J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

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May 31, 2017

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

Re: Isacc Starke, 00355498 v. State of South Carolina, 2014-CP-02-792

Dear Mr. Shearouse,

I was trial counsel for Alfred Guy Henson in his PCR. I am enclosing herewith the Notice of Appeal and Certificate of Service in the above captioned case. I am also enclosing a copy of the Order of Dismissal.

My representation does not extend to the appeal of the case. Along with a copy of this letter I have forwarded a properly executed affidavit of indigent status to the South Carolina Commission on Indigent Defense, Appellate Division. As I am anticipating Mr. Henson will qualify for services I will not order the transcript or take further action unless directed to do so by the Court or SCCID.

If you need anything further please let me know.

Sincerely,

J. Falkner Wilkes

c.
Alicia Olive, Assistant Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

Attorney for Respondent

and to:

M. Hope Blackley
PO Box 3483
Spartanburg, SC 29304-3483

Robert Michael Dudek
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

Henson, Alfred Guy, 00242989
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
Frank Addy, Jr., Circuit Court Judge

Case No. 2013-CP-42-1936

Alfred Guy Henson, #242989, ... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Alfred Guy Henson hereby appeals from the Order of Dismissal filed on May 23, 2017, in the above captioned case. The Order of Dismissal was signed by the Honorable Frank Addy, Jr., Circuit Court Judge, on May 17, 2017.

J. Falkner Wilkes, 12893
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Counsel for Appellant

Other Counsel of Record:

Alicia Olive, Assistant Attorney General
S.C. Attorney General's Office
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Attorney for Respondent

May 31, 2017.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
Frank Addy, Jr., Circuit Court Judge

Case No. 2013-CP-42-1936

Alfred Guy Henson, #242989, ... Appellant,

v.

State of South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

I certify that on May 31, 2017, I served Appellant's Notice of Appeal on the Respondent by placing a copy into the U.S. Mail, first class postage prepaid, addressed to the Respondent's counsel of record as follows, and by facsimile if indicated:

Alicia Olive, Assistant Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

Attorney for Respondent

and to:

M. Hope Blackley
PO Box 3483
Spartanburg, SC 29304-3483

Daniel E. Shearouse
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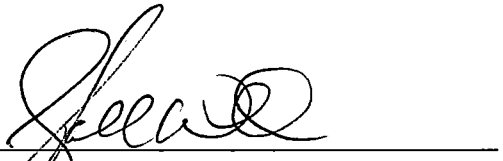

J. Falkner Wilkes, 12893
114 Whitsett Street
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Counsel for Appellant

May 31, 2017.

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Alfred Guy Henson, #242989, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-42-1936 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 25, 2013. Respondent made a Return on May 8, 2014. The Court convened an evidentiary hearing into the matter on November 9, 2016 at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by J. Falkner Wilkes. Alicia A. Olive of the Attorney General's Office appeared on behalf of Respondent. Applicant testified on his own behalf. Max B. Singleton, Matthew Shealy, and Timi Poulos also testified. Following the hearing, counsel for Respondent requested an opportunity for both parties to submit a memorandum of law concerning the issue of whether Counsel was ineffective for stipulating to Applicant's two prior convictions for burglary.

The Court had before it a copy of the trial transcripts, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the pleadings, the exhibits introduced at the hearing, and the parties' submissions. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In September 2011, the

Spartanburg County Grand Jury indicted Applicant for burglary—first degree (2011-GS-42-0351), and grand larceny, third or subsequent (2011-GS-42-0352). Max B. Singleton ("Counsel") represented Applicant. Assistant Solicitor Timi Poulos prosecuted the case. On October 11, 2011, Applicant proceeded to a jury trial before the Honorable Roger L. Couch. The jury found Applicant guilty of both charges as indicted. Judge Couch sentenced Applicant to imprisonment for concurrent terms of twenty (20) years for burglary and ten (10) years for larceny.

A timely notice of appeal was filed on Applicant's behalf. Pursuant to Applicant's request to withdraw, the South Carolina Court of Appeals dismissed the appeal. State v. Henson, Ct. App. Order filed June 12, 2012. The Remittitur was returned on September 14, 2012.

