

Lowcountry Law Office

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: [Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

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DEC 19 2017

S.C. SUPREME COURT

December 14, 2017

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

RE: Sasha Gaskins v. State of South Carolina; Case #: 2014-CP-10-2879

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal;
- (3) The Motion to Amend Judgment;
- (4) The Amended Order of Dismissal; and
- (5) A Request for Representation on Appeal.

The Applicant - Appellant was represented by me as indigent, pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for Applicant - Appellant. Should you need anything further, do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

✓ Enclosure(s). As stated above.  
RDD/mmt

cc: Megan H. Jameson, Assistant Attorney General  
Kimberly McCall, Appellate Division, SCCID

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DEC 19 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Brooks P. Goldsmith

Case #: 2014-CP-10-2879

Sasha Gaskins,

Appellant.

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Sasha Gaskins appeals the denial of her Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Brooks P. Goldsmith on April 27, 2017. Counsel for the Appellant received a filed copy of the Order of Dismissal on or about October 5, 2017. Upon review of the Order of Dismissal, Counsel for the Appellant filed a Motion to Amend Judgement on October 13, 2017. Counsel for the Appellant received a filed copy of an Amended Order of Dismissal on or about November 14, 2017.

December 8, 2017

  
Rodney D. Davis

400 Faber Place Drive, Suite 300

Charleston, SC 29405

(843) 323-4353

Davis@LowcountryLawOffice.com

Attorney for Appellant

Other Counsel of Record:

Alicia Olive, Assistant Attorney General

Office of the Attorney General, State of South Carolina

P.O. Box 11549

Columbia, SC 29211-1549

Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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DEC 19 2017

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

The Honorable Brooks P. Goldsmith

Case #: 2014-CP-10-2879

Sasha Gaskins,

Appellant.

v.

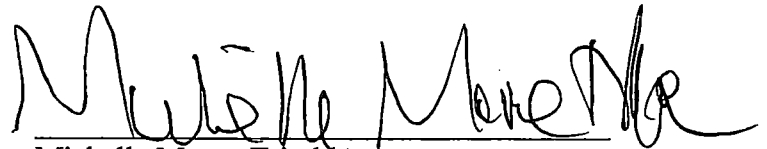
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Megan H. Jameson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 11, 2017.

December 11, 2017



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Alicia Olive, Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

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DEC 19 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Sasha Gaskins, SCDC No. 345415, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-2879

**ORDER OF DISMISSAL**

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2017 SEP 26 PM 12:12  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed May 5, 2014, by Sasha Gaskins (Applicant), alleging various grounds of ineffective assistance of counsel . Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 19, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. At the conclusion of the hearing, this Court denied the application from the bench. This order follows.

**SUMMARY OF PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its June 2010 term of court, the Charleston County Grand Jury indicted Applicant for two counts of first-degree burglary (2010-GS-10-4738 & -4794) and two counts of armed robbery (2010-GS-10-4761 & -4793). Kenneth Sowell, Esquire, represented Applicant. Assistant Solicitors Culver Kidd and Dale Savage prosecuted the case on behalf of the State.

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On February 28, 2011, Applicant proceeded to a jury trial the Charleston County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge. On March 4, 2011, the jury convicted Applicant as indicted.

The trial court held sentencing in abeyance until Applicant's co-defendants could be sentenced. On March 4, 2011, Applicant submitted a written "Motion for Reconsideration and Motion for New Trial" to the trial court. On March 23, 2011, the trial court issued and filed a written order denying Applicant's motions. On March 31, 2011, the trial court sentenced Applicant to four concurrent terms of eighteen years' imprisonment.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Susan B. Hackett, Esquire, of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Sasha Gaskins, 2013-UP-203 Ct. App. filed May 22, 2013). The Remittitur was returned to the circuit court on June 14, 2013.

### **SUMMARY OF FACTUAL HISTORY**

On the first day of trial, Applicant's counsel moved for a continuance to seek a psychological evaluation of Applicant. The trial court expressed concerns over delaying the trial and questioned counsel about his reasons for needing an evaluation. After a brief discussion, the trial court stated:

And I need to do a little bit of quick research. But I guess the real bottom line is whether it is applicable at all. You certainly could have her evaluated, and it does not take that long to have her evaluated.

And if it is your intention to have a psychiatrist testify as to the effects of fear on her or threats on her, they should be able to do that in very short order. You should be able to have somebody evaluate her today or tomorrow, and be ready to testify.

(Tr.p.10, line 19-p.11, line 4). After additional discussion concerning Applicant's duress defense, the trial court re-directed focus to the request for additional time to prepare for trial. Counsel asked for an additional week to prepare. The judge commented: "It doesn't take a week for a psychiatrist to evaluate somebody. I have them come over here and evaluate people all the time in a couple of hours." (Tr.p.15, lines 2-9). The assistant solicitor raised concerns about whether testimony from an expert would be proper, to which the trial court replied: "I don't know, I have to cross that bridge when I c[o]me to it." (Tr.p.17, lines 8-15). After additional discussion about whether an evaluation was needed, as well as the appropriate scope of an expert's testimony, the trial court ultimately ruled on Applicant's motion as follows:

The issue at this point, however, is not the admissibility of the evidence, it's making it available to her if she feels that she needs it. Then we will cross the admissibility threshold when appropriate.

But what is before the court at this point is a motion to continue based on giving access to the witness. And I am inclined to give her the ability to do that, but I don't think it's a basis for a continuance because I think her lawyer can figure out when that witness would be made available.

(Tr.p.22, lines 2-12).

Herbert Joseph Butler, III, (Herb) testified that at approximately ten o'clock on the evening of Wednesday, February 24, 2010, he and his girlfriend, Emily Michalak (Emily), were at Herb's house cooking steaks. (Tr.p.105, lines 20-24, p.108, lines 10-23; p.115, lines 17-25). Herb was in the back yard getting the steaks from the grill when Emily answered a knock at the front door. He heard a scream, dropped the steaks as he came in the back, saw Emily's face in

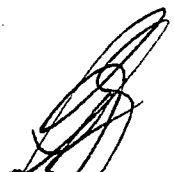
total shock, and saw two black males with masks coming into the house. The intruders pointed guns at Herb and Emily and told them to get on the ground and be quiet. Herb described the men as well built and athletic, at least 6 feet tall, with black masks, black gloves, and gray clothes. The men took the victims' cell phones, duct taped their hands together, duct taped their legs together, and put duct tape over Herb's eyes. The intruders later duct-taped a sock in Herb's mouth to keep him quiet, eventually shoving him in a closet. (Tr.p.109, line 24-p.110, line 17).

