

LAW OFFICE OF  
**Kristy Grafton Goldberg, LLC**  
ATTORNEY AT LAW

---

September 1, 2017

RECEIVED

SEP 05 2017

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

S.C. SUPREME COURT

RE: Dominique Cash, SCDC # 354926, vs. State of South Carolina  
Appeal of Case No. 2013-CP-21-2304

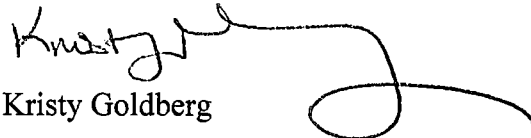
Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal. I was retained to represent Mr. Cash on his PCR at the trial level but not on the appeal of any such result. I believe Mr. Cash may be interested in applying for appointed counsel so I would ask that the Office of Appellate Defense mail Mr. Cash and/or myself an application for appointment of counsel so that he may apply for representation.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,

  
Kristy Goldberg

CC: Lindsey Ann McCallister  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Dominique Cash, SCDC # 354926  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

The Honorable Connie Reel-Shearin  
Florence County Clerk of Court  
180 North Irby Street, MSC-XX  
Florence, SC 29501

Office of Appellate Defense  
Chief Appellate Defender – Robert Dudek  
PO Box 11433  
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

SEP 05 2017

S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2013-CP-21-2304

Dominique Cash, SCDC # 354926, ..... Appellant

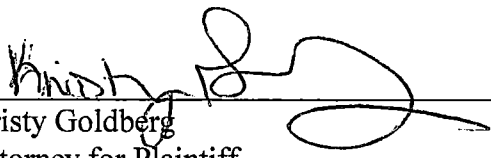
v.

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

NOTICE OF APPEAL

Applicant Dominique Cash hereby appeals from the Order of the Honorable Paul M. Burch presiding Judge for the 12<sup>th</sup> Judicial Circuit, filed August 25, 2017 and received by counsel for the Applicant on August 28<sup>th</sup>, 2016 in the matter of Dominique Cash v. State of South Carolina, Case No. 2013-CP-21-2304.

September 1, 2017

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
kristy@kristygoldberglaw.com

Other Counsel of Record:  
Assistant Attorney General, Lindsey Ann McCallister  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

SEP 05 2017

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

Case No. 2013-CP-21-2304

Dominique Cash, SCDC # 354926, ..... Appellant

v.

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

PROOF OF SERVICE

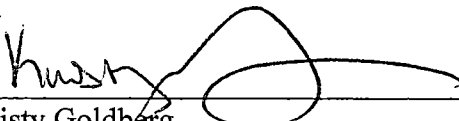
Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes  
and states:

She is the counsel of record for Applicant;

Service by mail is proper in this instance; and

She has served the NOTICE OF APPEAL on the following party on August 25, 2016 by  
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Lindsey Ann McCallister  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.

1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
[kristy@kristygoldberglaw.com](mailto:kristy@kristygoldberglaw.com)

Other Counsel of Record:  
Assistant Attorney General, Lindsey Ann McCallister  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

FILED FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP2102304

2017 AUG 25 AM 9:03

Dominique Cash  
South Carolina State Of  
DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

PLAINTIFF(S)  
DEFENDANT(S)  
Submitted by:  
Attorney for:  Plaintiff  Defendant  
 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- 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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

8/25/2017  
Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY  
*Doris Poulos O'Hara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

This judgment was entered on August 24, 2017, and a copy mailed first class or placed in the appropriate attorney's box on August 25, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Kristy Grafton Goldberg 1720 Main Street, Suite 303  
Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC  
29211-1549

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ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*Doris P. O'Hara*

---

Court Reporter

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Doris Poulos O'Hara - Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**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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STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 )  
 Dominique Cash, #354926, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-21-2304

