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OCT 23 2017

S.C. SUPREME COURT

## THE BOOZER LAW FIRM, LLC

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October 19, 2017

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

The Honorable Sharon W. Staggers  
Clerk of Court  
125 W Main St.  
Kingstree, SC 29556

**RE: Jason Boston, #360656, v. State of South Carolina  
2017-CP-45-184**

Dear Mr. Shearouse and Ms. Staggers:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Boston in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Boston in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG  
Loriene French, OAD  
Jason Boston, #360656

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OCT 23 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

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Case No. 2017-CP-45-184

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Jason Boston, #360656, .....Petitioner,

v.

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

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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable D. Craig Brown's Order dated August 15, 2017, and filed October 3, 2017, denying post-conviction relief to the Petitioner and received by undersigned counsel on October 19, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer  
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October 19, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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OCT 23 2017

APPEAL FROM WILLIAMSBURG COUNTY S.C. SUPREME COURT  
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2017-CP-45-184

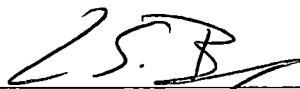
Jason Boston, #360656, .....Petitioner,

v.

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

**PROOF OF SERVICE**

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 19th day of October, 2017.



Lance S. Boozer  
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Tele: 803-608-5543

STATE OF SOUTH CAROLINA

County of Williamsburg

Jason T Bostons

Petitioner

vs.

STATE OF SOUTH CAROLINA

Defendant

IN THE COURT OF  
COMMON PLEAS

Third Judicial Circuit

NOTICE OF APPOINTMENT  
FOR LEGAL COUNSEL

Case Number 2017-CP-45- 0184

To: Boozer ,Attorney at Law

By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for Jason T Boston , the Petitioner, in this action.

This 16th day of June, 2017.

Sharon W. Stagers  
-Judge/Clerk of Court

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

IN THE COURT OF COMMON PLEAS )  
THIRD JUDICIAL CIRCUIT )

Jason Thomas Boston, #360656, )

2017-CP-45-00184 )

Applicant, )

v. )

**ORDER OF DISMISSAL** )

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 30, 2017. Respondent submitted its Return on June 22, 2017. An evidentiary hearing was convened on July 24, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's mother, Mary Pressley, and Applicant's plea counsel, M. Amanda Shuler, Esquire ("Trial Counsel") also testified. The Court had before it a copy of the trial transcript, the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings. The Court finds as follows:

#### I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. On March 14, 2014, Applicant was driven to the victim's home, got out

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**FILED**  
*10/31/17 @ 4:05 PM*  
Williamsburg County  
Clerk of Court  
Kingstree SC

of the backseat of the vehicle while the victim was speaking to the driver, pointed a gun at the victim, and took his cell phone and wallet. Tr. at 32:6-12.

In May 2014, the Williamsburg County Grand Jury indicted Applicant for armed robbery and possession of a firearm during the commission of a violent crime (2014-GS-45-0120). M. Amanda Shuler, Esquire, represented Applicant. Assistant Solicitor Kimberly V. Barr, Esquire, prosecuted the case. On April 1-2, 2015, Applicant proceeded to trial before the Honorable Clifton B. Newman. The jury found Applicant guilty of armed robbery and not guilty of possession of a firearm during the commission of a violent crime. Judge Newman sentenced Applicant to imprisonment for eleven years for armed robbery.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders on December 7, 2016. State v. Boston, Op. No. 2016-UP-503 (S.C. Ct. App. filed December 7, 2016). The Remittitur was issued on December 28, 2016.

## II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
  - a. Trial Counsel failed to object to witness inconsistent statements.

At the evidentiary hearing, Applicant orally amended his application to include two additional grounds of ineffective assistance of counsel for failure to call alibi witnesses and failure to object to the Solicitor's closing argument at page 193-94 of the trial transcript.

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### III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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## V. SUMMARY OF RELEVANT TESTIMONY

Applicant testified that he was currently serving an eleven year sentence for armed robbery. He stated he was originally represented on the charges by attorney Doward K. Harvin, but Mr. Harvin dropped his case because he represented Applicant's codefendant on the same charges, which was a conflict of interest. Applicant stated that he discussed the background of the case as well as defenses with Mr. Harvin before he told him he was representing his codefendant. After Mr. Harvin was relieved, Applicant testified that Trial Counsel was appointed. He stated that he met with Trial Counsel twice before the trial.

Applicant testified he was originally offered a plea deal for fifteen years, serving eighty-five percent of that time, but he rejected it. He stated that he did not put up a defense at trial; they were going to use his mother as an alibi witness, but he and Trial Counsel decided not to call any witnesses because they wanted the last closing argument at trial. He stated Trial Counsel explained the concept of having the last argument to him, but he did not know what that meant. He stated he wanted his mother and other witnesses to testify.