During a nearly four hour ordeal, Herb and Emily were interrogated, beaten, pistol-whipped and kicked while being asked for money, debit cards, and drugs. Herb gave up his debit cards and PIN numbers willingly. (Tr.p.113, line 16-p.114, line 18.) At some point Herb and Emily were separated and Herb was taken to his bedroom. The intruders continued to demand that he give up the money even though Herb told them he did not have any money. One intruder pulled Herb's pants down, grabbed Herb's penis, put a knife to it, and threatened to cut it off if Herb did not give him some money. They left Herb with his pants down. (Tr.p. 116, lines 1-20). Despite the intruders' attempts to disguise their voices using an accent, Herb recognized one voice as belonging to Reggie Rice, a former Citadel classmate who had been one of Herb's "smoking buddies." (Tr.p.116, line 24-p.118, line 4).

Emily testified she had known Herb since 2004, her freshman year at Bishop England High School, where they ran cross-country together. They had been dating for several months before the night of the incident. Although they had typically been staying at Emily's place downtown, on February 24, 2010, they decided to go to Herb's house on James Island to grill steaks and have dinner and a couple of drinks before going to bed, so she could get up early for a class. (Tr.p.718, line 17-p.720, line.8). While Herb was out back at the grill, Emily heard a knock

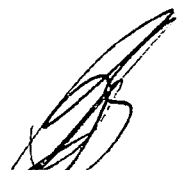
on the door. When she opened it, she greeted a young female saying her car had just broken down and she needed a cell phone to call for help. Emily identified the female as Applicant, Sasha Gaskins. Emily shut the door and went to retrieve her phone from across the room. When she turned around she noticed Applicant had pushed open the door and was standing about four feet inside Herb's house. Applicant looked over her right shoulder and within two seconds two big males with guns, masks and gloves entered the house and demanded that Emily get on the ground. (Tr.p.720, line 9-p.722, line 2).

Emily had retreated to the kitchen to get Herb and when they both returned to the living room, the defendant was still standing by the doorway. The two intruders proceeded to duct tape Emily and Herb around the wrists and legs and put duct tape over Emily's eyes. (Tr.p.723, line 1-p.724, line 6). Emily and Herb were separated, and while one intruder was in the bedroom questioning Herb, the other man sat down beside Emily and began touching her vagina through her jeans. He then undid his pants, picked Emily up and put her on her knees in front of him. The man put a gun to Emily's head and told her if she didn't do "this" he would kill her. The intruder then put one hand on the back of Emily's head, held the gun to her head with his other hand, and forced his penis into her mouth for approximately ten to fifteen seconds. The sexual assault ended when the second intruder returned and told the first man to stop. (Tr.p.726, line 1-p.727, line 23). Before the intruders left for good, they told Emily if they ever heard of her calling the police they were going to come back and find her, no matter where she was, and kill her. (Tr.p.733, lines 11-17). Emily later picked Applicant from a photo line-up prepared by the police. (Tr.p.735, line 14-p.736, line 15).



Joshua Shelton Harpe (Harpe) testified at approximately 1:15 a.m. on Saturday, February 27, 2010, he received a phone call from a female claiming to be a friend's ex-girlfriend. The caller said her car had broken down in a nearby parking lot, that she had called Triple-A, and that she knew Harpe's house was close. She asked if he would come get her and let her stay in his condo until Triple-A arrived, because she didn't want to be alone. (Tr.p.763, line 24-p.764, line 21). Harpe agreed to assist the caller, but as he was walking to his car in the parking garage beneath his apartment building a man put a silver revolver in his face and told him to get on his knees. The man struck him in the back of the head with the pistol and he went to the ground. Harpe then saw two more people come from his left. All three assailants had their faces covered. (Tr.p.765, line 4-p.767, line 17).

The three men forced Harpe at gunpoint to take them up to his apartment. One man put Harper on his knees, pointed a gun at the back of his head and said now would be a good time to start praying. Harpe thought he was going to die. The assailants then duct taped Harpe's hands behind his back, duct taped his ankles together, and put a sock over his eyes secured by duct tape around his head. They ransacked his apartment looking for money and demanded Harpe tell them the PIN number for his debit card or else they would cut off his "balls." Harpe complied with their demands. (Tr.p.768, line 8-p.770, line 6; p.771, line 7-p.773, line 11). During the attack, Harpe recognized the voice of one of his assailants, Reggie Rice. After the intruders left, Harpe was able to free himself and go for help. After being picked up by the police, Harpe was driven to another location and shown two suspects who were in police custody. He positively identified Reggie Rice. (Tr.p.778, line 15-p.784, line 11).



In addition to eliciting testimony from the three victims of these crimes, the State called Applicant's four co-defendants to the stand. Stephan Francois (Francois), Reginald Rice (Rice), Miguel Dominic Starks (Starks), and Breanna Yastace Bruster (Bruster) provided consistent testimony about a conspiracy to commit the two home invasions, including detailed descriptions of Applicant's knowledge of, and participation in, that conspiracy. Francois testified he was a student at the College of Charleston and was dating Applicant at the time the crimes were committed, and that Bruster was a mutual friend he met through Applicant. He said Starks was a high school friend from Georgia who was attending the Citadel, and that Rice was a friend of Starks whom he met shortly before the robberies. (Tr.p.137, line 17-p.142, line 25). Rice testified that although he was a couple of years ahead of Starks at the Citadel, they met in 2008 and were playing together on the football team. He said he met Francois and Applicant for the first time the day of the first robbery, and met Bruster for the first time a little later that same day, prior to the first robbery. Rice testified he knew both Herb and Harpe from his time at the Citadel and that he and Herb would sometimes hang out and smoke "weed" together. He said he also had smoked marijuana with Harpe and had sometimes purchased it from Herb. (Tr.p.306, line 9-p.315, line 24). Starks testified he met Rice at the Citadel in 2008 where they served in the same "company" together. He said he knew Francois from high school in Georgia and that while he may have seen Applicant before, his first real conversations with her were during the week of the two robberies. Starks testified he met Bruster for the first time on the day of the first robbery when they were introduced by Francois. (Tr.p.431, line 3-p.434, line 23). Bruster testified she and Applicant were friends and classmates together at the College of Charleston, and met in June



of 2009. She said she knew Francois before the robberies, but that she met Starks and Rice for the first time on the day of the first robbery. (Tr.p.586, line 12-p.591, line 20).

Rice and Starks testified that while they were on a drive from Atlanta to Charleston a few days before the first robbery, they started formulating a plan to rob someone. They initially discussed robbing Harpe, but eventually decided to rob Herb because as a seller, they assumed he would have a bunch of drugs and money. They determined they needed someone Herb did not know who could get him to come outside or allow them to get into the house, and they thought they should use a female to knock on the door. Starks suggested enlisting help from his childhood friend Francois and Francois's girlfriend (Applicant). (Tr.p.317, line 12-p.319, line 20; p.434, line 11-p.435, line 17).

