

# The Brooks Law Office, LLC

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April 26, 2016

**RECEIVED**

APR 29 2016

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

RE: Walter Harris, 344193 vs. South Carolina  
2013-CP-38-00118

Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,

  
Charles T. Brooks, III  
CTB/srw

Enclosed as stated

cc: J. Clay Mitchell, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Mr. Walter Harris, 344193

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Kristi L. Harrington, Circuit Court Judge

Case No: 2013-CP-38-00118

Walter Harris.....Appellant  
S.C.D.C. 344193

v.

The State.....Respondent

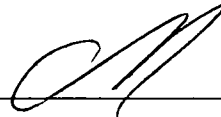
**RECEIVED**

APR 29 2016

**S.C. SUPREME COURT**

NOTICE OF APPEAL

Walter Harris, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Kristi L. Harrington, January 15, 2015, which I, Charles T. Brooks, III, received on April 25, 2016.



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Attorney for Appellant

Other Counsel on Record:  
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Assistant Attorney General  
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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Kristi L. Harrington, Circuit Court Judge

**RECEIVED**

Case No: 2013-CP-38-00118

APR 29 2016

Walter Harris.....Appellant  
S.C.D.C. 344193

**S.C. SUPREME COURT**

v.

The State.....Respondent

**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this 26<sup>th</sup> day of April, 2016, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on April 26, 2016, addressed to the following as indicated below:


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

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: J. Clay Mitchell, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Mr. Walter Harris, 344193  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina 29472

Dated: April 26, 2016

  
\_\_\_\_\_  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Walter Lee Harris, #344193,

2015 JAN 15 AM 11:42  
FILED FOR RECORD  
WINNYA B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

2013-CP-38-00118

**ORDER OF DISMISSAL**

**ATTEST: TRUE COPY**

*Winnya B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

THIS MATTER COMES BEFORE THE COURT pursuant to an application for post-conviction relief (PCR) filed January 17, 2013, and amended January 22, 2013. Respondent made its Return on May 7, 2013, requesting an evidentiary hearing be convened. Andrew B. Farley, Esquire, was appointed by the Orangeburg County Clerk of Court. Charles T. Brooks, III, Esquire, then took over representation of Applicant. Applicant filed a Motion for Funding in order to hire an expert investigator. A hearing was held on said Motion on May 28, 2014, at the Dorchester County Courthouse. Applicant and Counsel Brooks were present. This Court denied that motion by written Order filed August 28, 2014.

An evidentiary hearing was held on October 29, 2014, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Brooks. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's trial counsel, W. Scott Palmer, Esquire, and appellate counsel, Robert M. Dudek, Esquire. The Court had before it the Orangeburg County Clerk of Court records, Applicant's

South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was true bill indicted during the May 2010 term of the Orangeburg County Grand Jury for Murder (2010-GS-38-0812), Burglary First-Degree (2010-GS-38-0813), Armed Robbery (2010-GS-38-0814), Possession of a Weapon during the Commission of a Violent Crime (2010-GS-38-0815), and Kidnapping (2010-GS-38-0816). W. Scott Palmer, Esquire, represented Applicant.

Applicant proceeded to a joint trial by jury with four co-defendants on December 10, 2010. On December 17, 2010, the jury found Applicant guilty of Murder, Burglary First-Degree, and Armed Robbery. The remaining indictments were *nolle prossed*. The Honorable Edgar W. Dickson sentenced Applicant to thirty-five years imprisonment for Murder, thirty-five years imprisonment for Burglary First-Degree, and thirty years imprisonment for Armed Robbery, all three sentences to run concurrent.

A Notice of Appeal was filed with the South Carolina Court of Appeals and an appeal was perfected on Applicant's behalf by Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. Applicant raised the following issue on appeal:

Whether the trial court erred by refusing to grant a severance where the state sought to try five co-defendants each charged with murder, armed robbery, and burglary in the first degree since defense counsel correctly argued the jury would have difficulty considering their guilt or innocence separately in a mass trial, where the attorneys were forced to look disorganized to appellant's detriment, and particularly since the Supreme Court has warned about the dangers of multiple co-defendant trial such as this one for a variety of reasons?

The Court of Appeals affirmed Applicant's convictions and sentences on December 5, 2012. *State v. Harris*, Unpub. Op. No. 2012-UP-644 (S.C Ct. App. filed December 5, 2012). The Remittitur was issued on January 4, 2013.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel; and
2. Ineffective assistance of appellate counsel in that counsel failed to raise the issue of directed verdict.

