

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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JUL 14 2017

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Robert E. Hood, Circuit Court Judge

Case No.: 2013CP0201498

State of South Carolina,

Respondent,

v.

Albert James Cave, Jr.,

Appellant.

NOTICE OF APPEAL

Albert James Cave, Jr., #189002, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed November 16, 2016, and received by counsel on December 20, 2016, and the Order Denying Rule 59(E) Motion filed June 13, 2017, and received by counsel on June 14, 2017, issued by the Honorable Robert Hood, presiding Judge.

July 14, 2017



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P.O. Box 11961  
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ajzlawfirm@gmail.com  
Attorney for Appellant

Other Counsel of Record:  
Julie Coleman  
PO Box 11549  
Columbia, SC 29211  
Counsel for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

JUL 14 2017

Robert E. Hood, Circuit Court Judge S.C. SUPREME COURT

Case No.: 2013CP0201498

State of South Carolina,

Respondent,

v.

Albert James Cave, Jr.,

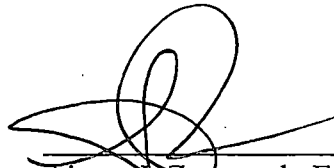
Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Julie Coleman by depositing a copy of it in the United States Mail, postage prepaid, on July 14, 2017, addressed to her office at:

PO Box 11549  
Columbia, SC 29211

July 14, 2017



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ajzlawfirm@gmail.com  
Attorney for Appellant

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
  
Albert James Cave, Jr., )  
  
Applicant, )  
  
vs. )  
  
State of South Carolina, )  
  
Respondent. )

IN THE COURT OF COMMON PLEAS  
CA. NO.: 2013-CP-02-01498

**RECEIVED**

JUL 14 2017

S.C. SUPREME COURT

ORDER

After careful consideration of the submitted briefs, the applicable law and all other arguments, this Court denies Applicant's Motion to Reconsider.

Under SCRCP Rule 59(f), a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument." Hence, the grant or denial of a Motion to Reconsider is within the discretion of the circuit court. Motions to Reconsider are limited in scope and are not to be used to repeat the same arguments previously presented. *Dockins v. Benchmark Commc'n*, 180 F.R.D. 294, 295 (D.S.C. 1998). A Motion to Reconsider cannot be granted where the moving party simply seeks to have the Court rethink its decision. *Id.*

Accordingly, Applicant's Motion to Reconsider is DENIED.

*Robert E. Hood*

The Honorable Robert E. Hood  
5th Judicial Circuit Judge

Columbia, South Carolina

This 13 day of June 2017

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL DISTRICT

2013-CP-02-01498

Albert James Cave, Jr., #189002, )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
Respondent. )

**RECEIVED**

MOTION TO RECONSIDER JUL 14 2017

S.C. SUPREME COURT

NOW COMES, Applicant, Albert James Cave, Jr., by and through his undersigned counsel, and moves pursuant to Rule 59(e) SCRCPP for an order altering or amending the court's prior order filed on November 16, 2016 and received by counsel on December 20, 2016, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000).

Specifically all allegations submitted in the memoranda by Applicant regarding:

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**AIKEN COUNTY  
CLERK OF COURT**

1. Ineffective assistance of counsel
  - a. Failure to recuse solicitor;
  - b. Failure to request a continuance pursuant to late provided evidence;
  - c. Failure to object to improper judicial remarks;
  - d. Failure to obtain a pretrial ruling and file motions to suppress fingerprint

evidence;

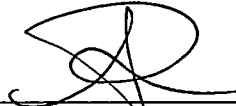
2. Prosecutorial Misconduct

- a. Violating due process in forcing a plea and/or trial with the threat of LWOP when the case was new to the docket;

- b. Failing to recuse office
- 3. Ineffective Assistance of Appellate Counsel
  - a. Failure to identify proper issues for appeal.
- 4. Failure to Overcome the Burden of Proof by Appellate Counsel
  - a. There was no testimony from the appellate division to offer any explanation as to failure to raise the issues that were ripe in this case. Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991).

