

THE GIESE LAW FIRM, LLC  
1315 BLANDING STREET  
COLUMBIA, SC 29201

W. BARNEY GIESE

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KEITH GIESE  
-----

JONATHAN D. WALLER

JUSTIN M. KATA

-----  
KELLY L. GIESE  
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(803) 708 - 6767  
FAX (803) 708 - 6769  
WWW.GIESELAWSC.COM

July 21, 2015

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


Re: Robert L. Johnson vs. State of South Carolina  
C/A No: 2013-CP-21-01147

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. Johnson 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 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Croom Hunter, South Carolina Office of Attorney General

Enclosures

**RECEIVED**  
JUL 23 2015  
SC SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY  
D. Craig Brown, Circuit Court Judge

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2013-CP-21-01147

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Robert L. Johnson, #211854,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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NOTICE OF APPEAL

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**RECEIVED**  
JUL 23 2015  
SC SUPREME COURT

Robert L. Johnson, #211854, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 24, 2015, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Giese Law Firm  
SC Bar No.: 76290  
1315 Blanding Street  
Columbia, SC 29201  
803-708-6767 (phone)  
803-708-6769 (fax)  
jwaller@thegieselawfirm.com  
ATTORNEY FOR PETITIONER

This 21 day of July, 2015.

Other Counsel of Record:

J. Croom Hunter, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM FLORENCE COUNTY  
D. Craig Brown, Circuit Court Judge

2013-CP-21-01147

Robert L. Johnson, #211854,

Appellant,

v.

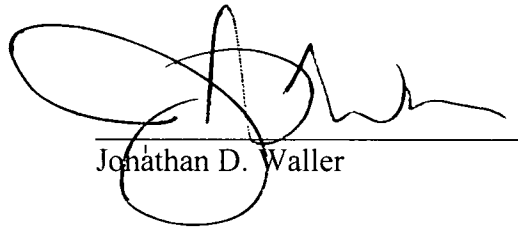
STATE OF SOUTH CAROLINA,

Respondent.

**RECEIVED**  
JUL 23 2015  
SC SUPREME COURT

CERTIFICATE OF SERVICE

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, J. Croom Hunter, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 21 day of July 2015.



Jonathan D. Waller

SWORN TO BEFORE me this 21 day  
of July, 2015.

Charlotte Shies  
Notary Public for South Carolina  
My Commission Expires: 1/24/2021

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP2101147

Robert L Johnson

South Carolina State Of

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;  Other: \_\_\_\_\_  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

FILED  
 JUN 25 AM 11:5  
 ANNIE REEL-SHEARIN  
 CLERK OF COURT  
 & G.S.  
 FLORENCE COUNTY, SC

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

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY  
 6/25/2015  
 Date *Annie Reel-Shearin*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

This judgment was entered on **June 24, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **June 25, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

**Jonathan D Waller**  
1315 Blanding Street  
Columbia, SC 29201

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**John Croom Colvin Hunter**  
PO Box 11549  
Columbia, SC 29211

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Connie Reel-Shearin*

---

**Court Reporter**

**Connie Reel-Shearin - Clerk of Court**

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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 )  
)   
Robert L. Johnson, #211854, )  
)   
Applicant, )  
)   
v. )  
)   
State of South Carolina, )  
)   
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-1147

**ORDER OF DISMISSAL**

FILED  
2015 JUN 24 PM 1:41  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 29, 2013. Respondent made a Return on or about May 14, 2014. The Court convened an evidentiary hearing into the matter on April 15, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, William V. Meetze, Esquire, also testified. The Court had before it a copy of the transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2010, the Florence County Grand Jury indicted Applicant for contributing to the delinquency of a minor, four (4) counts of second degree criminal sexual conduct with a minor, and three (3) counts of lewd act on a minor (2010-GS-21-664). William V. Meetze, Esquire, represented Applicant. On August 2, 2010, Applicant proceeded

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

to trial before the Honorable Michael G. Nettles and a jury. On August 4, 2010, the jury found Applicant guilty as indicted. Judge Nettles sentenced Applicant to a term of twenty (20) years imprisonment on one count of second degree criminal sexual conduct with a minor. On a second count of second degree criminal sexual conduct with a minor, Judge Nettles sentenced Applicant to a consecutive term of twenty (20) years. On the remaining counts of second degree criminal sexual conduct with a minor, Judge Nettles sentenced Applicant to concurrent terms of twenty (20) years. Judge Nettles sentenced Applicant to concurrent terms of fifteen (15) years for each count of lewd act on a minor and three (3) years for contributing to the delinquency of a minor.