### PCR HEARING

Applicant alleged that his trial Counsel was ineffective for not properly advising him of risks and advantages of testifying in his defense. Applicant testified that Counsel failed to advise him that he could have testified in support of his defense of withdrawal. Applicant admitted to smoking marijuana the night of the incident and then going into the apartment where the crimes occurred to buy marijuana from the victim. He testified he left the apartment and went back to the car where his codefendants were waiting. He stated his codefendants told him about their plans to rob the victim, and he then made the decision not to participate in the robbery and claims he remained in the car when the murder and robbery took place. Applicant also alleged Counsel was ineffective in not arguing the defense of withdrawal throughout the trial.

Applicant alleged his trial Counsel was ineffective in failing to hire an investigator and a forensic expert. Applicant testified that an investigator and an expert would have supported his version of the facts. Applicant also alleged that Counsel did not effectively cross-examine codefendant, also a witness for the State, Patrick Tyler. Applicant testified that Counsel should have brought out the fact that Tyler was likely to receive a favorable plea deal in exchange for his testimony against his five codefendants.

Applicant argued trial Counsel was ineffective in failing to secure a plea deal. It was Applicant's testimony that he wanted trial Counsel to attempt to elicit an offer from the Solicitor. Applicant claimed trial Counsel did not advise him of his right to testify. Applicant conceded the State would agree to initiate a plea deal if Applicant agreed to testify at trial as a State witness against his codefendants. Applicant admitted the trial judge reviewed his right to testify in detail and that he told the judge it was his decision not to testify.

Applicant further alleged that appellate Counsel was ineffective for not raising a directed verdict issue on appeal. Applicant testified the direct verdict motion should have been granted and that this issue should have been raised by appellate Counsel in his direct appeal.

Trial Counsel testified that he has been practicing law for over twenty-five (25) years. Trial Counsel testified he was appointed by the Orangeburg County Clerk to represent Applicant. He stated he met with Applicant numerous times. He testified he explained the charges to Applicant and how the State has the burden of proving all elements of the charges. Trial Counsel testified that Applicant was articulate during their meetings.

Trial Counsel testified that he presented a withdrawal theory of defense in this case. He testified that Applicant was part of a group and acted as a recon agent to buy drugs, look around the victim's apartment, and then report back to the group. Trial Counsel emphasized that this was what Applicant had told him from the very beginning of his representation; that he withdrew from the crime when he realized his codefendants planned to rob the victim.

Trial Counsel testified he encouraged Applicant to testify and actually advised him that he must testify in order to get the withdrawal defense in front of the jury. He stated there was no doubt Applicant was present at the scene when the murder and robbery took place. Trial Counsel testified he successfully argued for a jury charge on withdrawal. Trial Counsel testified he urged

Applicant to testify on many occasions even after the State rested. Trial Counsel testified he prepared a letter to Applicant where he set out what he believed were his three options after the State had completed its fifth day of testimony. These options were that Applicant could continue the trial, but it was trial Counsel's opinion that it was highly likely Applicant would be convicted on all three charges. The other two options were that Applicant could also plead guilty "straight up" to all three charges or he could take the stand in his own defense. Applicant decided not to testify and instead to continue on with the trial. Trial Counsel testified he presented a withdrawal defense theory to the jury and argued it thorough the trial in opening arguments, on cross-examination of State witnesses, and in closing arguments.

Trial Counsel testified there was no need for an investigator because there was no doubt Applicant was at the scene when the crimes were committed. He also stated he thought there was no reason to employ a forensic expert because he could not prove or disprove whether Applicant shot a gun or was present when the victim was robbed and murdered. The State did not plan to offer any evidence of gunshot residue linking Applicant to the crime.

Trial Counsel testified he cross-examined the State's witness Tyler in order to challenge his version of the facts. He also cross-examined him on the charges he was currently facing and whether he had received a favorable plea deal in exchange for his testimony against Applicant and his other codefendants.

Trial Counsel stressed there were no plea negotiations before trial. He testified he was able to arrange a meeting with the deputy solicitor, lead investigator, and Applicant to discuss whether a plea deal could be worked out the day before the State rested. Applicant was able to tell his version of the facts and that he withdrew his participation, but it was noted there was also evidence that Applicant reentered the scene and actually tied the victim up before he was shot.

Trial Counsel testified the solicitor stated that in order for a plea offer to be extended, Applicant would have to testify against his codefendants. Trial Counsel testified he reviewed this with Applicant, who then declined the offer to testify as a witness for the State.

Appellate Counsel testified he has been practicing law for twenty-nine (29) years, twenty-five (25) of which representing indigent defendants in their criminal appeals. Appellate Counsel testified he has likely handled somewhere between 1,500-2,000 murder appeals over his career.