**ORDER OF DISMISSAL**

2017 AUG 24 PM 1:04  
 DORIS POULOS HANNA  
 CCCP & S.S.  
 FLORENCE COUNTY, S.C.  
**FILED**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 30, 2013 and subsequent amendments filed July 12, 2016 and March 9, 2017. Respondent made its Return on April 22, 2014. An evidentiary hearing into the matter was convened on March 17, 2017, at the Florence County Courthouse. Kristy Goldberg, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Terrell Williams, Applicant's father, also testified on his behalf. Investigator Alvin Worsley and Jay Jordan, Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, the trial transcript, and Applicant's appellate records.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2013, the Florence County Grand Jury indicted Applicant for assault on law enforcement officer (2013-GS-21-207). Jay Jordan, Esquire, represented Applicant. On April 9, 2013, Applicant proceeded to trial

CERTIFIED: A TRUE COPY  
*Doris Poulos Hanna*  
 CLERK OF COURT OF S.C.  
 FLORENCE COUNTY, S.C.

before the Honorable D. Craig Brown and a jury. On April 10, 2013, the jury found Applicant guilty as indicted. Judge Brown sentenced Applicant to ten years' imprisonment.

Applicant filed a notice of appeal, but the South Carolina Court of Appeals dismissed the appeal as untimely on June 6, 2013. The remittitur was returned to the circuit court on June 27, 2013.

### ALLEGATIONS

In his current application and the subsequent amendments thereto, Applicant alleges that he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that:
  - a. Counsel failed to investigate and obtain video from the scene which would have refuted the State's allegations;
  - b. Counsel failed to timely file a notice of appeal after being asked to do so;
  - c. Counsel failed to investigate and call necessary witnesses at trial;
  - d. Counsel failed to sufficiently question and cross examine police officers at trial;
  - e. Counsel failed to sufficiently explain Applicant's charges and indictment prior to advising him whether to proceed to trial or accept a plea offer;
  - f. Counsel failed to effectively argue a legal and factual basis for the defense's directed verdict motion;
  - g. Counsel failed to effectively present mitigation evidence during sentencing;
  - h. Counsel failed to file a motion to reconsider the sentence.
2. Brady violation by the State for failing to disclose all material evidence relating to codefendants' statements and ineffective assistance of counsel for not seeking to obtain those statements.

### 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant

findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

### **Ineffective Assistance of Counsel**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). 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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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.

Counsel testified he had six years of experience as an attorney at the time he represented Applicant, having done extensive criminal work in both federal and state courts. Counsel

testified he was a part-time public defender in Florence for three or four years, and he was appointed to represent Applicant through the Public Defender's Office. Counsel testified this incident occurred at a motel when law enforcement was called to respond to the lobby by employees there. Counsel stated two of Applicant's female codefendants were upset at not being allowed back into a room, and Applicant initially tried to calm the situation, but ultimately a fight ensued between Applicant, his male codefendant, and law enforcement. Counsel testified the fight was partially captured on dash cam video from responding officers.

Applicant testified he is from North Carolina and only came to Florence for one night with his cousin and some friends. Applicant testified he was arrested on October 20, 2012, and tried on April 10-11, 2013, and he remained in the Florence County Detention Center in the interim. Applicant testified he was notified he had been appointed an attorney in December 2012, and the first time Counsel met with him was in January or February 2013. Applicant also testified he met with Investigator McKenzie, from the Public Defenders' Office, prior to his first meeting with Counsel and told McKenzie his version of events. Applicant testified Counsel sent discovery to Applicant prior to their first meeting as well. Applicant testified he saw Counsel twice before trial, both times at the courthouse when Applicant was transported for court appearances. Applicant also testified Counsel reviewed discovery and the State's evidence with him, including the dash cam video.