II. ALLEGATIONS

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

a. Ineffective assistance of counsel, in that;
   i. Counsel failed to properly prepare and investigate the case,
   ii. Counsel failed to properly present an adequate defense based on the facts and circumstances of the case,
   iii. Counsel failed to properly conduct discovery,
   iv. Counsel failed to properly subpoena and call witnesses to present evidence in the case,
   v. Counsel failed to raise proper objections during the trial to present and preserve evidentiary issues,
   vi. Counsel failed to move for a Jackson v. Denno hearing and failed to object to the testimony of witnesses concerning statements allegedly made by Applicant,
   vii. Counsel failed to properly and effectively cross-examine the State's witnesses,
   viii. Counsel failed to properly raise, argue, and preserve record as to the issue of the jury seeing Applicant in shackles during trial,
   ix. Counsel failed to make a proffer of evidence when warranted to properly present and preserve issues for appeal,
   x. Counsel failed to properly advise Applicant as to law regarding a proffer,

xi. Counsel failed to consider how the introduction of evidence would cause the loss of last argument in the case,
xii. Counsel failed to communicate and discuss all plea offers with Applicant,
xiii. Counsel failed to properly discuss the case and advise the Applicant on the applicable law and procedure;

b. Brady violation, in that;
   i. State failed to produce discovery including but not limited to the dash cam video or any relevant recordings of the stop and arrest of Applicant.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has 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.

A. Evidence Adduced at Trial

On November 8, 2010, the victim, Leslie Ofori, was taking a shower when she felt vibrations in the floor, which indicated that someone was walking around downstairs in her home. (Tr. Vol. I at 98). At first she though it was her husband returning early from work. While she was getting dressed, she called out to him and did not hear a response. She then heard footsteps again and the chimes of the alarm system, indicating a door had been opened. (Tr. Vol. I at 99). She heard a motor crank, then looked out the window, and saw someone on a moped speeding out of her driveway. (Tr. Vol. I at 99).

A few moments before the events involving Mrs. Ofori, officers had seen Applicant in front of a restaurant. (Tr. Vol. I at 132). Applicant approached Deputy Jason Wilson, but then Applicant stated he did not know them and that he thought they were someone else. (Tr. Vol. I at 132-33). Wilson asked Applicant's name, but Applicant would not provide his last name. (Tr.

Vol. I at 133). He then got on his moped and drove off. (Tr. Vol. I at 133). Wilson went back inside, and he and the other officers were able to identify him as Applicant. They determined that his driver's license was suspended and that he did not have a moped license. (Tr. Vol. I at 133).

Later that afternoon, while on patrol with Deputy Brent Brown near Bennetts Bridge Road, Deputy Wilson looked in his rearview mirror and observed Applicant driving the same moped and wearing the same clothing. (Tr. Vol. I at 134; 165). He then turned around and tried to conduct a traffic stop on Applicant as Applicant was pulling into his driveway. (Tr. Vol I at 134-35). Brown testified that they followed Applicant into his driveway and Applicant jump off his moped and began throwing items under an adjacently parked car. (Tr. Vol. I at 165). Wilson testified he saw Applicant throw a camera. (Tr. Vol. I at 136).

Brown testified he saw him throw "what seemed to be a large object and then a couple small objects under the car, but [he] couldn't tell what they were." (Tr. Vol. I at 165). Deputy Nick Turner looked under the car where the camera was found and saw two credit cards right next to the moped. (Tr. Vol. I at 154). Brown testified he searched Applicant and recovered from his front pocked a folding pocketknife with a blade about three or four inches long. (Tr. Vol. I at 166).

After determining the credit cards belonged to her, the officers went to the victim's home. (Tr. Vol. I at 183). It was not until then that the victim realized things had been taken from her home. (Tr. Vol. I at 183). She identified the camera as belonging to her husband. (Tr. Vol. I at 179). Photographs of shoe prints on the floor in the victim's home were taken and introduced as evidence at trial. (Tr. Vol. I at 179-80). Deputy Kevin Murphy testified that Applicant was wearing size ten medium Timberland boots when he was arrested. (Tr. Vol II at 15). A

photograph of the boots was also introduced into evidence. (Tr. Vol. II at 16). The victim testified her husband owned size 13 Timberland boots. (Tr. Vol. I at 130-31).