Francois, Rice, and Starks testified about a meeting they had in Applicant's dorm room to discuss and to further plan the robbery. Rice, Starks, Francois and Applicant were present and participated in the discussion. Starks had even drawn up a "landscape" of Herb's apartment on a napkin, and explained the role each person should play in the plan. Applicant was expected to knock on the door and say she needed to use the phone, or her car was broken, or something to that effect. In other words, she would be the "bait" to "lure" him out, which would allow the others to enter Herb's house and rob him. (Tr.p.145, line 23-p.148, line 11; p.319, line 21-p.322, line 13; 435, line 21-p.436, line 14). Francois, Rice, and Starks also testified about picking up Bruster and going with her and Applicant to eat dinner before returning to Starks' apartment to smoke and hang out prior to the first robbery. While at Starks' apartment, Francois, Rice, Starks and Applicant again discussed the robbery, and talked about the possibility of committing two

robberies, one against Herb and another against Harpe. (Tr.p.148, line 16-p.158, line 20; p.324, line 20-p.331, line 1; p.438, line 9-p.442, line 21).

Francois, Rice, Starks, and Bruster testified in great detail as to how the burglary and robbery were carried out at Herb's house, including Applicant's participation. Rice and Starks gave details about the sexual assault against Emily and other events while they were inside Herb's house. (Tr.p.158, line 21-p.174, line 22; p.331, line 2-p.355, line 17; p.442, line 22-p.451, line 6; p.595, line 16-p.611, line 18). All four co-defendants further testified about driving back to Starks' apartment after the first robbery, dividing up the items stolen from Herb, and discussing plans for the second robbery. They testified as to Applicant's presence when those additional plans were discussed. Francois, Rice and Starks then described in detail how the burglary and robbery were carried out at Harpe's apartment, including Applicant's participation. (Tr.p.177, line 15-p.179, line 23; p.185, line 5-p.220, line 12; p.355, line 11-p.374, line 23; p.452, line 21-p.453, line 7; p.466, line 2-p.484, line 23; p.616, line 4-p.629, line 10; p.634, line 19-p.642, line 24).

Francois, Rice, Starks, and Bruster testified repeatedly that Applicant was a willing participant in both robberies, that she was part of the discussion when the robberies were being planned, and that she was never threatened in their presence. They testified she did not make any attempt to leave or terminate her participation in either home invasion despite having opportunities to do so. Each of the four testified they neither pointed a gun at nor threatened Applicant, and never saw any other co-defendant point a gun at or threaten Applicant. They also

testified Applicant never appeared to be threatened and never told them she felt threatened before or during the robberies.<sup>1</sup>

After the State rested, the assistant solicitor advised the trial court there was a matter of law to discuss. He said Applicant's counsel had just handed him a document provided by a doctor Applicant planned to call as her first witness. The trial court was given a copy of the document and asked Applicant's counsel to explain. Counsel said Applicant would testify as to all the facts in the document, and the doctor would answer a hypothetical question based on those facts. (Tr.p.797, line 18-p.798, line 23). The trial court said the witness cannot answer a hypothetical about what she could have done, would have done, or is capable of doing, and could only testify in general as to human behavior, and the effects of fear on the human being. The trial court added that "no expert can testify as to the propensity for someone to do something, past or future . . . that's not permissible. That's a jury question." The trial court further stated, "he cannot

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<sup>1</sup> Francois' testimony appears in the transcript as follows: Tr.p.147, line 10-p.148, line 11; p.153, line 6-p.154, line 8; p.155, lines 8-18; p.158, lines 3-20; p.159, lines 12-21; p.162, lines 10-25; p.164, lines 12-24; p.166, line 16-p.167, line 3; p.169, lines 14-24; p.171, line 11-p.172, line 12; p.173, line 14-p.174, line 10; p.175, line 22-p.176, line 15; p.188, line 18-p.189, line 12; p.191, lines 8-19; p.195, line 9-p.197, line 18; p.211, lines 2-12; p.213, line 15-p.214, line 25; p.217, line 24-p.218, line 25; p.238, line 25-p.239, line 18; p.241, lines 20-22; p.248, lines 3-8; p.259, line 22-p.260, line 3; p.261, lines 2-4; p.272, line 23-p.273, line 2; p.285, lines 12-19; & p.302, lines 12-14.

Rice's testimony appears in the transcript as follows: Tr.p.322, lines 14-20; p.325, line 24-p.327, line 21; p.330, lines 15-25; p.331, line 22-p.333, line 10; p.334, lines 2-5; p.335, lines 2-5; p.336, line 24-p.337, line 4; p.338, line 25-p.340, line 5; p.351, line 21-p.353, line 17; p.358, line 14-p.362, line 7; p.363 lines 20-24; p.369, line 24-p.370, line 5; p.373, lines 4-24; p.375, lines 13-20; p.377, line 19-p.378, line 8; p.397, lines 11-14; p. 401, lines 5-20; p.406, lines 4-9; p.424, line 24-p.425, line 2.

Starks' testimony appears in the transcript as follows: Tr.p.436, lines 5-18; p.438, line 23-p.439, line 10; p.442, lines 7-20; p.443, line 21-p.444, line 4; p.446, line 23-p.448, line 4; p.450, lines 14-p.451, line 16; p.452, line 21-p.453, line 3; p.475, lines 9-14; p.479, lines 4-21; p.482, line 3-p.483, line 23; p.488, lines 1-11; p.490, line 12-p.491, line 13; p.493, line 15-p.494, line 11; p.512, lines 19-25; p.532, lines 7-11.

Bruster's testimony appears in the transcript as follows: Tr.p.599, lines 14-22; p.600, line 20-p.601, line 6; p.602, lines 18-20; p.603, lines 19-24; p.604, lines 19-25; p.605, line 21-p.606, line 3; p.608, line 8-p.609, line 5; p.612, lines 10-18; p.617, line 5-p.618, line 23; p.621, line 25-p.622, line 12; p.624, lines 2-11; p.625, line 5-p.626, line 20; p.638, lines 10-13; p.639, lines 2-15; p.641, lines 15-24; p.684, lines 4-10.

say he examined her and in his professional opinion she didn't do it on this date, or that she doesn't have the capacity to do it in the future because that's off limits." (Tr.p.798, line 24-p.800, line 7). Counsel said he had hoped to present the hypothetical to his witness; however, the judge ruled:

You can't do a hypothetical if it's going to have him say what she could have done or what she will do. That's a jury question.

....

You can always argue to the jury that, you know, of the effects of fear, and that you presented an expert as to the effect of fear, duress and coercion on a person. It's up to the jury to draw that conclusion.

The jury is the ultimate fact-finders whether something took place or didn't take place. But you can't have an expert supplant that and say that I think that they didn't do it or that they did do it or that they have the capacity to do it. That's off limits.

(Tr.p.800, line 19-p.801, line 11). Counsel said he would do his best to stay within those parameters. (Tr.p.801, lines 12-13).