Applicant testified that on the night of the crime, he was at his mother's house. He stated that the crime happened at 8:00 or 8:30 P.M., but he was at his mother's house doing work from 6:00 P.M. until about 11:00 or 11:30 P.M.

Following Applicant's testimony, Mary Pressley, took the stand. Ms. Pressley testified that she was Applicant's mother. She stated she attended the trial, but she did not get to watch it because she was sequestered as a witness, and she intended to testify at trial as an alibi witness. She testified that Applicant was at a piece of rental property that she owned on the day of the crime doing some work, but she was not there with him at the time. Ms. Pressley stated Applicant came over to her house a little before 6:00 P.M. to do some work she asked him to do.

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She stated that she was with him or could see him all night until he left her house around 10:30 or 11:00 P.M. She testified that she remembers him coming in before 6:00 because she was finishing a paper for a class she was taking that was due at 6:15 P.M., and he spoke with someone on the phone waiting for her to finish her paper. She stated that she cooked dinner for him, he helped move the trash out of her yard, he stayed late, and they talked about her other son in Texas.

Following Ms. Pressley's testimony, Respondent called to the stand Trial Counsel M. Amanda Shuler. Trial Counsel testified that she was appointed to this case through the public defender's office. She stated that Doward Harvin was appointed to represent Applicant's codefendant, but she does not recall any discussions with Applicant about Mr. Harvin. She stated that it was her understanding Applicant had never met with Mr. Harvin. Trial Counsel stated there was a fifteen-year plea offer from the State, but Applicant rejected it. She stated that he did not want to plead guilty because he said he did not commit the crime; she believed that if he were guilty, he would have pled guilty. She stated that she explained this to the judge during sentencing.

Trial Counsel testified her trial strategy was to discredit the State's witness Latoya Hickson. She stated the victim testified at trial and was not able to identify Applicant as the person who robbed him, and the only person who identified him was Latoya Hickson. She stated that the case was all about the credibility of the witnesses. Trial Counsel stated she filed a notice of alibi and planned to use Applicant's mother, Ms. Pressley, his girlfriend Zalandria Brown, and his brother as alibi witnesses. However, she stated she made a strategical decision not to call those witnesses in order to have the last closing argument, which she believed would be more beneficial. She testified she spoke to Ms. Pressley several times, and Ms. Pressley always told

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her that Applicant left her house that night around 8:00-8:45 P.M. Trial Counsel stated that time was so close to the time of the crime that she did not feel comfortable putting Ms. Pressley on the stand, and it was not a good idea to call her. She stated that she and Applicant discussed this during the trial and Applicant decided not to put up a defense.

Trial Counsel testified she and Applicant discussed his prior criminal history and the events of the day in question, and Applicant decided that he would not testify. She stated that they discussed whether to call witnesses on his behalf, but ultimately she did not want to tell the judge that there was a gap in time for which he had not been accounted for.

Trial Counsel testified that she did not see anything objectionable about the Solicitor's closing argument. She stated she did not object to the Solicitor's statements about Hispanic victims (Tr. 193) because she does not see anything wrong with it at the time. She stated she does not object in closing arguments unless something is absolutely improper or objectionable. She stated Ms. Pressley noted on the record during the sentencing that Applicant was not prejudiced against Hispanics because they had Mexican family members.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Trial Counsel's testimony to be credible and

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persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. This Court finds Trial Counsel's representation did not fall below the standards of professional norms in any manner. Based on the testimony presented and the record before the court, this Court finds Trial Counsel's representation was not ineffective in any regard.

##### *Failure to object to witness inconsistent statements*

Applicant alleges Trial Counsel was ineffective for failing to object to inconsistent statements by the witnesses. This allegation is meritless. Applicant has failed to prove that Trial Counsel was deficient in failing to make any specific objection to a witness's testimony or that he was prejudiced by that lack of objection. Based on the testimony and the trial transcript, this Court finds that Trial Counsel thoroughly cross-examined each witness and raised inconsistencies in their stories before the jury and was not ineffective in this regard. Therefore, this allegation is denied and dismissed with prejudice.

##### *Failure to present alibi witnesses*

Applicant alleges that Trial Counsel was ineffective for failing to present Mary Pressley as an alibi witness. This Court finds that Trial Counsel was not deficient for choosing not to put up the alibi witness because she presented a valid strategic reason for choosing not to do so.

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).

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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).

Applicant presented testimony from Mary Pressley, Applicant's mother, at the hearing. Ms. Pressley testified that Applicant was with her at her house from 6:00 P.M. until 11:30 P.M. on the evening of the crime, which occurred around 8:30 P.M. She testified that it was not possible for him to have been elsewhere because he was with her the entire time. However, Trial Counsel credibly testified that Ms. Pressley told her before the trial, and would have testified at trial, that Applicant was only with her until 8:00 or 8:30 P.M., and then he left her house. This Court finds Trial Counsel's testimony to be very credible. In contrast, it finds Mary Pressley's testimony to be not credible.