THEREFORE, counsel requests that Order be reconsidered for the above listed specific reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



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Counsel for Applicant

Columbia, South Carolina  
Dated: December 29, 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL DISTRICT

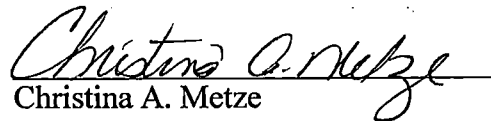
2013-CP-02-01498

Albert James Cave, Jr., #189002, )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
Respondent. )

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Motion to Reconsider dated December 29, 2016 by depositing it in the U.S. Mail in an envelope with sufficient postage affixed, addressed as follows:

Julie Coleman  
Assistant Attorney General  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

  
Christina A. Metz

Columbia, South Carolina

Dated: 12/29/16

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JAN 03 2017 12:30  
AIKEN COUNTY  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS )  
SECOND JUDICIAL CIRCUIT )

Albert James Cave Jr., #189002, )

2013-CP-02-01498 )

Applicant, )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

FILED 11-16 2016 12:50 )  
SP )

Respondent. )

*Shirley Ireland*  
CLERK )  
*Shirley Ireland*  
Deputy Clerk )

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 8, 2013. Respondent submitted its return on October 16, 2013. An evidentiary hearing into the matter was convened on September 23, 2016, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Aimee Zmroczek, 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 Aiken County Clerk of Court. Applicant was true bill indicted during the July 2011 term of the Aiken County Grand Jury for Grand Larceny more than \$2,000 but less than \$10,000 (2011-GS-02-01032) and Burglary in the First Degree (2011-GS-02-01031). C. David Hayes, Esquire, represented Applicant. On May 9-12, 2011, a jury trial was held before the Honorable Doyet A. Early, III. The jury convicted Applicant as indicted. On May 12, 2011, Judge Early sentenced Applicant to twenty-five years imprisonment for Burglary First, and thirty days with credit for time served for larceny.

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A Notice of Appeal was filed with the South Carolina Court of Appeals and an Anders brief was submitted. The Court of Appeals affirmed Applicant's sentences and convictions on December 28, 2012. State v. Albert Cave, Jr., No. 2013-UP-245 (Ct. App. June 12, 2013). The Remittitur was issued on July 1, 2013.

Applicant filed a timely application for post-conviction relief on July 8, 2013.

## II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
  - a. Failure to recuse solicitor
  - b. Failure to request a continuance pursuant to late provided evidence
  - c. Failure to object to improper judicial remarks
  - d. Failure to obtain a pretrial ruling and file motions to suppress fingerprint evidence
2. Prosecutorial Misconduct
  - a. Violating due process in forcing a plea and/or trial with the threat of LWOP when case was new to the docket
  - b. Failing to recuse office
3. Ineffective Assistance of Appellate Counsel
  - a. Failure to identify proper issues for appeal

## III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

The evidentiary hearing was held before this Court on September 23, 2016. Due to unusual circumstances, the hearing was combined with the hearing for another PCR application that Applicant filed on a different conviction stemming from similar events. The following is a summary of testimony from the hearing that is relevant to the convictions in this application.

At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Deputy Solicitor David Miller (hereinafter "Solicitor") and Trial Counsel C. David Hayes (hereinafter "Trial Counsel").

*Applicant*

Applicant testified that he had been arrested several times for burglary and forgery. He stated that in 2008 he was charged with burglary first degree and grand larceny. He stated that he went to trial on these charges and was acquitted, and the South Carolina Attorney General's Office prosecuted the case because the victim was a member of the Second Circuit Solicitor's Office and they were recused from the action. Applicant entered into evidence Applicant's Exhibit #1, "Order Recusing the Second Circuit Solicitor's Office from Prosecuting Defendant."

