence presented. "The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). A jury charge is appropriately given if there is any evidence presented that

would support it. To warrant reversal, a trial judge's charge must be both erroneous and prejudicial. Ellison v. Parts Distributors, Inc., 302 S.C. 299, 395 S.E.2d 740 (Ct.App.1990).

Mutual Combat negates a claim of self-defense. State v. Jones, 113 S.C. 134, 101 S.E. 647 (1919). South Carolina courts have held that there must be "mutual intent and willingness to fight" to constitute mutual combat. State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). Mutual intent is "manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." Id. "Where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder." State v. Andrews, 73 S.C. 257, 53 S.E. 423 (1906). The doctrine has most often been applied in situations where the defendant and decedent bear a grudge against each other before the fight in which one of them is killed occurs. State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977).

This Court finds that the jury charge of mutual combat was properly given in this case, and thus Trial Counsel was not ineffective for failing to object to the instruction. There was evidence presented at the trial that there was a dispute between Applicant and the two victims earlier in the day. There was evidence presented that Applicant and the two victims willingly entered into a separate altercation that evening, and they all physically fought each other. More importantly, there was evidence that, at some point during the fight, the victim pulled out a firearm, and Applicant pulled out a firearm in response. Applicant then shot both the victim who pulled the gun and his unarmed younger brother.

Because there was evidence presented that both Applicant and the victim were armed in this fight, the mutual combat instruction was properly given. Any objection to this instruction would have been overruled. Therefore, this Court finds that Trial Counsel was not ineffective for

failing to object to this charge. Because Applicant failed to meet his burden in proving deficiency and prejudice, this allegation is denied and dismissed with prejudice.

Failure to object to judge's conversation with jury foreperson

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to an off-the-record conversation between the trial judge and the jury foreperson meritless. Trial Counsel credibly testified that he saw no reason at the time to object to the conversation or listen to the content. Applicant has failed to prove that the conversation was in any way related to the trial or that it changed the outcome of the trial. See State v. Rowell, 75 S.C. 494, 56 S.E. 23 (1906) (Where a juror spoke privately to the judge while on the bench, but the judge endeavored at once to impart the utmost publicity to what the juror said to him privately by stating what had been asked him, the defendant was not prejudiced.) Because Applicant has failed to meet his burden of proving deficiency and prejudice, this allegation is denied and dismissed with prejudice.

LACK OF SUBJECT MATTER AND PERSONAL JURISDICTION

Applicant alleges that the General Sessions court lacked personal and subject matter jurisdiction. This allegation is meritless and must be dismissed.

A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, Applicant was indicted by the Barnwell County grand jury. These indictments were true-billed and signed by the foreman of the grand jury. The said indictments contain all the necessary elements of the offense, and further cite to the applicable statute. A

presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, this allegation is denied and dismissed with prejudice.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1 day of March, 2017.

Maite Murphy

MAITE MURPHY
Presiding Judge
Second Judicial Circuit

St. George, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)
Demetrius Smalls,)
Plaintiff(s),)
-vs-)
South Carolina State of,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO.: 2015CP0600380
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 Demetrius Smalls, 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: .

DEC 08 2015 PM 4:00

Therefore, it is ordered that Lance S. Boozer 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
December 8, 2015

Constance B. Mansfield for Rhonda D. McElveen

☐ Circuit Judge ☒ Clerk of Court Deputy

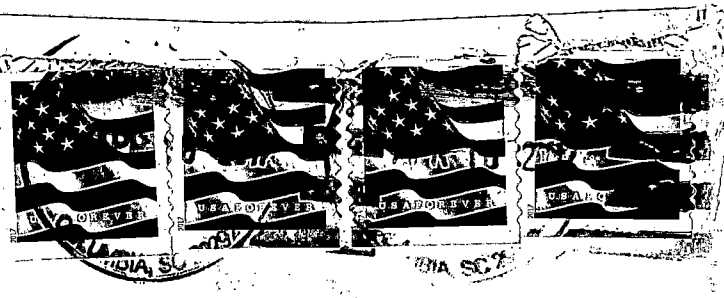
Plaintiff Attorney:	
Lance S. Boozer	
807 Gervais St., Suite 203	
Columbia, SC 29201	

Defendant Attorney:	
Daniel Francis Gourley II	
P.O Box 11549	
Columbia, SC 29211	

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.

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

THE BOOZER LAW FIRM, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201



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