Trial Counsel credibly testified that she was not comfortable putting Ms. Pressley on the stand to testify that there was a gap in time for which Applicant was not accounted for. She further testified that she made a strategic decision not to put up a defense so they could have the last closing argument before the jury. This was evidenced not only by Trial Counsel's testimony, but also by the trial transcript, where Trial Counsel indicated to the trial judge during sentencing that Ms. Pressley "did not testify because we made a judgment call about whether we wanted to lose our right to argue last, and we did not want to lose the right to argue last." Tr. 239, line 21-24.

Because Trial Counsel presented a valid trial strategy in choosing not to put up a defense, she cannot be found ineffective in this regard. "Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective." Roseboro v.

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State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Applicant has failed to prove that Trial Counsel was deficient or that he was prejudiced by the failure to put this witness up at trial. Therefore, since neither prong of the Strickland test is met, this allegation is denied and dismissed with prejudice.

*Failure to object to Solicitor's closing argument*

Applicant alleges Trial Counsel was ineffective for failing to object to the Solicitor's closing argument comments about Hispanics being the target of crimes. This allegation is meritless. In her closing argument, the Solicitor argued the following:

[The victim is] an easy target. And folks, I'll just be candid, a lot of people like the defendant believe that people like the victims are easy marks because the victim can't speak English. People come to the conclusion, and you know, he's Hispanic or he's from Mexico and probably here illegally, they're not gonna call the police, they're not gonna call the police because, you know, they're afraid they'll get deported so they're an easy mark. And surely if he calls the police, the police aren't, you know, they're not going to be worried about trying to investigate that or bring charges. And certainly, you know, heaven forbid the police investigate it and they report it. Well, I mean, they're not gonna be around when it comes to trial time. And surely, surely the State is not gonna go through the expense of getting an interpreter and having all these people come up here and try this case. And what he's also counting on most assuredly, the jury is not going to convict him for that, surely will not.

Tr. 193 line 9 – 194 line 4. Trial Counsel did not object to this statement, and she testified at the evidentiary hearing that she did not find it objectionable at the time. She stated she does not object during closing arguments unless something is absolutely improper or objectionable, and in this case, she did not believe it was. This Court finds that the Solicitor's comments in closing argument were not objectionable, and Trial Counsel was not deficient in choosing not to object. Her remarks were reasonably based on the circumstances of the crime, and she was only

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speculating to the jury about a potential motive to commit the crime. Whether the jury believed the motive or not was within their discretion.

Furthermore, even if the comments were objectionable, this Court finds there was no prejudice resulting from them. "Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case." State v. Mouzon, 321 S.C. 27, 31, 467 S.E.2d 122, 124 (Ct. App. 1995), aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997) (citing Herring v. New York, 422 U.S. 853 (1975)). "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. at 609-10, 602 S.E.2d at 744. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

Applicant has failed to meet his burden of proving that these comments in the Solicitor's closing arguments changed the outcome of the trial. This Court finds there was sufficient evidence to convict Applicant on this charge regardless of what the jury believed was his motive. The testimony presented clearly showed that someone robbed the victim at gunpoint and stole his wallet and cell phone. A codefendant and another passenger in the vehicle identified Applicant as the perpetrator to the jury. Regardless of why he chose his victim, the jury clearly believed

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Applicant was the man who robbed him. Therefore, there was no prejudice resulting from these comments.

Finally, Applicant argues the trial judge improperly used the Solicitor's comments in sentencing Applicant. Tr. 245 line 12 – 247 line 7. This Court finds this assertion meritless. Sentencing is in the trial court's discretion, and he may use whatever motive he believed Applicant held in his decision. A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. U.S. v. Magliano, 336 F.2d 817 (4th Cir. 1964); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). The transcript also clearly shows that Applicant and his mother both explained to the trial court that he was not prejudiced against Hispanics because they had Mexican members of their family. Even if this motive was considered in sentencing, there was no prejudice to Applicant because the trial court sentenced him to eleven years' imprisonment when he was facing at least ten and up to thirty years in prison.

Because Applicant has failed to meet either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

## VII. CONCLUSION

Based on all the foregoing, this 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.

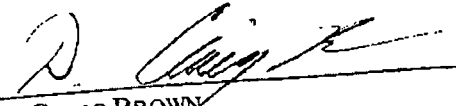
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This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. That Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of August, 2017.

  
D. CRAIG BROWN  
Presiding Judge  
Third Judicial Circuit

Florence, South Carolina

  
DLB  
8/29/17

**THE BOOZER LAW FIRM, LLC**

1400 Laurel Street, Suite 4A  
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The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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