Counsel then called Dr. Lewis Randolph Waid, a clinical psychologist from Mount Pleasant who is on the faculty at the Medical University of South Carolina, to testify on Applicant's behalf. Dr. Waid was admitted as an expert in neuropsychology and testified that the classic example of fear or duress is the absolute threat of loss or life to either the person, another individual, or a family member. (Tr.p.801, line 24-p.808, line 2). Dr. Waid testified that fear could result in an otherwise completely normal, reasonable, non-criminal person committing a crime, such as a burglary or armed robbery. (Tr.p.808, lines 3-15). He explained that the more reasonable the belief of imminent threat of death, the more it can mediate why a person would engage in criminal conduct, and that if the person making the threat has a gun available, or pointed at the subject, it would raise the ante that it is a reasonable threat. (Tr.p.808, line 23-



p.809, line 13). Dr. Waid said making a threat on one's life can cause a person to choose what seems to be the lesser of two evils, such as participating in a crime, and that the length of time a person may continue to engage in the participation depends on the continuing period of time he feels there is a continuing threat to himself or family members. (Tr.p.810, line 20-p.812, line 10).

Applicant testified in her own defense. She described her participation in church, school, extracurricular activities, and her academic success, including her acceptance into the College of Charleston. (Tr.p.833, line 16-p.838, line 3). She then described her relationship with Francois, her boyfriend of seven months, and meeting Rice and Starks for the first time on Wednesday, February 24, 2010, the day of the first robbery. (Tr.p.838, line 8-p.842, line 23). Applicant did not deny participating to some extent in the crimes; however, she claimed she initially thought the first robbery was a joke, and only continued participating in the crimes under duress. She testified Starks threatened to kill her or Francois if she did not do what he said. Applicant said she felt scared and that her only options were to do it or die. She testified she was afraid for her life and felt like she would be killed if she did not say yes. (Tr.p.842, line 24-p.878, line 4).

Applicant also called several witnesses who testified about her good character and reputation in the community. Alvenes Barksdale, William Eugene Delaine, III, Sa'Datrius Alson, Brenda Ligon, and Applicant's mother, Rosietta Gaskins Nance, all testified as to Applicant's good character and her reputation in her hometown community of Clinton, South Carolina. (Tr.p.814-p.832; p.940-p.968).

During closing arguments, Counsel for Applicant attempted to attack the State's case in two ways. First, he argued Applicant was a young, sweet, innocent, nice, helpful little girl who does not have the character to voluntarily commit these crimes. (Tr.p.989, lines 6-9; p.999, lines



9-10; p.1001, lines 3-22; p.1006, lines 1-9; p.1010, line 8-11; p.1018, lines 2-4). Second, although counsel acknowledged crimes were committed and that Applicant was involved in those crimes, she only did so out of fear for her life. He argued Applicant was coerced—that she acted under duress. Counsel argued on at least two occasions guns were pointed at Applicant and she was told she would be killed if she did not do as she was directed. (Tr.p.991, lines 2-11; p.992, line 25-p.993, line 16; p.994, line 23-p.1005, line 2; p.1008, line 23-p.1012, line 3).

After Applicant's counsel finished, the assistant solicitor made a closing argument, beginning with a reminder that "any words that come out of [Applicant's counsel's] mouth are not evidence. In the same vein, anything that I say is not evidence." (Tr.p.1018, line 24-p.1019, line 2). Despite an objection, the trial court noted this was an accurate statement of the law, and the assistant solicitor repeated the comment. (Tr.p.1019, lines 3-12). The solicitor noted that ninety percent of counsel's argument had been about painting Applicant as the sweetest little girl in town, but asked the jurors to save their sympathy for the victims. (Tr.p.1019, line 24-p.1020, line 15). The assistant solicitor then took a moment to "address the allegations that there has been some sort of arrangement between me or my office and those witnesses." He said:

And we are going to show them mercy and leniency for their testimony? I don't think. [Applicant] isn't near as culpable as they are, but she is just as guilty. Everything Mr. Sowell presented to you is mitigation. It's something that should be considered as sentencing, not toward guilt.

(Tr.p.1022, lines 5-10). Counsel for Applicant objected on grounds that "he is not quoting the law." When pressed about his objection, counsel specifically argued: "He told them that coercion is not to be considered by the jury." (Tr.p.1022, lines 11-21). The trial court said: "He didn't misstate the law, he said it's something they can consider. They don't have to consider it."

Counsel responded: "I understand that. He said it has to be considered by the Judge at sentencing." (Tr.p.1022, line 22-p.1023, line 3). The trial court overruled the objection and the assistant solicitor continued his argument. (Tr.p.1023, line 17).

Much later in closing the solicitor said:

We only have one type of criminal justice system and it's the best one in the world. But it treats everybody the same. It treats 18-year-old little girls the same as grown men as far as whether they're guilty or not guilty.

Whether they are a pillar in the community, an active member of the church, or have a great reputation, that's mitigation that's to be given to the judge at sentencing, so you can either down-depart. Or if they have the opposite reputation, if they have a reputation for being a bad guy, they might get a stiffer sentence.

But that's for sentencing, that's not for you to consider, that's not for me to consider, that's for the Judge. You are not to concern yourself with sentencing, you are to concern yourself with guilt.

(Tr.p.1035, lines 5-20). Applicant's counsel made no objection.

The trial court then advised the parties she had an instruction on good character and reputation she was contemplating giving to the jury. She said she was now convinced she needed to give it, because the assistant solicitor had argued Applicant's good character could only be considered in mitigation and "that's not the law." The trial court said it did not want to leave the jury with that misapprehension, because it was actually appropriate for them to consider good character in determining whether Applicant committed the crime or not. (Tr.p.1036, lines 9-19). The trial court recited the language she planned to charge and neither party took exception. (Tr.p.1036, line 20-p.1037, line 21).

The trial court then charged the jury on the law, including correct general charges on the roles of the judge and jury, the duty to assess the credibility of witnesses, the duty to weigh the



evidence, expert witness testimony, identification, burden of proof, direct evidence, circumstantial evidence, the presumption of innocence, the crimes and the elements of those crimes, accomplice liability, intent, mere presence, and verdicts. The trial court gave the following charge on good character:

I further instruct you that the defendant has presented evidence of her good reputation and character to show that it would be inconsistent with the defendant committing the crime.

The weight you give to that testimony, like all other testimony in this case, is for you to decide in your good judgment. You may consider testimony of the defendant's good character, along with all the other evidence in the case, in deciding whether or not the defendant committed the crime.

(Tr.p.1042, lines 1-10). The trial court also specifically gave the jury the following charge on the defense of coercion or duress:

Ladies and gentlemen, the defendant has raised the defense of coercion or duress. Coercion or duress is when a person makes another person commit a crime against someone else's person or property by the threat of immediate physical violence.

The coercion or duress must be present, imminent and of the type to create a well-grounded fear of death or serious bodily harm if the act is not done. The fear of injury must be reasonable.

Coercion or duress is not a defense if there is any reasonable way, other than committing the crime, for the defendant to escape the threat of harm. If you find that the defendant was coerced into committing the crime, you must find the defendant not guilty.

