



WALLER LAW GROUP

RECEIVED

OCT 12 2017

S.C. SUPREME COURT

October 10, 2017

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

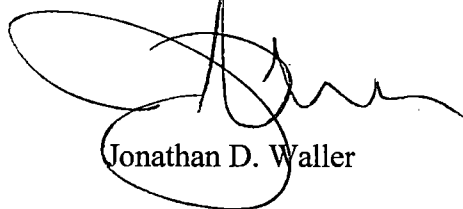
Re: Jermaine Mayweathers vs. State of South Carolina  
C/A No: 2014-CP-21-3583

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Mayweathers in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

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RECEIVED  
OCT 12 2017  
S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY  
Thomas A. Russo, Circuit Court Judge

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2014-CP-21-3583

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Jermaine Mayweathers, #340585,

Appellant,

v.

STATE OF SOUTH CAROLINA,

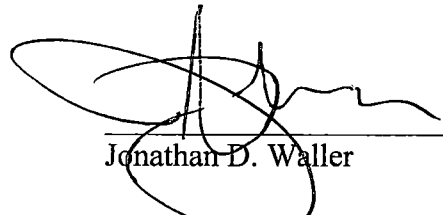
Respondent.

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NOTICE OF APPEAL

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Jermaine Mayweathers, #340585, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed September 27, 2017, issued by the Honorable Thomas A. Russo, Presiding Judge, Twelfth Judicial Circuit, as well as his conviction for Indictment No. 2009-GS-21-1048, as ordered by Judge Russo in the same Order.



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Jonathan D. Waller

Waller Law Group  
SC Bar No.: 76290  
1116 Blanding Street  
Suite 2B  
Columbia, SC 29201  
803-520-7278 (phone)  
jonathan@wallergroupsc.com  
ATTORNEY FOR PETITIONER

This 10 day of ~~September~~<sup>OCTOBER</sup>, 2017.

Other Counsel of Record:  
Lindsey A. McCallister, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY  
Thomas A. Russo, Circuit Court Judge

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2014-CP-21-3583

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RECEIVED

OCT 12 2017

S.C. SUPREME COURT

Jermaine Mayweathers, #340585,

Appellant,

v.

STATE OF SOUTH CAROLINA,

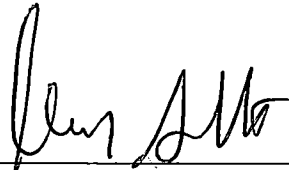
Respondent.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 10<sup>th</sup> day of October 2017, to her office located at P.O. Box 11549, Columbia, SC 29211.



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M. David Scott

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
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 )  
 Jermaine Mayweathers, #340585 )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOR THE TWELFTH JUDICIAL CIRCUIT

C.A. No. 2014-CP-21-3583

2017 SEP 27 AM 11:32  
 DORIS POULOS O'HARA  
 CCCP & G.S.  
 FLORENCE COUNTY, S.C.

FILED

**CONSENT ORDER GRANTING RIGHT  
 TO SEEK BELATED APPELLATE REVIEW  
 PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 10, 2014. Respondent made its Return on July 17, 2015. An evidentiary hearing on the matter was convened on August 28, 2017, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

The Court had before it the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, Applicant's current application, Respondent's return, and the records from Applicant's previous PCR action. The State also submitted correspondence from Applicant regarding an appeal from his former PCR counsel's file as State's Exhibit 1 for the Court's consideration.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the July 2009 term of the Florence County Grand Jury for homicide by child abuse (2009-GS-21-

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

1048). He was represented by Carrington Salley Baker Wingard, Esquire. On September 21-23, Applicant proceeded to trial before the Honorable Ralph King Anderson and a jury, wherein Applicant was convicted as indicted. On September 23, 2009, Applicant was sentenced by Judge Anderson to a term of imprisonment of thirty years.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Wanda H. Carter, Esquire, of the South Carolina Office of the Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 9, 2011. State v. Mayweathers, Op. No. 2011-UP-549 (S.C. Ct. App. filed December 9, 2011). The Remittitur was returned to the circuit court on January 5, 2012.

**First PCR Application: 2012-CP-21-2999**

Applicant filed his first PCR application on November 9, 2012, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel:
  - a. Applicant did not feel he "[met] with his attorney on enough occasions to properly prepare for trial[;] that his trial counsel either represented him properly or effectively at the Waiver Hearing or at the trial itself[;]" and Applicant felt that "[w]itnesses were not interviewed[;] [and that] [f]amily members were not called to testify on his behalf."