Counsel testified he had a protocol for communicating with clients who were in detention, which was followed in Applicant's case. Counsel testified it was not unusual for the first contact to be made by Investigator McKenzie at the detention center or the courthouse, and sometimes Counsel might not have received discovery at the time of that first meeting, though he did make a request pursuant to Rule 5 and eventually received videos, incident reports, and prior

criminal histories. Counsel testified he met with Applicant multiple times prior to trial to review the dash cam video, discuss the elements of the offense, and Applicant's version of events. Counsel testified he also obtained video from the hotel lobby at Applicant's request, but it does not show the fight, which occurred outside. Counsel testified he would have gone over the elements of the charge in detail with Applicant though he could not recall the specific date or time the conversation took place.

Applicant testified Counsel advised him to plead guilty, but Counsel did not explain his reasoning for that advice, though Counsel did go over a pro and con list for proceeding to trial rather than accepting a plea agreement. Applicant testified the only offer was to plead "straight up" to a range of 0 to ten years' imprisonment. Applicant acknowledged the case "looked bad," but he testified he wanted a trial because he wanted to prove he did not strike the officer and was merely trying to fight him off after the officer initiated contact. Applicant further testified because the warrant stated he kicked the officer, he thought the State would have to prove physical contact occurred, and Applicant did not know that assault was legally different than battery. Applicant testified he did not know actual touching or physical contact was not required to prove the charge, and he would have agreed to plead guilty if he had known. Applicant testified his co-defendants all pleaded guilty, and one received two years, nonviolent, and the others both received time served.

Counsel testified Applicant always maintained he wanted a trial because Applicant felt he was merely defending himself and trying to calm the scene, and the only plea offer they ever received was to plead "straight up." Counsel testified he went over the elements of the charge with Applicant and what the State would need to prove. Counsel testified Applicant's statements to him about what happened were consistent with what Applicant testified to at trial, and Counsel

felt Applicant did well on the stand. Counsel further testified his trial strategy was to try to poke holes in the case and maintain Applicant's position that he was defending himself. Counsel testified the jury deliberated for several hours and requested to see the dash cam video again.

Applicant testified he did not know his trial was taking place the day it was called. Counsel testified he was aware Applicant's case was being called for trial and met with Applicant and the solicitor in the days immediately leading up to the trial. Counsel testified the trial would not be scheduled for a specific day, just a term of court. Counsel further testified he informed Applicant his case was on the list and could be called at any time. Applicant also testified he did not believe Counsel was prepared because he had not obtained the statements of two of his co-defendants, Natasha Wright and Briana Harrison; Counsel referred to "assault and battery" on the record; and Counsel attempted to impeach one of the police officers with the police report, but he was wrong about what the report said. Applicant testified in Counsel's argument for a direct verdict, Counsel referred to the charge as "assault and battery on a police officer," rather than merely "assault on an officer," though Applicant acknowledged the State had presented evidence for assault. Applicant testified he asked Counsel to call all three of his co-defendants, but Counsel only called Adrian Boney.

Counsel testified Applicant requested his codefendants be present to testify, and Counsel was able to have the male codefendant there. However, Counsel stated the female codefendants had returned to North Carolina a few weeks prior to trial, and although Investigator McKenzie was able to locate them and interview them, they were unwilling to return to South Carolina. Counsel further testified he did not have any legal options to force them to testify, and as a matter of strategy, he does not force defense witnesses to be present because it often results in unfavorable testimony. Counsel admitted he was in error as to the wording of the report when he

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attempted to impeach one of the officers. However, Counsel testified he conducted a thorough cross examination and attempted to dissect the officers' statements to expose holes in the State's case. Finally, Counsel testified that although he could not recall the specific wording of the statute in this case, he was aware of the legal definition of "assault," and he would have pulled the relevant statute sections to prepare for trial. Counsel testified that although he did not argue in his direct verdict motion that the officer was not attempting to serve process or make an arrest, there was testimony the officer gave commands to cease during the struggle which were not followed. Counsel further testified he makes direct verdict motions as a matter of course, and it is an extremely high bar to reach if any fact is in dispute because the court only needs "any evidence" to support the State's case to deny the motion.