(Tr.p.1055, line 20-p.1056, line 9).

At the conclusion of trial, Applicant was convicted of both counts of armed robbery and both counts of burglary in the first degree. (Tr.p.1063, line 14-p.1065, line 2). She was sentenced to four concurrent terms of imprisonment for eighteen years. (Sent.p.36, line 24-p.37, line 6).



**ALLEGATIONS RAISED**

In her application, Applicant alleged she is being held in custody unlawfully based on allegations of:

1. "Ineffective assistance of counsel."
  - a. Insufficient time to prepare.
  - b. Investigation and presentation of witnesses; There was a witness to help the case but she was not there.
  - c. Lawyer hire a few weeks before trial.

At the evidentiary hearing, Applicant proceeded forward on additional grounds that counsel was ineffective for failing to move for severance, failing to object to testimony regarding a co-defendant committing a sexual offense against a female victim, failing to move for suppression of a video, and failing to have Applicant evaluated by a psychiatric or psychological expert.

**SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant testified first on her own behalf. She testified she has completed one-and-a-half years of college. (PCR Tr. p. 7-8). She testified she did not recall her arrest date or the particular charges for which she was arrested but was aware it was for two separate incidents. (PCR Tr. p. 9). She testified her first attorney was Beattie Butler from the Charleston County Public Defender's Office and she retained private counsel shortly before trial because she was concerned about health issues with Butler. (PCR Tr. p. 10-11). She testified she met with her retained counsel twice before trial for a total of ninety minutes. (PCR Tr. p. 12-14). She testified she was unsure if counsel reviewed her charges or the elements of the offenses with her. (PCR Tr. p. 13-14). She testified counsel never discussed possible sentences with her or the possibility of being convicted of any lesser-included offenses other than accessory after the fact. (PCR Tr. 20-21). She later testified counsel "maybe" discussed these things with her. (PCR Tr. p.

27). She testified she never discussed the possibility of having two separate trials with counsel. (PCR Tr. p. 14). She testified the only defense they discussed was "necessity." (PCR Tr. p. 15, 27-28). She elaborated her defense was that she was forced to participate in these crimes. (PCR Tr. p. 28-29). She testified counsel discussed her testifying prior to trial and that she did testify during her trial. (PCR Tr. p. 22). She testified counsel had her type out her version of what happened and email it to him prior to trial in preparation for her testimony at trial. (PCR Tr. 28-29). She testified she understood the risks and benefits of testifying before she took the stand. (PCR Tr. p. 26-27). She acknowledged all four of her co-defendant's testified against her at trial and could identify her as a participant. (PCR Tr. p. 26). However, she testified counsel never discussed any identification of her prior to trial. (PCR Tr. 22-23). She testified she knew her co-defendants testified she was not forced or threatened to participate in the crimes. (PCR Tr. 29). She testified her co-defendants' statements to law enforcement were inconsistent with their trial testimony and counsel "could have definitely objected to it or showed the perjury or how they lied." (PCR Tr. p. 19). She acknowledged her attorney cross-examined her co-defendants and highlighted the inconsistencies between their prior statements and trial testimony. (PCR Tr. p. 29). She testified she reviewed her co-defendants' statements prior to trial. (PCR Tr. p. 30). She testified the discovery materials she received came from her first attorney, Beattie Butler, not from retained counsel. (PCR Tr. p. 33).

Applicant testified counsel "seemed sad" prior to trial but that she did not have any concerns about his physical ability to conduct the trial. (PCR Tr. p. 15). She testified counsel informed her of "new evidence" the morning of her trial and she thinks it was her co-defendant changing his story or a new video with her co-defendants. (PCR Tr. 16, 18). She testified she did



not have an opportunity to watch the video with counsel and saw it for the first time when it was played for the jury. (PCR Tr. p. 18). She testified the trial focused more on her co-defendants and not enough on her and the part she played in the crimes. (PCR Tr. p. 19-20).

She testified she felt like counsel was not well prepare and was rushed. (PCR Tr. 17). Applicant testified she did not discuss the impact of switching attorneys so close to her trial date, but acknowledged she knew her trial was twelve days away when she retained counsel. (PCR Tr. p. 23-25). She testified her parents made the decision to switch attorneys and retain counsel. (PCR Tr. p. 31). She testified there was no discussion of her being evaluated by a psychiatrist or psychologist until the morning of trial at the suggestion of the trial court. (PCR Tr. p. 16-17). She testified she did not meet with defense expert Dr. Waid before trial. (PCR Tr. 17).

Counsel testified next. Counsel testified he has been practicing law since 1974 and a large percentage of his practice is criminal defense. (PCR Tr. p. 80). He testified he was retained to represent Applicant shortly before trial and he assumes her parents paid his retainer. (PCR Tr. p. 35-36, 80). Counsel testified he told the trial court he was ready for trial despite being retained so close to the trial date. (PCR Tr. 36-37). Counsel testified he does not think Applicant's testimony of them only meeting twice is correct, but acknowledge it was not "a whole lot of times." (PCR Tr. p. 38, 81). He elaborated he spent most of his time in Charleston preparing for trial after he was retained. (PCR Tr. p. 38, 82). He testified he believes he discussed that the charges arose from two separate incidents the first time he met with Applicant, including the elements of the offenses, possible punishments, and whether Applicant would testify. (PCR Tr. 39, 81). Counsel testified Applicant emailed him her version of events and anticipated testimony, and they then discussed this by phone multiple times. (PCR Tr. p. 82-83).

Counsel testified he did not need to file discovery motions because Applicant's prior counsel had already received discovery. (PCR Tr. p. 83-84). He testified he reviewed discovery with Applicant. (PCR Tr. p. 84-85). Counsel testified he also meet with Applicant's prior counsel and discussed the case. (PCR Tr. p. 85)

He elaborated the two homeowners were football coaches at the Citadel, where some of Applicant's co-defendant's played football. (PCR Tr. p. 39-40). Counsel testified he did not move to sever the case into two trials because he did not think it was necessary. (PCR Tr. p. 40-41, 90-91). He testified he thinks any severance motion would have been denied by the trial court. (PCR Tr. p. 40-42, 90-91). Counsel testified he did not have any medical or personal problems at the time of Applicant's trial. (PCR Tr. p. 48).