At trial, Counsel moved to suppress the introduction of the camera and credit cards, arguing they were the fruits of an illegal search and seizure. (Tr. Vol. I at 29). The Court denied the motion, finding the police were lawfully on the property of Applicant because of the traffic stop, the items they saw under the car were in plain view, and the viewing of those items would have indicated a possibility or potential for criminal activity requiring additional investigation. (Tr. Vol. I at 76). The Court also stated that, because Applicant tossed the items under a vehicle during a stop, the officers had the right, if nothing else, to look under the vehicle for officer safety. (Tr. Vol. I at 76). Counsel did not contemporaneously object to the officer's testimony that they found the camera and cards. (Tr. at 136).

B. Summary of Testimony

Applicant testified he hired Counsel six (6) months before trial. Applicant testified that one of his prior burglary convictions used at trial was obtained through an uncounseled plea. He received probation for that offense, but he was later incarcerated following revocation of his probationary sentence. Applicant testified his first burglary conviction resulted in imprisonment after his probation was revoked. Applicant testified a suppression hearing was held regarding the legality of the search and seizure pursuant to which the camera and credit cards were obtained. Applicant testified the suppression issue was not properly argued. He also testified that an actual knife was never presented as evidence. Applicant testified he would have taken the plea offer if he had known about the stipulation.

Applicant testified Counsel should not have called the officer back during the defense's case. Applicant testified that during trial Counsel was preoccupied, nervous, and did not ask

questions they had previously discussed. Applicant also testified Counsel asked the wrong witnesses about the wrong things. He stated it seemed Counsel was starting on a brand new thought process during trial.

Counsel testified he researched the issue of the search and seizure of the camera and credit cards, and he argued in a pretrial motion that the evidence should be suppressed; however, the judge denied his motion. Counsel testified officers saw Applicant driving a moped and pulled him over. The officers saw him throw things off of the moped and one of the things he threw was a camera from the Ofori house. Counsel testified the suppression issue was the focus of the defense, but that he did not contemporaneously object to the admission of the evidence that was the subject of the suppression hearing.

Counsel testified he drove by the victim's house to see how far it was from Applicant's house and how many different routes could be taken between the two; he also observed the makeup of the yard and the trees. Counsel testified he began representing Applicant approximately six (6) months before trial, and they likely met about ten or fifteen times for approximately fifteen or twenty minutes each time, sometimes longer. Counsel testified he would not have signed in under each client that he went to visit at the jail, so the jail logs would not reflect every visit he made to Applicant.

Counsel testified he did not recall any plea offers being made and that he was sure he approached the solicitor about any offers. When asked on-cross examination why he recalled Officer Wilson to testify during the defense's case, Counsel testified that he was caught off-guard by the victim's testimony that her wallet was found and returned to her by a third party; he said he would have discussed that with Applicant if he had known that in advance. Counsel admitted that he could have asked those questions on cross instead of recalling Officer Wilson.

Matthew Shealy testified he was appointed to represent Applicant on Nov 19, 2010, and that he received an offer on March 4, 2011, from Assistant Solicitor Poulos for a plea to Burglary second violent. Shealy relayed the offer to Applicant, reviewed the advantages and disadvantages of going to trial versus pleading guilty, and Applicant rejected the offer.

Assistant Solicitor Poulos testified she was approached many times about a plea offer and that Shealy asked her about a burglary second non-violent offer, but she was not willing to allow him to plead to that. She testified she had no knowledge that any of his prior burglary convictions were uncounseled. Poulos testified that if Counsel had not agreed to stipulate to the convictions she simply would have called the Clerk of Court to testify regarding the existence of the convictions.

C. Ineffective Assistance of Trial Counsel

Applicant bears the burden of proving the allegations in his 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. Second, counsel's deficient performance must have prejudiced the

Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

1. Failure to contemporaneously object to search and seizure

Applicant alleged Counsel was ineffective for failing to raise proper objections during the trial to present and preserve evidentiary issues. Specifically, Applicant asserts Counsel was deficient for failing to contemporaneously object to testimony concerning deputies looking under a car and locating the stolen camera and credit cards. This issue was argued pretrial, and the trial court found the plain view exception to control.