An evidentiary hearing was held on February 27, 2013. Henry M. Anderson, Jr., Esquire, represented Applicant. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Honorable William H. Seals denied and dismissed the application with prejudice by written order filed December 10, 2013. Applicant did not appeal Judge Seals's order.

## ALLEGATIONS

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

1. Ineffective assistance of PCR Counsel; specifically
  - i. PCR Counsel was ineffective in failing to file an appeal following the denial of application.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges he was denied the right to seek an appeal following the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of allegations in Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant's first post-conviction relief application (2012-CP-21-2999) pursuant to Austin v. State. The parties agree Applicant did not voluntarily waive his right to seek an appeal of the post-conviction relief court's denial and dismissal of Applicant's first application for post-conviction relief. Based on the documents submitted from the previous PCR file, it appears to the parties and this Court Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief, and PCR counsel failed to file a timely Notice of Appeal of the application.

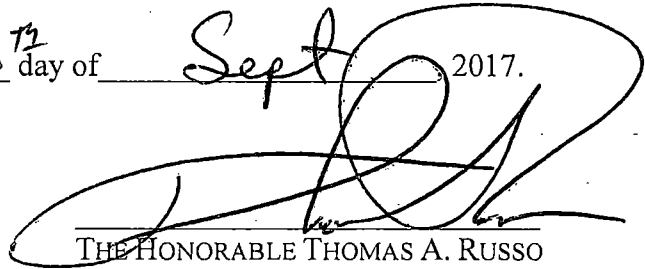
Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of his first PCR (2012-CP-21-2999) pursuant to Austin v. State is warranted. Counsel for the State and Applicant's current PCR counsel consented to the granting of leave to

pursue a PCR appeal in this matter. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of case 2012-CP-21-2999 pursuant to Austin v. State.

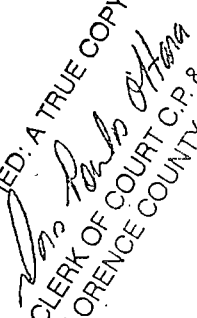
AND IT IS SO ORDERED this 26<sup>th</sup> day of Sept 2017.



THE HONORABLE THOMAS A. RUSSO  
Presiding Judge  
Twelfth Judicial Circuit.

Florence, South Carolina.

**FILED**  
2017 SEP 27 AM 11:32  
DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY  
  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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FORM 4

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

FILED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP2102999

Jermaine Mayweather

2013 DEC 11 AM 11:15 State

CONNIE REEL SHEARIN  
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: \_\_\_\_\_
- 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 12/11/2013

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY  
*Connie Reel Shearin*  
CLERK OF COURT-C.P. & G.S.  
FLORENCE COUNTY, S.C.

ATTORNEY GENERAL'S OFFICE

RECEIVED 12-12-13

ADMINISTRATIVE INSTRUCTIONS

FILE  OPEN  END

HAVE  COPIES MADE

ROUTE TO \_\_\_\_\_

ORDER: \_\_\_\_\_ TRANSCRIPT

PEN RECORDS  CLERK RECORDS

OTHER: LB - close 35 days

*Int  
12/13*

This judgment was entered on December 10, 2013, and a copy mailed first class or placed in the appropriate attorney's box on December 11, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Henry Morris Anderson Jr. 265 W. Evans St. Ste. A  
Florence, SC 29501

Joshua Lee Thomas PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Connie Reel-Shearin*

Court Reporter

Connie Reel-Shearin - 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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STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 )  
 Jermaine Mayweather, #340585, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2012-CP-21-2999

**ORDER OF DISMISSAL**

2013 DEC 10 PM 12:21  
 CONNIE REEL-SHEPHERD  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.  
 FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 9, 2012. Respondent made its Return on or about February 27, 2013. The Court convened an evidentiary hearing into the matter on October 7, 2013, in Marion County. Applicant was present at the hearing and represented by Henry M. Anderson, Jr., Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's grandmother, Ms. Jerrido, also testified on his behalf. Applicant's trial counsel, Carrington S.B. Wingard, Esquire, also testified. The Court had before it the waiver hearing transcript, the trial transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

**I. 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 July 2008, the State filed a petition in the Florence County Family Court charging Applicant with homicide by child abuse

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 Connie Reel-Shepherd  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

(2008-JU-21-108). Carrington Wingard, Esquire, (“trial counsel”) represented Applicant on the family court charge. The Honorable Jerry D. Vinson convened a hearing on the petition on March 18-19, 2009. At the conclusion of the hearing, Judge Vinson waived Applicant’s charges up to circuit court. Subsequently, in July 2009, the Florence County Grand Jury indicted Applicant for homicide by child abuse (2009-GS-21-1048). Ms. Wingard also represented Applicant in circuit court.