Regarding Applicant's role in the crimes, counsel testified, "Well, she admitted that she was involved in the planning, she was involved in the preparation, she was involved in the actual event. She discussed sharing of the proceeds from the thefts. She was never threatened and she could not fit into the exact parameters of the duress defense because number one she had the ability to get away. She had the ability to escape. She and the three girls the other two girls had very little part in this. She—they were left in one of the apartments by themselves while the boys went—I don't I know where they went." (PCR Tr. p. 42-43). He testified he was unaware of any potential defenses other than duress and Applicant's former public defender agreed. (PCR Tr. p. 43, 85). He elaborated Applicant had already given a statement to law enforcement admitting her involvement and all of the co-defendants were testifying as cooperating witnesses, so duress was the only possible defense that could be raised. (PCR Tr. p. 87). He testified he was worried the trial court would not allow him to raise duress as a defense because Applicant "had plenty of



ability to escape” and “was never threatened.” (PCR Tr. p. 43). He later testified Applicant was directly involved in these crimes and had plenty of time to escape. (PCR Tr. p. 92). He testified the trial court allowed him to raise duress as a defense despite his concerns. (PCR Tr. p. 44). He testified Applicant testified she felt threatened at trial. (PCR Tr. p. 44). Counsel testified he made a strategic decision not to seek out a psychiatric expert to support his duress defense because the case law supported the defense without the need for an expert and the desire not to have a dueling expert from the State to possibly weaken their defense. (PCR Tr. p. 44, 94). Counsel elaborated, “If we had brought a psychiatrist the State would have brought their own psychiatrist and it would have magnified the impact on the jury about proof—burden of proof as to the defense.” (PCR Tr. p. 44). He testified he was also afraid a psychiatric expert would highlight to the jury that Applicant did not try to escape when she had the chance. (PCR Tr. p. 46). He testified the evidence showed Applicant cooperated and assisted in the second incident. (PCR Tr. p. 46). He testified he ultimately retained a psychological expert, Dr. Randy Waid, at the insistence of the trial court. (PCR Tr. p. 47-49, 93). He testified he called Dr. Waid as an expert at trial and attempted to elicit testimony about a hypothetical situation involving a gun being held to someone’s head. (PCR Tr. p. 50, 53, 92). He testified the trial court did not allow him to go into this line of questioning with Dr. Waid. (PCR Tr. p. 50, 92). He acknowledged he did not object or provide case law to the trial court in an attempt to elicit this testimony. (PCR Tr. p. 51-53). Counsel testified he had used a defense of duress in a burglary case previously. (PCR Tr. p. 55). Counsel acknowledged he did not object to the State’s questioning of when Dr. Waid was hired. (PCR Tr. p. 55-56). Counsel testified he also called numerous character witnesses on Applicant’s behalf. (PCR Tr. p. 88, 98, 101).



Counsel testified there was an allegation that one of Applicant's male co-defendants committed criminal sexual conduct on a victim. (PCR Tr. p. 56). He testified although she was not charged with or alleged to have committed any sexual offense, he did not object to any testimony regarding this because he thought it was relevant to the incidents in which Applicant participated. (PCR Tr. p. 57-68, 99-100). Counsel testified he elicited testimony regarding the sexual offense in an attempt to distance Applicant's involvement. (PCR Tr. p. 69-74).

Counsel testified he received a video purportedly filmed by Applicant with her co-defendants shortly before trial and he did not have an opportunity to watch it prior to trial. (PCR Tr. p. 75). Counsel testified he did not move to suppress the video because he did not think it was prejudicial. (PCR Tr. p. 75-76, 97). He testified he was provided with time to watch the video, watched the video prior to its introduction, and did not move to suppress or for a mistrial because he did not feel one was warranted. (PCR Tr. p. 76).

#### **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 hearings. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption 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. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court’s specific finding regarding each of Applicant’s allegations of ineffective assistance of counsel:

*Allegation: Failure to Sufficiently Prepare for Trial*

Applicant alleges trial counsel was not sufficiently prepared for trial, citing the short, twelve day period between when she retained counsel and the start of her trial. This Court finds



Applicant failed to show Counsel's trial preparation fell below an objective standard of reasonableness.

"[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 745 S.E.2d 378 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). Applicant elected to fire her public defender and retain private counsel less than two week prior to her trial date and she acknowledged she knew her trial was less than two weeks away. Consequently, Applicant's own actions in choosing to obtain different counsel so shortly before trial is what caused trial counsel to have so little time to prepare for trial. See Strickland v. Washington, 466 U.S. 668, 691 (1984) ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). Regardless, counsel testified he had sufficient time to prepare and meet with Applicant. Counsel testified he spent the vast majority of the twelve days between retainer and trial in Charleston preparing for Applicant's trial. Although counsel testified he did not file any discovery motions because Butler already had, counsel met with Butler, reviewed Butler's entire file, discussed the file, possible defenses, and trial theory both with Butler and Applicant, and reviewed all discovery himself and with Applicant. Though counsel did not have the information concerning the change in his co-defendants' testimony until the Friday prior to trial, he testified that when he received that information, he reviewed it and reviewed it with Applicant and discussed the potential impact on testimony and evidence at trial. He testified it was not significant and he cross-examined the co-defendants on any inconsistent statements. Counsel could not recall how many times he met with Applicant prior to trial but that it was more than twice. He also testified they mostly spoke on the phone. He testified he

discussed the State's evidence with Applicant and what the State would have to prove at trial. Counsel testified he had sufficient time to speak with Applicant prior to trial, had sufficient time to prepare for trial, and was prepared to go to trial. This Court finds Applicant has presented no evidence of any deficiency in counsel's trial preparation.

Additionally, Applicant failed to show how the alleged failure to adequately prepare prejudiced her. Applicant presented no evidence of that any additional preparation, time or investigation could have discovered or how it could have aided in her defense. Where an applicant fails to offer any evidence of how additional preparation or communication would have resulted in a different outcome, he cannot show prejudice. Smith v. State, 404 S.C. 493, 745 S.E.2d 378 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding applicant failed to show prejudice resulting from counsel's lack of preparation where applicant presented no evidence of what counsel could have discovered or what other defenses applicant would have requested counsel pursue had he been more fully prepared for trial). Pure conjecture is insufficient to support a finding of prejudice. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (“[A]pplicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.”).

Therefore, this Court finds Applicant has failed to show either deficiency or prejudice with respect to this allegation. Accordingly, Applicant has failed to demonstrate he received ineffective assistance of counsel and this allegation is denied and dismissed.

*Allegation: Failure to Move to suppress video*

Applicant alleges Counsel was ineffective for failing to move to suppress a video, purportedly shot by Applicant with her co-defendant(s), that was turned over to the defense the

Friday prior to trial. Applicant has presented no evidence that counsel was deficient for not moving to suppress the video. Applicant failed to show on what basis counsel could have objected to the video. Counsel testified and the record reflects he had an opportunity to view the video before it was introduced as evidence. Counsel also testified he did not know how he could have kept the video out and he did not think it was irrelevant because it showed her demeanor between the incidents.

Further, Applicant has failed to show that had Counsel moved to suppress the video, there is a reasonable probability the trial judge would have granted the motion to suppress. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (finding applicant failed to establish that had he moved to suppress applicant's statement, there is a reasonable probability the trial judge would have granted the motion). Therefore, this Court finds Applicant has failed to satisfy her burden of proving either deficiency or prejudice with respect to this allegation. Accordingly, this allegation is denied and dismissed.