Applicant filed a timely notice of appeal, and Breen R. Stevens, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions on October 31, 2012. State v. Johnson, Op. No. 2012-UP-590 (S.C. Ct. App. Filed October 31, 2012). The remittitur was returned to the circuit court on November 27, 2012.

## **II. ALLEGATIONS**

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

1. "Ineffective assistance of trial counsel"
  - a. Failure to properly object to trial court's failure to operate in common law jurisdiction.

However, at the PCR hearing, Applicant proceeded with the following allegations:

1. Failure to utilize alibi witnesses.
2. Ineffective assistance of counsel for failure to object to objectionable testimony.

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

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness

who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003). Furthermore, this Court finds that Applicant abandoned all allegations except for those specifically addressed below.

#### **A. Summary of Testimony**

Applicant testified he was arrested in 2009 for crimes alleged to have taken place between 2001 and 2009. Applicant testified Vick Meetze (Counsel) was appointed to represent him. Applicant expressed concerns with the fact that there was a gap of a number of years between his arrest and when the crimes allegedly took place. Applicant testified he only met with Counsel twice, and they only briefly discussed the charges he was facing. Applicant testified Counsel never discussed the possible sentencing exposure he faced, nor did Counsel discuss the State's evidence in any detail. Applicant testified the State did not present any evidence at the preliminary hearing. Applicant testified he requested certain witnesses be subpoenaed, but the subpoenas went to the wrong addresses. Applicant testified he and Counsel spoke during breaks in the trial, and Counsel advised him not to testify. Applicant testified the house where the crimes took place looked different in pictures than it did when he was there. Applicant testified he believed there were issues Counsel should have raised with regard to the search warrants. Applicant testified he did not believe the tazer should have been allowed into evidence.

On cross-examination, Applicant admitted that he recalled reviewing discovery with Counsel. Applicant asserted that he wanted certain witnesses to testify for him at trial, but Applicant admitted those witnesses were not present to testify at the PCR hearing either. Applicant admitted Counsel conveyed the state's plea offer, but he elected to proceed to trial. Applicant admitted the tazer he

objected to was on him when he was arrested. Applicant testified he believed the trial transcript was inaccurate where it reflected the victim testified at trial that Applicant used the tazer to intimidate her into submission. Applicant admitted that he told the trial court at sentencing that Counsel “had to take into a lot of time to do a lot of work on this case.” (Transcript pp. 258-69). Applicant further admitted he also told the trial Court on page 259 of the transcript, “I knew the consequences of me taking this to trial.”

Applicant next called Counsel to testify. Counsel testified he was appointed to represent Applicant as part of his work at the Public Defender’s office. Counsel testified he had his investigator track down the witnesses Applicant gave him. Counsel testified that after the investigator spoke with those witnesses, Counsel determined they would not be beneficial to Applicant’s case. Counsel testified the indictments covered a broad timeline, but he did not recall thinking there was anything significant to challenge. Counsel testified he had no particular strategy for failing to object to Ursula Wardy’s testimony on page 25, lines 4-7, of the transcript. Counsel admitted the testimony was likely objectionable. Counsel admitted he did not have a strategy for not objecting to the forensic interviewer’s (Debbie Elliot) testimony on page 128, lines 1-4. Counsel testified he objected to Officer Robinson’s testimony on page 148 of the transcript and asked for a mistrial. Counsel testified he decided not to ask for a curative charge because he wanted to make sure his objection and request for a mistrial was preserved.