Applicant testified that this Order read that the Second Circuit Solicitor's Office was recused from prosecuting his 2008 offense, "or any charges or indictments stemming from the same incidents or incidents alleges to *be related or part of a pattern of criminal activity including*" the 2008 charge. App. Ex. #1 (emphasis added). He opined that the 2011 charges listed in this PCR application for which he was currently serving time were part of a pattern of criminal activity related to his 2008 charges, and therefore under this Order the Second Circuit Solicitor's Office should have been recused from this case, as well.

Applicant testified that he did not discuss this Order with Trial Counsel, but Trial Counsel knew about his 2008 case because they had discussed it. He stated that he did not ask Trial Counsel to move to have Solicitor recused based on this order.

Applicant testified that he did ask Trial Counsel to file a motion to suppress the fingerprint evidence from his 2008 case. He stated that law enforcement had no probable cause to arrest him for these crimes because the warrant was based on a match from the fingerprints from his previous charges, on which he was acquitted, and that fingerprint card should have been destroyed. However, he was told that because he had not applied to have his previous charges expunged, the card had not been destroyed. He testified that Trial Counsel had a motion to

suppress the fingerprints based on the chain of custody, but he never made the motion. Applicant stated that he met with Trial Counsel multiple times but they always argued about the motion to suppress his fingerprints, so he tried to have Trial Counsel relieved. He stated that the fingerprint issue was discussed in his Anders brief on appeal but the brief did not address the admissibility of the prints.

Additionally, Applicant testified that he pled guilty to possession of marijuana second degree on March 18, 2010. He stated that this was one of the charges he was arrested for in January, 2008, along with the charges on which he was later acquitted at trial.

Applicant testified that Trial Counsel agreed to stipulate that Applicant had prior burglary charges, but Trial Counsel never consulted with him before the stipulation was made.

#### *Solicitor*

Deputy Solicitor David Miller testified that he has been employed at the Second Circuit Solicitor's Office since January of 2009, and he was the solicitor who prosecuted this case against Applicant. Solicitor stated that he turned all of the discovery material over after Trial Counsel filed Rule 5 and Brady motions. He stated that there was no material that they requested that he did not provide them.

Solicitor testified that law enforcement was able to match Applicant to the crime because of latent fingerprints found at the scene of the burglary that matched up to his prints in their database. He stated that Applicant's fingerprints were in their possession because he was arrested on January 14, 2008 for several different charges, including possession of marijuana, resisting arrest, and about twelve other charges. Solicitor stated that Applicant had a trial on some of the charges from the January 2008 arrest and was acquitted, but remained in custody until March 18, 2010, when he pled guilty to possession of marijuana and resisting arrest.

*Rest*

Solicitor testified that, because Applicant pled guilty to possession of marijuana and resisting arrest, the fingerprint card from his January 2008 arrest, which was used to match the prints from the crimes address in this PCR application, could not be destroyed. Solicitor testified that Applicant was entitled to have the charges he was acquitted of expunged from his record, but he was not entitled to have his fingerprint card destroyed because of the charges he pled guilty to.

Solicitor further testified that, after the trial on the convictions in question, Applicant was facing different charges, and a hearing was held over the suppression of the fingerprints. He testified that Judge Early ruled that he would allow the prints into evidence because Applicant was not entitled to have the card destroyed and because he had fifteen prior arrests and twelve prior convictions in South Carolina and several other fingerprint cards. He stated that Judge Early allowed these prints because of their inevitable discovery. The Order denying this motion was entered into evidence at the evidentiary hearing.

Solicitor testified that he later had an officer go over to the jail to roll new fingerprints from Applicant to compare to the latent prints found at the scene of the crime. He noted that fingerprints do not change, and Applicant's prints matched both the 2008 fingerprint card and the crime scene prints.

Solicitor testified that there was never any issue with the chain of custody on the fingerprints. He stated that he invited Trial Counsel to come see the discovery, and Trial Counsel sent an expert to examine the fingerprints in a secured, contained area.