*Allegation: Failure to Have Applicant Evaluated*

Applicant alleges trial counsel was ineffective for failing to have her evaluated by a psychiatric or psychological expert and then calling that expert as a witness during trial. However, Applicant failed to present such an expert at her evidentiary hearing or offer any evidence of how such an expert would have aided her defense and led to her acquittal.

Because Applicant neither produced such an expert "nor offered [his] testimony in some other manner consistent with the rules of evidence," what his additional testimony would have been is "purely speculative." Bannister v. State, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). This Court finds this allegation must be denied and dismissed.



*Allegation: Failure to Move for Severance*

Applicant alleges trial counsel was ineffective for failing to move for a severance, essentially arguing she was entitled to separate trials for each incident. She argues the State would not have been able to present evidence from the other incident in each trial, making acquittal likely. Counsel testified he did not move for severance because he had no valid grounds to do so and the trial court would have denied a motion, as the two events were so intertwined. This Court agrees with counsel and finds this allegation must be denied and dismissed with prejudice.

Where “two offenses [are] of the same general nature involving connected transactions closely related in time, place, and character[,] the trial judge [has] power, in his discretion, to order them tried together over [a defendant’s] objection in the absence of a showing that [her] substantive rights would have been thereby prejudiced.” McCrary v. State, 249 S.C. 14, 36, 152 S.E.2d 235, 246 (Ct. App. 1967)) (citations omitted). In addition, “joinder of offenses in one trial is ‘proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) required the same or similar proof.’” State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) (quoting State v. Carter, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996)). Here, the burglaries were days apart, occurred in the same city, were carried out by the same people according to the same plan and in the same general manner. Counsel testified he did not move to sever because he did not believe the motion would have been successful. This Court finds that Counsel’s decision not to move to sever the burglary charges into two separate trials was not professionally unreasonable. Likewise, Applicant failed to show that had Counsel moved to sever, the court would have



granted the motion. See State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) (finding trial judge did not abuse discretion in refusing to sever burglary indictments where offenses were close in time and proximity, arose out of a single chain of events, were of the same nature, and were proved by the same evidence and witnesses); Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (finding applicant failed to establish that had he moved to suppress applicant's statement, there is a reasonable probability the trial judge would have granted the motion). Therefore, this allegation must be denied and dismissed with prejudice.

### CONCLUSION

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

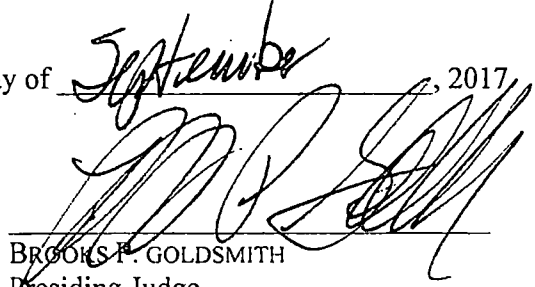
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides 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. This application for post-conviction relief must be denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 14 day of September, 2017

  
\_\_\_\_\_  
BROOKS P. GOLDSMITH  
Presiding Judge  
Ninth Judicial Circuit

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



ALAN WILSON  
ATTORNEY GENERAL

September 20, 2017

The Honorable Julie J. Armstrong  
Charleston Clerk of Court  
100 Broad St Ste 106  
Charleston, SC 29401-2210

Re: **Sasha Gaskins, #345415 v. State of South Carolina**  
**2014-CP-10-2879**

Dear Ms. Armstrong:

Enclosed please find the original Order of Dismissal signed by the Honorable Brooks P. Goldsmith, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Megan Harrigan Jameson  
Senior Assistant Deputy Attorney General

MHJ/jaj

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
SASHA GASKINS, )  
Applicant, )  
vs. )  
STATE OF SOUTH CAROLINA, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE #: 2014-CP-10-2879

MOTION TO AMEND JUDGMENT

FILED  
2017 OCT 13 PM 3:19  
JULIA ANN STRONG  
CLERK OF COURT

Now comes the defendant, by and through his undersigned attorney, moving to amend the Order of Dismissal pursuant to Rule 59(e) of the South Caroline Rules of Civil Procedure. Counsel received a copy of the filed Order on October 3, 2017. The Order fails to address one issue raised at the Post Conviction Relief (PCR) Hearing. The Applicant requests a ruling on the following issues:

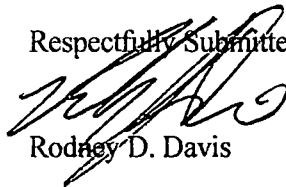
1. Ineffective assistance of counsel by inducing and failing to object to testimony about the sexual assault for which the Applicant was not charged. Such testimony was irrelevant, prejudicial and inflamed the jury to an extent that casts doubt on the fairness of the verdict.

This issue was fully presented at the PCR Hearing yet not addressed in the Order of Dismissal. Specifically, trial counsel testified that he made no objection to this testimony multiple times during the trial (Trial Transcript Pg. 115, Line 10; Pg. 120, Line 11; Pg. 175, Line 14; Pg. 346, Line 8; Pg. 348, Line 8 – Pg. 349, Line 20; Pg. 446, Line 6; Pg. 726, Line 9 – Pg. 728, Line 2; and Pg. 734, Line 23.). Furthermore, the trial attorney elicited testimony about the sexual assault from State’s witnesses (Trial Transcript Pg. 408, Line 22; Pg. 409, Line 14 – Pg. 410, Line 21; Pg. 552, Line 21; Pg. 557, Line 19; and Pg. 740, Line 23.). The Applicant was never charged with Criminal Sexual Conduct (CSC). Applicant argued at the PCR Hearing that evidence involving a

CSC that occurred is irrelevant and prejudicial during the trial of the Applicant. It was argued that trial counsel's conduct is ineffective and directly influenced the jury's verdict.

The Order of Dismissal fails to address this issue. Therefore, the Applicant would respectfully request that this Court obtain and review the full evidentiary hearing transcript. Applicant would further request that this Court reconsider the standing Order of Dismissal and direct the entry of a new judgment or alter the standing Order of Dismissal to ensure that all arguments are fully addressed by this Court prior to appeal.

Respectfully Submitted,



Rodney D. Davis

Charleston, SC  
10/13, 2017

cc  
AG  
AT  
GS  
SOL

RECEIVED

DEC 19 2017

FILED

23 2017 NOV 9

STATE OF SOUTH CAROLINA IN THE SUPREME COURT  
COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT

JULIE J. ARMSTRONG  
CLERK OF COURT

Sasha Gaskins, SCDC No. 345415,

Case No.: 2014-CP-10-2879

BY \_\_\_\_\_  
Applicant, )

**AMENDED ORDER OF DISMISSAL**

v. )

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of an application for post-conviction relief filed May 5, 2014, by Sasha Gaskins (Applicant), alleging various grounds of ineffective assistance of counsel . Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 19, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. At the conclusion of the hearing, this Court denied the application from the bench. On September 14, 2017, this Court signed an order of dismissal denying and dismissing this application in full. On October 13, 2017 Applicant, through counsel, filed a Motion to Amend Judgment, asking this Court to rule on an additional issue that although not raised in her application, was addressed at the evidentiary hearing. This amended order, addressing this additional ground, follows.