Applicant further testified he took the stand in his own defense at trial, but he wanted to speak during sentencing as well. Applicant testified he did not realize he would be sentenced immediately, and none of his friends or family were present, despite having asked Counsel to contact them. Applicant acknowledged Counsel did make mitigation arguments on his behalf, but Applicant testified he would have wanted Counsel to tell the court more about him as a person, including that he was in school and working two jobs. Terrell Williams, Applicant's father, also testified on Applicant's behalf. Mr. Williams testified he was not aware Applicant was in jail in Florence County, and he did not find out until after Applicant's trial and sentencing. Mr. Williams testified Counsel never contacted him, but he would have tried to be present to speak on Applicant's behalf to tell the court Applicant was in school, had a job, and was not a bad person. Applicant acknowledged during cross examination that the trial court did in fact offer him a chance to speak, but he did not tell the court any of these things or take responsibility for his actions. Counsel testified he was focused on preparing for trial, not

mitigation. Counsel further testified he did not recall ever being asked to contact Applicant's family, and his usual practice is to have his clients contact the people they want to be present.

Applicant testified he was not sure whether he spoke with Counsel after sentencing. Applicant further testified Counsel did not discuss an appeal with him, and he was not aware he had that right until he arrived at Kirkland. Applicant testified he attempted to file a notice of appeal as soon as he became aware he could, and he mailed letters to the Florence County clerk and Counsel on the same day, April 16. Applicant further testified he never asked anyone at the jail if he could call Counsel by phone and did not know if he had Counsel's phone number. Applicant testified Counsel did not file an appeal on his behalf until May 8, and it was dismissed as untimely. Counsel testified he specifically recalled discussing an appeal with Applicant before the verdict while the jury was deliberating, and Counsel explained to Applicant what would happen in both scenarios, guilty or not guilty. Counsel further testified he most likely did not speak with Applicant after sentencing as Applicant was moved to the holding cell very quickly. Counsel testified he received Applicant's letter requesting an appeal on April 25, 2013, and then received a second copy from the county clerk on May 2, 2013. Counsel testified he sent the notice of appeal and a letter explaining the situation to the clerk at the Court of Appeals on May 8, 2013. Counsel stated he did not know why there was a delay except that there was some confusion as to what was happening. Counsel further testified the time for filing an appeal had already lapsed when he first received Applicant's letter on April 25. Applicant also testified Counsel never discussed the possibility of a motion to reconsider the sentence, and he was not aware that was an option. Counsel testified his practice regarding motions to reconsider at sentence is to use them only when something unusual happens at sentencing. Counsel testified the sentence Applicant received was within the sentencing range set forth by statute and in line

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with the typical sentence imposed for the charge, so he did not feel he had any grounds to support such a motion.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, Counsel conveyed all plea offers to Applicant, who rejected them in favor of maintaining his innocence. The Court finds Counsel's performance at trial was within the within the range of competence required in criminal cases, and Counsel rendered effective assistance. The Court finds Applicant has failed to meet his burden of proof on his claims Counsel was ineffective in his cross-examination of the police officer or in his argument for a directed verdict. Additionally, this Court finds Applicant has failed to show Counsel was ineffective in his presentation of mitigation arguments at sentencing. Counsel corrected the State's recitation of Applicant's criminal record and asked the judge for leniency. Furthermore, Applicant had a chance to speak to the trial court and did not apologize or take responsibility for his actions, but in fact, continued to deny culpability. Finally, the Court finds Counsel fully explained Applicant's right to an appeal, but Applicant failed to make a timely request, and Counsel took appropriate action to file a notice once he realized Applicant wanted him to do so. This Court finds credible Counsel's testimony as to why he felt he had no grounds to support a

*Paul*

motion for reconsideration, and this Court finds Counsel was not deficient for failing to file said motion.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