Appellate Counsel testified when deciding which issues to raise on appeal he first determines what issues are preserved, takes notes from witnesses, and tries to form a strategy giving his client the best chance to win on appeal. He testified he does not have a duty to raise all preserved issues. Appellate Counsel testified he raised the issue of severance because he thought it was the strongest issue citing circumstances that trying five codefendants together can raise issues with the jury losing track of which evidence pertains to which specific defendant. Appellate Counsel testified he considered raising the denial of the directed verdict motion on appeal, but decided against it because the solicitor stressed "the hand of one, hand of all" theory of liability and because Tyler's testimony directly implicated Applicant. He concluded this was not a directed verdict issue case.

#### 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.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Applicant's appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

#### **Failure to Advise of Right to Testify and Present Withdrawal Defense**

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This Court finds Applicant failed to meet his burden to prove Counsel was ineffective in advising him of his constitutional rights to testify. "An on-the-record waiver of a constitutional or statutory right is but one method of determining whether the defendant knowingly and intelligently waived that right." *Brown v. State*, 317 S.C. 270, 272, 453 S.E.2d 251, 252 (1994). "The same principles apply to the lack of a knowing and intelligent waiver of the defendant's right to testify at trial." *Id.* "The Fifth Amendment provides that [n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. On the other hand, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions. Rule 609, SCRE. If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations. *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (internal quotations omitted). This Court finds Counsel adequately advised Applicant on his fundamental constitutional rights at issue. It is apparent from trial Counsel's testimony that Applicant was well aware of his constitutional rights to testify. The record fully supports this conclusion as the trial judge entered a thorough colloquy on the matter where Applicant knowingly, intelligently, and voluntarily made the ultimate decision not to testify.

This Court finds Applicant's contention that he was allegedly prejudiced by trial Counsel's advice because had he testified, he would have been able to tell the jury how he withdrew from the crimes. This Court finds trial Counsel not only properly advised Applicant of his Constitutional rights to testify, but rather he urged him to testify in his defense. Counsel's

testimony shows that he met with Applicant after beginning the trial and advised him to testify and that by doing so there was a possibility he could be acquitted on one or more of the charges. This Court finds this allegation is denied and dismissed.

This Court finds Applicant's allegation that trial Counsel was ineffective in failing to present the defense theory of withdrawal to be without merit. The record fully supports trial Counsel's testimony that he argued Applicant withdrew from the crimes as it is clear that was trial counsel's strategy in presenting the case to the jury. 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). This allegation is denied and dismissed.

#### **Failure to Investigate**

Applicant's allegations that Counsel was ineffective for failing to hire an investigator and a forensic expert are also without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998).

Applicant specifically argues Counsel was ineffective for failing to hire an investigator and a forensic expert. This Court finds this allegation is without merit. This Court finds Counsel's testimony both credible and very persuasive on this issue. This Court finds Applicant

failed to meet his burden of proving trial Counsel was ineffective in failing to properly investigate the case, as there was no need for either an investigator or a forensic expert. There was ample evidence in the record to show that Applicant was present at the scene, including the three statements he gave to investigators. Applicant never denied being at the scene, but rather, that he withdrew when he learned of the plan to rob the victim. No forensic testing would have supported Applicant's version of events as he was not alleged to have fired a gun. This Court finds Applicant has not presented any evidence that could have been discovered by an investigator or a forensic expert. Applicant did not present any testimony at the hearing regarding what a forensic expert would have concluded and how that would have supported his case. 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). This Court will not speculate on this issue and finds Applicant has failed to carry his burden of proving Counsel was ineffective for failing to investigate his case.

**Failure to Effectively Cross-Examine State Witness Tyler**

This Court finds Applicant has not demonstrated trial Counsel was ineffective for failing to more thoroughly cross-examine the State's witness Patrick Tyler. Applicant's primary contention is that trial Counsel should have elicited testimony from Tyler that he was promised a favorable plea deal and recommendation from the State if he testified against Applicant and codefendants. The record indicates trial Counsel thoroughly cross-examined Tyler on whether he had been promised anything in exchange for his testimony. It is noteworthy that Tyler still had pending murder and armed robbery charges when he testified at trial which he admitted at trial on cross-examination. He also did not have a formal agreement with the State to reduce those charges. In light of trial Counsel's thorough cross-examination of the witness on this exact point,

the Court finds Applicant has not shown either a deficiency or prejudice from trial counsel's performance. *See Skeen v. State*, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (court will not "speculate whether a 'better' cross examination would have helped" a defendant's case).