On September 21-23, 2009, Applicant was tried before the Honorable Ralph King Anderson, Jr., and a jury. The jury found Applicant guilty as indicted. Judge Anderson sentenced Applicant to thirty (30) years imprisonment.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant’s conviction on December 9, 2011. State v. Mayweathers, Op. No. 2011-UP-549 (S.C. Ct. App. filed December 9, 2011). The remittitur was returned to the circuit court on January 5, 2012.

## **II. ALLEGATIONS**

In his application, Applicant alleged he is being held in custody unlawfully because of ineffective assistance of counsel. Specifically, Applicant alleged “he did not meet with his attorney on enough occasions to properly prepare for trial[;] that his trial counsel either represented him properly or effectively at the Waiver Hearing or at the trial itself[;] [w]itnesses were not interviewed[;] [and that] [f]amily members were not called to testify on his behalf.”

At the PCR hearing, Applicant explained that his allegations regarding counsel’s effective representation at trial centered around her failure to exclude some of the State’s

evidence and her failure to ask the jury to find him not guilty. He also proceeded on the allegation that trial counsel never called members of his family to the stand to testify on his behalf.

### **III. SUMMARY OF TESTIMONY**

Applicant testified he was fifteen years old when arrested. He recalled meeting with trial counsel "a couple" of times before the waiver hearing. Applicant testified to discussing his theory of the case with trial counsel at these meetings. He further testified he spoke with a female doctor, Dr. Baker, and the evaluator from the Department of Juvenile Justice ("DJJ") prior to the waiver hearing. He understood the waiver hearing was a trial run for any eventual trial on the charges. Applicant testified trial counsel did help him get out on bond while he awaited trial in circuit court. However, he testified he does not remember meeting with her in the sixth months between the waiver hearing and trial. He did speak with her the Friday before trial was set to begin. He testified that at that meeting they discussed calling Dr. Baker as an expert. He further testified they reviewed the state's autopsy photos, but that they did not discuss attempting to keep them out of evidence. He also testified trial counsel discussed with him his right to testify, but that she advised against it so that she could make the last argument.

Applicant testified trial counsel negotiated a twenty (20) year plea offer with the State, but he declined it. He further testified that trial counsel called no witnesses on his behalf and never asked the jury in opening or closing arguments to find him not guilty. He also alleges she never tried to exclude a belt the State entered into evidence. Applicant also believes trial counsel should have had the belt examined for prints or at least have argued to the jury that there was no

evidence his prints were on the belt. He believes his aunt, who testified at the waiver hearing, would have been a good witness to present to the jury.

Applicant's grandmother testified she spoke to trial counsel on at least one occasion. She testified that she raised to trial counsel the issue of calling the doctor to testify, but the doctor did not testify. The grandmother also testified she was concerned the 911 tape was never played for the jury. The grandmother also testified she believed the jury would have benefitted from hearing testimony about Applicant's upbringing.

Trial counsel testified she was appointed on this case and filed Rule 5/Brady motions. She testified she reviewed the State's discovery responses with Applicant. Trial counsel testified the State's theory was that Applicant was the only person in the house capable of inflicting the fatal injuries on victim. She testified the case was somewhat circumstantial, but the medical evidence was overwhelmingly against Applicant. Trial counsel met with Applicant several times before the waiver hearing in family court. Prior to the waiver hearing, trial counsel spoke with Applicant's family members, the Department of Juvenile Justice evaluator, and Dr. Baker, a doctor in Columbia. She testified she sent the victim's records to Dr. Baker for review, but Dr. Baker indicated the evidence was overwhelming and he could not testify contrary to the official report. Trial counsel also testified Applicant's family had difficulty getting him to meet with Dr. Ray while he was out on bond. Applicant and Dr. Ray finally met in early September 2009. Trial counsel testified Dr. Ray wanted to be helpful to Applicant's case, but Dr. Ray could ultimately provide no helpful testimony.

Trial counsel testified she explained to Applicant the waiver hearing would be a trial run for an eventual trial. She testified that after hearing the testimony at the waiver hearing, the

defense strategy was to attempt to create reasonable doubt in the State's evidence. Primarily, she argued the brain injuries were related to prior bumps on the head. However, she admitted this strategy was difficult because the medical evidence overwhelmingly demonstrated the severity of the damage would have rendered the child incapacitated well before applicant dialed 911.