#### Brady<sup>1</sup> violation

Applicant also alleges the State committed a Brady violation by failing to turn over statements made by two of Applicant’s codefendants and that Counsel was ineffective for failing to request copies of the statements from law enforcement. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). “Determining whether evidence withheld by the state is ‘material’ under Brady turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280–81 (2006). Further, in order to support a claim that trial

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<sup>1</sup> 373 U.S. 83 (1963).

counsel was ineffective for failing to interview or call potential . . . witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Investigator Alvin Worsley of the Florence County Sheriff's Office testified he was on call the day of the incident and responded to the scene. Investigator Worsley testified Applicant and his codefendants had already been taken into custody when he arrived, but he interviewed the injured deputy at the hospital, and then spoke with Natasha Wright and Briana Harrison at his office. Investigator Worsley testified he was the only officer present for the interviews, and both Ms. Wright and Ms. Harrison were given Miranda<sup>2</sup> warnings before he spoke with them. Investigator Worsley testified there were no written statements made by either the girls or law enforcement, but he believed the statements were recorded. However, Investigator Worsley testified their video software system does not have records for that long ago, and he could not say whether the video had ever been turned over to the Solicitors' Office. Applicant's PCR counsel stipulated that no videos or written statements were contained in the solicitor's file, and it appears the State never received any statements of the two female codefendants from law enforcement. Investigator Worsley testified he did not recall the substance of either statement or whether it related to Applicant's guilty or innocence, except that it was their version of what happened. Investigator Worsley further testified one of the codefendants told him she was across the street at Hardee's when the incident happened, but video later showed her statement was not true. Applicant's codefendants were not present to testify regarding whether they gave a statement to law enforcement or the substance of such statement.

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<sup>2</sup> 384 U.S. 436 (1966).

Applicant testified Counsel told him the others were out of the jurisdiction of the court since they had returned to North Carolina. Applicant further testified he was not aware the police had ever taken statements from either Natasha Wright or Briana Harrison until after his trial, though Applicant testified he did have documents in his possession before trial indicating statements may have been taken from Ms. Wright and Ms. Harrison at some point after their arrest; Applicant did not read through all of the documentation he was given until after the trial. Counsel testified he did not attempt to obtain copies of the female codefendants' statements because he wanted to interview them in person instead. Counsel asked them to return to South Carolina for trial, but they declined.

Therefore, this Court finds Applicant has failed to present sufficient evidence that any statements given by the codefendants were material or related to his guilt or punishment and would have changed the result at trial, especially in light of the testimony that one statement was proven false by other evidence. Additionally, this Court finds the additional codefendants' statements are cumulative at best as the incident was captured on video, and the defense called Applicant and one codefendant to testify at trial. This Court finds Counsel was not deficient for not requesting the statements from law enforcement since Counsel's investigator was able to locate and speak with the codefendants.

### CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court also finds, as to Applicant's Brady allegation, Applicant failed to present evidence the

*AMS*

State committed such a violation, as Applicant has not shown any statements made by his codefendants were favorable to him or material to his guilt or punishment. The Court further finds Counsel was not deficient for failing to request such statements, as Counsel's investigator was able to locate and speak with the codefendants directly.

The Court notes Applicant must file and serve a notice of appeal within thirty days from 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, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 14<sup>th</sup> day of August, 2017.

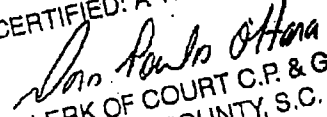


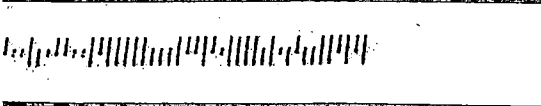
THE HONORABLE PAUL M. BURCH  
Presiding Judge  
Twelfth Judicial Circuit

, South Carolina.

2017 AUG 24 PM 1:04  
DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

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