Solicitor testified that he did not know that the Order of Recusal existed until it came up in the allegation in this PCR action. He stated that it was completely unrelated to the charges and

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victims in this case, and it did not make sense to recuse the Second Circuit Solicitor's Office from this case. He stated that he saw no reason to recuse himself from this case.

*Trial Counsel*

Trial Counsel testified that he was appointed in this case and he met with Applicant five or six times prior to trial. He stated that he and Applicant did not get along, and Applicant did not cooperate during the course of his representation. He testified that he and Applicant fought all the time, mostly about the issue of the admissibility of the fingerprints. He stated that their bad relationship did not affect his ability to represent Applicant. Trial Counsel stated that he saw no grounds on which to move to suppress the fingerprints based on their admissibility or on the chain of custody. He stated that he did not think the fingerprint card could have been destroyed or expunged, so he did not move to suppress it. He further opined that this issue would not have been successful on appeal if it had been fully argued.

Trial Counsel testified that his trial strategy in this case was to cast doubt on the accuracy of the fingerprints. He opined that the state's evidence against Applicant was overwhelming because they had his fingerprints at the crime scene.

Trial Counsel stated that he happened to be present at the trials that the Attorney General's Office prosecuted, but he did not know about the existence of the Order of Recusal until this PCR action. Trial Counsel stated that this Order did not apply to this case.

Trial Counsel testified that he did not feel there was any reason for Solicitor to be recused from the case. He stated that there was no reason to request a continuance based on new evidence. He stated that he saw no reason to object to any judicial remarks during the trial.

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Trial Counsel testified that he stipulated to the fact that Applicant had prior burglary convictions because he did not want to draw it to the jury's attention. He stated that it was better to quietly stipulate the fact than to have the Clerk of Court testify against Applicant at trial.

Trial Counsel stated that he was eventually relieved from his representation of Applicant because of their poor relationship.

#### IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

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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. 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).

#### 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).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Trial Counsel's testimony to be credible and persuasive. This Court further finds Solicitor's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they are denied and dismissed with prejudice.

##### *Failure to recuse Solicitor*

Applicant alleges that Trial Counsel was ineffective for failing to move to have Solicitor recused from the case. This allegation is meritless and must be denied.

The Order of Recusal introduced by Applicant is clearly meant to apply only to the charges from the trial in which it was ordered. The charges in the case at issue are completely

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separate and unrelated from Applicant's prior trial and cannot be viewed as a "pattern of criminal activity" stemming from his prior charges. The Order was clearly written only for the purpose of recusing an office that might be swayed because of the victim in the prior case. The victims in the case at hand have no relation to the previous case, and there is no reason why this Order would apply to different charges. This Court finds that this allegation is meritless and that there was no reason for the Second Circuit Solicitor's Office to be recused from this case. Therefore, Trial Counsel cannot be ineffective for failing to move to have Solicitor recused. Thus, this allegation is denied and dismissed.

*Failure to request a continuance pursuant to late provided evidence*

Trial Counsel credibly testified that there was no reason to request a continuance based on any late provided evidence. Applicant has failed to meet his burden in proving that there was any evidence that was not provided in a timely manner, that a continuance request based on this evidence would have been successful, or that a continuance would have changed the outcome of the trial. Therefore, this allegation is meritless and must be denied and dismissed.

*Failure to object to improper judicial remarks*

Applicant has failed to meet his burden in proving which judicial remarks were improper, why they were improper, that Trial Counsel was ineffective for failing to object to them, or that the result of the trial would have been different had Trial Counsel objected. Because Applicant has not met his burden of proof, this allegation is denied and dismissed with prejudice.

*Failure to move to suppress fingerprint evidence*

Applicant's allegation that Trial Counsel improperly failed to move to suppress the fingerprint evidence is meritless. This Court finds that there was no legal reason to move to

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suppress these fingerprints, as a motion to suppress would not have been successful, thus Trial Counsel cannot be found ineffective for choosing not to do so.