Trial counsel testified she unsuccessfully attempted to exclude Applicant's statement at the waiver hearing and at trial. She also challenged the introduction of the EMT as an expert. Trial counsel testified she was able to keep out most of the autopsy photos, but that the trial judge admitted others over her objection. She testified she did not recall objecting to the introduction of a belt, but that the belt was not ultimately related to the injuries to victim's brain.

Trial counsel testified she entered into plea negotiations with the State. She testified she believed the State was willing to offer a plea to voluntary manslaughter. However, Applicant indicated he did not want to take a plea. Trial counsel further testified Applicant's family informed her to stop pursuing plea negotiations because they believed Applicant to be innocent. She further testified she discussed with Applicant the right to present a defense. However, Applicant was aware he had some negative reports from his Virginia juvenile probation officer. He understood that if he presented one character witness, the State could introduce his prior record. In light of this, Applicant chose not to present a defense.

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

This Court has reviewed 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

conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

**A. Ineffective Assistance of Trial 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) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The 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).

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 that 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.

The Court finds Applicant's failed to meet his burden of proof regarding his allegation that trial counsel did not properly prepare for trial. Regarding this allegation, the Court finds Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. The Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. Specifically, the Court notes trial counsel testified she thought this was an important case and she devoted a substantial amount of time to it. She met with Applicant and thoroughly discussed with him the evidence and trial strategy. She also engaged in plea negotiations until directed by Applicant and his family to prepare for trial. Further, trial counsels' investigation involved contacting two doctors to attempt to discredit the State's theory of the case. Therefore, Applicant's allegations trial counsel did not meet with him and prepare for trial are without merit.

The Court also finds Applicant has not met his burden of showing trial counsel's performance at trial was deficient. Specifically, the Court notes that trial counsel raised objections to the introduction of Applicant's statement, the autopsy photographs, and the expert testimony of the EMT. Trial counsel also thoroughly cross-examined each witness and attempted to discredit the medical testimony as best she could. The record reflects and this Court finds trial counsel subjected the State's case to a thorough and "meaningful adversarial testing." Nance v. Ozmint, 367 S.C. 547, 553, 626 S.E.2d 878, 881 (2006).

Further, the Court has reviewed trial counsel's opening statement and closing argument and finds no error in failing to ask the jury to find Applicant innocent. Trial counsel testified she

implored the jury to not make a second tragedy of Applicant's life. When viewed in light of the whole record, the jury clearly understood trial counsel was arguing for a verdict of not guilty.

Likewise, trial counsel was not deficient for failing to object to the introduction of the belt. Trial counsel testified the belt was seized as part of the State's investigation, and the record reflects it was properly authenticated at trial. Thus, trial counsel would have had no grounds to exclude the belt at trial. The record also indicates trial counsel brought out on cross-examination that Applicant's prints were not on the belt. She further testified the belt was not related to the brain injuries sustained by victim. Thus, the admission of the belt was not prejudicial to Applicant.

Finally, the Court finds no deficiency from failing to call witnesses on Applicant's behalf. Trial counsel testified she reviewed the risks of calling family members as character witnesses. She testified Applicant also understood the benefits of not presenting a defense and having last argument. Thus, the Court finds trial counsel articulated a valid reason for not presenting a defense. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). The Court further finds Applicant made a knowing and voluntary decision to not present a defense.

Regardless, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Applicant gave a statement to police that the victim was awake and functioning the morning before the 911 call. This statement was supported by the testimony of the victim's brother at trial. Medical experts testified the victim would have been incapacitated

once he sustained the injuries. Coupled with the testimony that Applicant was the only person in the house capable of inflicting such severe injuries, the jury was presented with a strong circumstantial case. Thus, the Court finds Applicant cannot show any errors by trial counsel that would have changed the result of his trial. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

**B. 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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

**V. CONCLUSION**

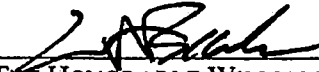
Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


The Court notes that Applicant must file and serve a notice of appeal within thirty (30) 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), SCRCR, 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 THAT:**

1. 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 27 day of Nov., 2013.

  
\_\_\_\_\_  
THE HONORABLE WILLIAM H. SEALS, JR.  
Presiding Judge  
Twelfth Judicial Circuit

  
\_\_\_\_\_, South Carolina

2013 DEC 10 PM 12:27  
CONNIE REEL-SHEARER  
CCLP & GS  
FLORENCE COUNTY, SC

FILED

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CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.



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U.S. POSTAGE  
PAID  
COLUMBIA, SC  
29201  
OCT 10, 17  
AMOUNT

**\$1.40**

R2304H108068-23

**W**

WALLER LAW GROUP  
1116 BLANDING STREET  
SUITE B  
COLUMBIA, SC 29201

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