This Court finds Counsel was deficient for failing to object, thus rendering the issue unpreserved for appellate review. Nevertheless, this Court finds there is no reasonable probability that but for counsel's unprofessional error, the result of the proceeding would have bene different. "Warrantless searches are *per se* unreasonable unless an exception to the warrant requirement is presented." State v. Bailey, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981). The following exceptions to the warrant requirement have been recognized: "(1) search incident to a lawful arrest, (2) 'hot pursuit,' (3) stop and frisk, (4) automobile exception, (5) the "plain view" doctrine, and (6) consent." Id. at 35–36, 274 S.E.2d at 915. South Carolina has "also recognized the doctrine of abandonment as an exception to the Fourth Amendment warrant requirement." State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995).

The search in this case clearly falls within the plain view or open fields exception. Under the specific facts of this case, Applicant was pulled over on his moped because the deputies knew he did not have a valid moped license. Applicant threw items off of the moped while the officers were initiating a traffic stop. They observed him throw something under an adjacently

Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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The search in this case clearly falls within the plain view or open fields exception. Under the specific facts of this case, Applicant was pulled over on his moped because the deputies knew he did not have a valid moped license. Applicant threw items off of the moped while the officers were initiating a traffic stop. They observed him throw something under an adjacently

parked car. Applicant's actions gave the police reasonable suspicion to search and determine what those items were. Additionally, Applicant had no reasonable expectation of privacy in the area searched. See State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (holding where defendant threw bag containing cocaine on ground in front of officers constituted abandonment of the item such that he had no reasonable expectation of privacy in the bag). "[E]vidence abandoned by the defendant before he was seized by the police cannot be the basis for a violation of the Fourth Amendment's prohibition against unreasonable search and seizure." Fernandez v. State, 306 S.C. 264, 266, 411 S.E.2d 426, 428 (1991) (finding no error in admitting evidence where defendant dropped packages while fleeing running form police).

In addition, in Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). Accordingly, even if trial counsel had objected and the issue had been presented to the appellate courts, there is no reasonable probability Applicant would have prevailed on appeal.

2. Failure to retain final argument

Applicant asserts that Counsel was deficient for recalling Deputy Jason Wilson in Applicant's case-in-chief, causing him to lose last argument. Although this Court agrees that Counsel could have asked Deputy Wilson these questions on cross-examination during the State's case-in-chief, this Court finds that the loss of last argument did not so prejudice Applicant as to warrant relief. See Strickland v. Washington, 466 U.S. 668 (1984) (holding Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result."). This Court has reviewed both closing arguments and can find nothing that Assistant Solicitor Poulos argued that would have required Counsel to rebut. In short, Counsel's closing would likely have remained the same, and Applicant has not demonstrated that there is a reasonable probability that, but for the loss of last argument, the outcome would have been different.

3. Stipulation to prior burglary offenses

Applicant also alleges Counsel was deficient for stipulating to Applicant's purportedly uncounseled guilty pleas to a 1993 and 2001 burglary charge. Applicant argues that to allow these pleas to form a basis for a charge under section 16-11-311(A)(2)[1] constitutes "enhancement" which is prohibited under Nichols v. United States, 511 U.S. 738 (1994) and its progeny. Assuming arguendo that the prior pleas truly were uncounseled, the Court finds that the prior convictions were not used to *enhance* Applicant's crime. Instead, they constituted an element of the burglary first charge. Assistant Solicitor Poulos also testified that, had counsel not stipulated to their use, the State would have called a representative of the Clerk of Court's office to testify as to the existence of the prior convictions. Accordingly, Counsel was not deficient in stipulating to these convictions.

To the extent that Counsel could have objected to their use, the Court notes that a significant amount of evidence was presented that Applicant was armed with a knife at the time of the burglary. Therefore, even if the prior burglary convictions had not formed a basis for a

[1] Subsection 16-11-311(A) of the South Carolina Code of Laws provides:
(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:
(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
(a) is armed with a deadly weapon or explosive; or . . .
(2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both[.]

burglary first charge, Applicant suffered no prejudice because evidence that he was armed with a deadly weapon would have also supported the burglary first indictment and conviction.