On cross-examination, Counsel testified he has been practicing criminal defense for thirteen years. Counsel testified he met with Applicant a number of times at the jail prior to his trial. Counsel testified he filed Rule 5 and Brady motions, and that he went over the discovery with Applicant. Counsel testified he discussed Applicant’s version of the facts, and it was Counsel’s belief that the extended timeframe covered by the indictments could help Applicant’s case. Counsel testified there

was no reason to challenge the indictments. Counsel testified he believed the best defense at trial was to attempt to cast doubt on the victim's story. Counsel testified there was a large amount of evidence against Applicant, particularly victim's testimony, the tazer that was recovered, and testimony from the victim's sibling. Counsel reiterated that it would not have been in Applicant's best interest to present testimony from the witnesses he gave Counsel to pursue. Counsel testified the State offered a plea of ten years, but Applicant decided to proceed to trial. Counsel testified there were no issues with the preliminary hearing. Counsel testified he saw no reason to challenge the search warrants. Counsel testified that he did object to the tazer being allowed into evidence, but that it was on Applicant when he was arrested, and the victim's testimony mentioned the tazer. Counsel reiterated that his strategy in not asking for a curative charge was that he wanted to preserve his request for a mistrial. Counsel testified there were no issues with any of the subpoenas that were sent. Finally, Counsel acknowledged he was successful in keeping the forensic interviewer from being qualified as an expert.

### **B. Ineffective Assistance of Counsel**

In this post-conviction relief action, 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 trial counsel as a ground for relief, Applicant must prove trial 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. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel 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)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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 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, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials.

#### 1. Alibi Witnesses

With regard to Counsel's alleged failure to call Applicant's alibi witnesses, this Court finds Applicant has failed to show any ineffectiveness on the part of Counsel. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi 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). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

This Court finds Counsel is an extremely capable and experienced criminal lawyer. Counsel testified his investigator interviewed the potential alibi witnesses, and after consultation, Counsel decided presenting those witnesses before the jury would not be in Applicant's best interest. Furthermore, Applicant did not have those witnesses present to testify at the PCR hearing. This Court has weighed Counsel's testimony as well as reviewed the transcript of Applicant's trial. Based on the foregoing, and in conjunction with the applicable jurisprudence, this Court can find no ineffectiveness on the part of Counsel for electing not to call Applicant's alleged alibi witnesses at trial. Nor has Applicant shown any resulting prejudice since he did not present testimony from the witnesses in question at the PCR hearing. As such, this Court finds the allegation without merit.

## 2. Failure to Object

With regard to Counsel's alleged failure to object to portions of the testimony presented by Ursula Wardy, Debbie Elliott, and Michael Robinson, this Court finds Counsel's performance was not deficient. Under Strickland, Applicant must show that Counsel's performance fell below the accepted standard of reasonableness for defense counsel, and but for that deficient performance, the outcome of the trial would likely have been different. Furthermore, it is well founded that "any alleged impropriety must be examined on appeal in light of the entire record." State v. Brown, 333 S.C. 185, 191, 508 S.E.2d 38, 41 (Ct.App.1998). A criminal defendant is entitled to a fair trial, not a perfect one. State v. Mizell, 332 S.C. 273, 504 S.E.2d 338 (Ct.App.1998), *cert. denied* (Apr. 12, 1999). State v. Sweet, 342 S.C. 342, 348, 536 S.E.2d 91, 94 (Ct. App. 2000).

This Court finds Applicant has failed to show that there is a substantial likelihood the outcome of the trial would have been different, had Counsel objected to the testimony in question. The record

clearly indicates Counsel offered multiple objections and did a fine job of challenging the state's case. Additionally, Applicant has failed to show how Counsel's objections at the times in question would have served to change the outcome of the trial. As such, this Court finds no ineffectiveness on the part of Counsel for not objecting. Further, this Court finds no resulting prejudice. Accordingly, the allegation is without merit.

### **C. 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 any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

### **D. Overwhelming Evidence of Guilt**

This Court notes that Applicant can show no prejudice in regards to any of the alleged allegations as there is clear overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

## **IV. CONCLUSION**


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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

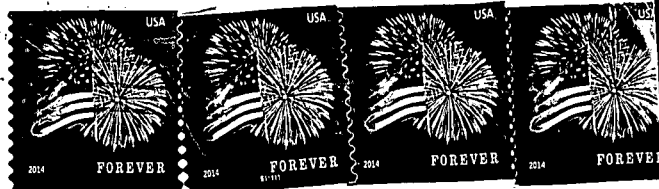
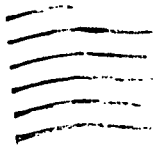
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of June, 2015.

  
D. CRAIG BROWN  
Presiding Judge  
Twelfth Judicial Circuit

Floume, South Carolina

THE GIESE LAW FIRM, LLC  
1315 BLANDING STREET  
COLUMBIA, SC 29201



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Clerk of Court  
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