**Failure to Effectuate a Favorable Plea Deal**

This Court finds Applicant has failed to meet his burden in proving trial Counsel was ineffective in not effectuating a favorable plea deal. A defendant has no constitutional right to a plea bargain. *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). The State has the discretion to offer a defendant the opportunity to enter a plea as opposed to calling a case for trial. *State v. Blakely*, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (Ct. App. 2013) (quoting *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012)). Trial counsel has no general duty to initiate plea negotiations. *Van Wart v. United States*, CRIM. RWT-07-0492, 2013 WL 3788535, at \*3 (D. Md. July 18, 2013) (quoting *United States v. Pender*, 514 Fed. Appx. 359 (4th Cir. 2013) (unpublished)). When negotiating a plea on behalf of a defendant, counsel is merely required to "fully communicate with the client so that the client can make an informed decision regarding any proposals by the State." *Davie v. State*, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). This Court finds the State never made a plea offer to Applicant. There were no offers made by the solicitor prior to trial. During trial, trial Counsel and Applicant were advised that no plea offer would be extended unless Applicant agreed to testify against the codefendants. Applicant declined to testify as a witness for the State, so no plea offer was extended.

Accordingly, as to issues related to trial Counsel, this Court finds the Applicant failed to prove the first prong of the *Strickland* test – that trial Counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant failed to prove the second prong of *Strickland* – that he was prejudiced by trial Counsel's

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performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

### Ineffective Assistance of Appellate Counsel

Finally, this Court finds Applicant's allegation that appellate Counsel was ineffective is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones*, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Griffin v. Aiken*, 775 F.2d 1226, 1235 (4th Cir. 1985).

An applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. *Thrift*, 302 S.C. at 537, 397 S.E.2d at 526; *Strickland*, 466 U.S. at 687. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Furthermore, the applicant must prove prejudice by showing "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) (citations omitted).

This Court finds Applicant failed to meet his burden of showing appellate Counsel was deficient in failing to challenge the trial judge's denial of Applicant's directed verdict motion.

This Court finds appellate Counsel's testimony on this allegation persuasive. Appellate Counsel briefed what he considered to be the strongest issue on appeal, the severance issue. Appellate Counsel considered raising the directed verdict issue but decided against it as there was testimony directly implicating Applicant. Appellate Counsel made a valid strategic decision not to brief this issue. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (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.).

This Court finds Applicant also cannot show there is a reasonable probability that he would have prevailed on appeal and, therefore, cannot show prejudice. There is ample evidence to support the trial judge's ruling denying the directed verdict motion. "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *Id.* When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. *State v. Cherry*, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *Id.* There was sufficient evidence presented at trial to show Applicant was involved in these offenses. Patrick Tyler's testimony directly implicated Applicant as a full participant in the crimes and that he even tied up the victim before he was murdered. Applicant has failed to carry his burden in proving appellate Counsel was deficient.

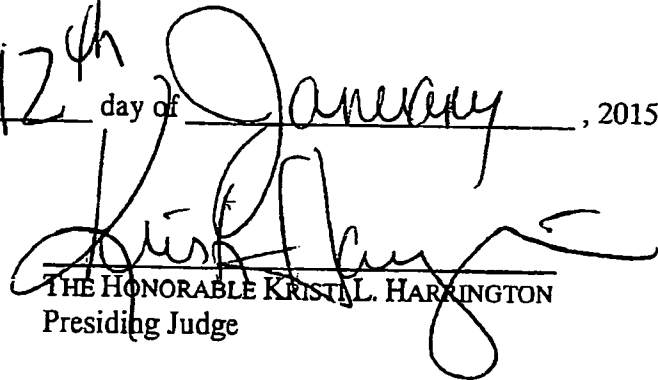
#### CONCLUSION

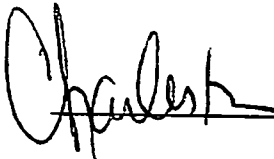
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625; *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

**IT IS THEREFORE ORDERED THAT:**

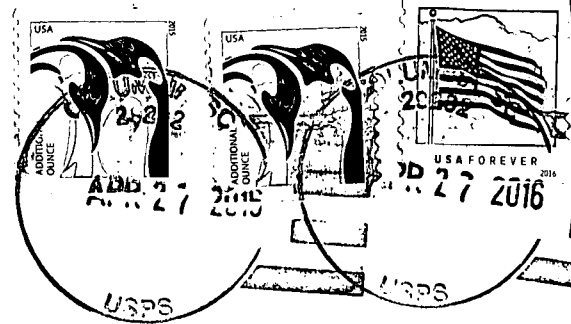
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12<sup>th</sup> day of January, 2015.

  
THE HONORABLE KRISTAL L. HARRINGTON  
Presiding Judge

 South Carolina

THE BROOKS LAW OFFICES, LLC  
309 BROAD STREET  
P.O. BOX 3512  
SUMTER, S.C. 29151



South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211