4. Failure to communicate plea offers

Applicant alleged in his application that Counsel failed to communicate all plea offers. This Court finds Applicant produced no evidence of any plea offers that were not communicated to him. Matt Shealy testified he informed Applicant about the offer received from the state for burglary second violent. He testified he relayed the offer to Applicant, reviewed the advantages and disadvantages of pleading guilty or proceeding to trial, and Applicant rejected the offer. (See State's Exhibit 1). Solicitor Poulos testified she was approached many times about a plea offer and that Shealy asked her about burglary second non-violent, but she was unwilling to offer that. This Court finds Applicant failed to present any evidence of uncommunicated plea offers, and therefore, has failed to show either deficiency or prejudice. Accordingly, this allegation is without merit and is denied and dismissed.

5. Failure to investigate and prepare

Applicant raised the following allegations in his application: Counsel failed to (1) properly prepare and investigate the case, (2) properly present an adequate defense based on the facts and circumstances of the case, (3) properly conduct discovery, (4) properly subpoena and call witnesses to present evidence in the case, (5) properly and effectively cross-examine the State's witnesses, (6) properly advise Applicant as to law regarding a proffer, and (7) properly discuss the case and advise the Applicant on the applicable law and procedure.

This Court finds Applicant raised these issues in only a vague or cursory fashion in the evidentiary hearing and has, therefore, failed to satisfy his burden of proving deficiency or prejudice with respect to these allegations. Applicant has not satisfied his burden of proving that Counsel failed to conduct an appropriate investigation under the circumstances. "[C]ounsel has a

duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (citing Strickland, 466 U.S. at 691). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Further, Applicant made no showing of what additional investigation Counsel could have done or how any such additional investigation would have likely resulted in a different outcome at trial. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (noting mere speculation and conjecture on the part of Respondent is insufficient to prove prejudice); Skeen v. State, 325 S.C. 210, 2014, 481 S.E.2d 747, 749 (1997) (finding Applicant not entitled to relief where no evidence presented to show how additional preparation would have had any possible effect on result of trial). Further, to show ineffective assistance for failing to call witnesses, 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 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). Lastly, Applicant has made no showing Counsel failed to properly and effectively cross-examine the State's witnesses. Applicant pointed to no specific testimony in support of this allegation, nor did he show how any differing cross-examination would have affected the outcome of trial. See Strickland v. Washington, 466 U.S. 668, 689 (holding there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "[applicant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy."); Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133

(1997) (finding no prejudice where "one can only speculate whether a 'better' cross examination would have helped [applicant."). Accordingly, this Court finds Applicant has not met his burden as to these allegations and therefore denies relief.

6. Brady Violation

Applicant's allegation in his application that the "State failed to produce discovery including but not limited to the dash cam video or any relevant recordings of the stop and arrest of Applicant" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

7. Failure to move for Jackson v. Denno

Applicant's allegation that Counsel was ineffective for failing to "move for a Jackson v. Denno hearing and failed to object to the testimony of witnesses concerning statements allegedly made by Applicant" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

8. Failure to preserve issue of jury seeing Applicant in shackles

Applicant's allegation that Counsel was ineffective for failing to "properly raise, argue, and preserve record as to the issue of the jury seeing Applicant in shackles during trial" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

9. Failure to make a proffer

Applicant's allegation that Counsel was ineffective for failing to "make a proffer of evidence when warranted to properly present and preserve issues for appeal" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

Spartanburg County

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M. Hope Blackley
Clerk of Court

May 23, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Alfred Calhoun #242989
Applicant

VS

Lee
Respondent

IN THE COURT OF COMMON PLEAS

7TH JUDICIAL CIRCUIT

CASE # 2013 CP 42 01936

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order of Dismissal
In this action dated 5-17, 2017 on 5-23-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Haworth
AG Faulkner Wilkes

5-23-17
(Date)

(Signature)

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

IT IS THEREFORE ORDERED THAT:

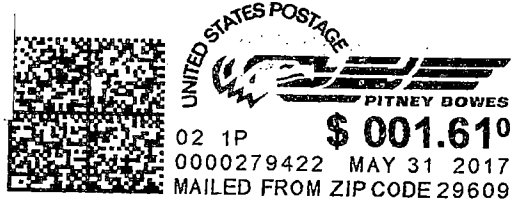
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 17th day of May, 2017.

FRANK R. ADDY, JR.
Presiding Judge
Seventh Judicial Circuit

Greenwood, South Carolina



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Daniel Shearouse, Clerk
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