Solicitor credibly testified that Applicant's fingerprint card is not eligible to be destroyed after his 2008 acquittal because it was taken after the same arrest as two charges to which Applicant pled guilty. Furthermore, even if the card had been destroyed, law enforcement could have collected more fingerprints from Applicant to compare to the crime scene based on his other charges and arrests; as Solicitor noted, fingerprints do not change. Finally, as noted by Solicitor, Applicant later had a hearing over a motion to suppress these fingerprints, and the motion was denied based on inevitable discovery. Applicant had 15 prior arrests and 12 convictions, and there were multiple other sets of his fingerprints throughout the state of South Carolina with which to compare to the prints at the crime scene. Any motion to suppress the fingerprints would not have been successful, and Trial Counsel's choice not to pursue this motion was reasonable.

Furthermore, Trial Counsel credibly testified that he saw no legal reason to move to suppress these fingerprints. 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,

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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). "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland at 689, 104 S. Ct. at 2065.

Applicant has further failed to meet his burden in proving any prejudice. Even if Trial Counsel had managed to successfully suppress the fingerprint card from 2008, law enforcement could have pulled any other fingerprint card from Applicant's prior arrests and convictions throughout the state. Applicant's fingerprints would have been matched to the crime scene even without this specific fingerprint card from 2008. Thus, any failure to move to suppress this card would not have changed the outcome of the trial.

This Court finds that Applicant has failed to meet his burden of proving that Trial Counsel was ineffective in this regard, this allegation is denied and dismissed with prejudice.

#### PROSECUTORIAL MISCONDUCT

This Court finds that Applicants claims of prosecutorial misconduct are meritless and must be denied and dismissed with prejudice.

Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520

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(1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed. As addressed above, the Order of Recusal introduced by Applicant clearly does not apply to the convictions at hand, and there was no reason for the Second Circuit Solicitor's Office to be recused from this case. Furthermore, Applicant has failed to meet his burden in proving that Solicitor used the "threat" of a sentence of Life Without Parole to force Applicant to go to trial. Applicant has not shown a manner in which Solicitor acted improperly or outside the bounds of what is allowed under South Carolina law. Therefore, these allegations are denied and dismissed with prejudice.

#### INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant's allegation that appellate counsel was ineffective for failing to argue the inadmissibility of Applicant's fingerprints at trial is meritless.

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every nonfrivolous issue that is presented by the record." Id. (citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)) (emphasis supplied). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the

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very goal of vigorous and effective advocacy...." Id. (citing Jones, 463 U.S. at 754, 103 S.Ct. 3308).

"Neither Anders nor any other decision of this Court suggests, however, that the indigent defendant has a constitutional right to compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points." Jones, 463 U.S. at 751, 103 S. Ct. at 3312. "To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal." Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Solicitor credibly testified that Applicant's fingerprint card is not eligible to be destroyed after his 2008 acquittal because it was taken after the same arrest as two charges to which Applicant pled guilty. Any argument over the admissibility of these fingerprints likely would not have prevailed on appeal, and thus Applicant can show no prejudice. This Court finds that Applicant's appellate counsel was not ineffective for failing to thoroughly brief the issue of admissibility of Applicant's fingerprints, and 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

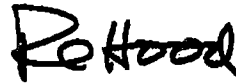
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 10 day of NOV, 2016.



ROBERT E. HOOD  
Presiding Judge  
Second Judicial Circuit

Columbia South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP0201498

Albert James Cave Jr		South Carolina State of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

\_\_\_\_\_  
 Circuit Court Judge. Judge Code Date 11/16/2016

**For Clerk of Court Office Use Only**

This judgment was entered on 11-16-16, and a copy mailed first class or placed in the appropriate attorney's box on 11-16-16, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzejewski Zmroczek A.J.Z. Law Firm, LLC PO  
Box 11961 Columbia, SC 29211

Julie Amanda Coleman PO Box 11549 Columbia, SC 29211

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

*Liz Godard by Staff*

\_\_\_\_\_  
Court Reporter

\_\_\_\_\_  
Liz Godard - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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