**SUMMARY OF PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County



INDIGENT DEFENSE  
DIVISION

Clerk of Court. During its June 2010 term of court, the Charleston County Grand Jury indicted Applicant for two counts of first-degree burglary (2010-GS-10-4738 & -4794) and two counts of armed robbery (2010-GS-10-4761 & -4793). Kenneth Sowell, Esquire, represented Applicant. Assistant Solicitors Culver Kidd and Dale Savage prosecuted the case on behalf of the State.

On February 28, 2011, Applicant proceeded to a jury trial the Charleston County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge. On March 4, 2011, the jury convicted Applicant as indicted.

The trial court held sentencing in abeyance until Applicant's co-defendants could be sentenced. On March 4, 2011, Applicant submitted a written "Motion for Reconsideration and Motion for New Trial" to the trial court. On March 23, 2011, the trial court issued and filed a written order denying Applicant's motions. On March 31, 2011, the trial court sentenced Applicant to four concurrent terms of eighteen years' imprisonment.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Susan B. Hackett, Esquire, of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Sasha Gaskins, 2013-UP-203 Ct. App. filed May 22, 2013). The Remittitur was returned to the circuit court on June 14, 2013.

**SUMMARY OF FACTUAL HISTORY**

On the first day of trial, Applicant's counsel moved for a continuance to seek a psychological evaluation of Applicant. The trial court expressed concerns over delaying the trial

and questioned counsel about his reasons for needing an evaluation. After a brief discussion, the trial court stated:

And I need to do a little bit of quick research. But I guess the real bottom line is whether it is applicable at all. You certainly could have her evaluated, and it does not take that long to have her evaluated.

And if it is your intention to have a psychiatrist testify as to the effects of fear on her or threats on her, they should be able to do that in very short order. You should be able to have somebody evaluate her today or tomorrow, and be ready to testify.

(Tr.p.10, line 19-p.11, line 4). After additional discussion concerning Applicant's duress defense, the trial court re-directed focus to the request for additional time to prepare for trial. Counsel asked for an additional week to prepare. The judge commented: "It doesn't take a week for a psychiatrist to evaluate somebody. I have them come over here and evaluate people all the time in a couple of hours." (Tr.p.15, lines 2-9). The assistant solicitor raised concerns about whether testimony from an expert would be proper, to which the trial court replied: "I don't know, I have to cross that bridge when I c[o]me to it." (Tr.p.17, lines 8-15). After additional discussion about whether an evaluation was needed, as well as the appropriate scope of an expert's testimony, the trial court ultimately ruled on Applicant's motion as follows:

The issue at this point, however, is not the admissibility of the evidence, it's making it available to her if she feels that she needs it. Then we will cross the admissibility threshold when appropriate.

But what is before the court at this point is a motion to continue based on giving access to the witness. And I am inclined to give her the ability to do that, but I don't think it's a basis for a continuance because I think her lawyer can figure out when that witness would be made available.

(Tr.p.22, lines 2-12).



Herbert Joseph Butler, III, (Herb) testified that at approximately ten o'clock on the evening of Wednesday, February 24, 2010, he and his girlfriend, Emily Michalak (Emily), were at Herb's house cooking steaks. (Tr.p.105, lines 20-24, p.108, lines 10-23; p.115, lines 17-25). Herb was in the back yard getting the steaks from the grill when Emily answered a knock at the front door. He heard a scream, dropped the steaks as he came in the back, saw Emily's face in total shock, and saw two black males with masks coming into the house. The intruders pointed guns at Herb and Emily and told them to get on the ground and be quiet. Herb described the men as well built and athletic, at least 6 feet tall, with black masks, black gloves, and gray clothes. The men took the victims' cell phones, duct taped their hands together, duct taped their legs together, and put duct tape over Herb's eyes. The intruders later duct-taped a sock in Herb's mouth to keep him quiet, eventually shoving him in a closet. (Tr.p.109, line 24-p.110, line 17).

During a nearly four hour ordeal, Herb and Emily were interrogated, beaten, pistol-whipped and kicked while being asked for money, debit cards, and drugs. Herb gave up his debit cards and PIN numbers willingly. (Tr.p.113, line 16-p.114, line 18.) At some point Herb and Emily were separated and Herb was taken to his bedroom. The intruders continued to demand that he give up the money even though Herb told them he did not have any money. One intruder pulled Herb's pants down, grabbed Herb's penis, put a knife to it, and threatened to cut it off if Herb did not give him some money. They left Herb with his pants down. (Tr.p. 116, lines 1-20). Despite the intruders' attempts to disguise their voices using an accent, Herb recognized one voice as belonging to Reggie Rice, a former Citadel classmate who had been one of Herb's "smoking buddies." (Tr.p.116, line 24-p.118, line 4).



Emily testified she had known Herb since 2004, her freshman year at Bishop England High School, where they ran cross-country together. They had been dating for several months before the night of the incident. Although they had typically been staying at Emily's place downtown, on February 24, 2010, they decided to go to Herb's house on James Island to grill steaks and have dinner and a couple of drinks before going to bed, so she could get up early for a class. (Tr.p.718, line 17-p.720, line 8). While Herb was out back at the grill, Emily heard a knock on the door. When she opened it, she greeted a young female saying her car had just broken down and she needed a cell phone to call for help. Emily identified the female as Applicant, Sasha Gaskins. Emily shut the door and went to retrieve her phone from across the room. When she turned around she noticed Applicant had pushed open the door and was standing about four feet inside Herb's house. Applicant looked over her right shoulder and within two seconds two big males with guns, masks and gloves entered the house and demanded that Emily get on the ground. (Tr.p.720, line 9-p.722, line 2).

Emily had retreated to the kitchen to get Herb and when they both returned to the living room, the defendant was still standing by the doorway. The two intruders proceeded to duct tape Emily and Herb around the wrists and legs and put duct tape over Emily's eyes. (Tr.p.723, line 1-p.724, line 6). Emily and Herb were separated, and while one intruder was in the bedroom questioning Herb, the other man sat down beside Emily and began touching her vagina through her jeans. He then undid his pants, picked Emily up and put her on her knees in front of him. The man put a gun to Emily's head and told her if she didn't do "this" he would kill her. The intruder then put one hand on the back of Emily's head, held the gun to her head with his other hand, and forced his penis into her mouth for approximately ten to fifteen seconds. The sexual assault



ended when the second intruder returned and told the first man to stop. (Tr.p.726, line 1-p.727, line 23). Before the intruders left for good, they told Emily if they ever heard of her calling the police they were going to come back and find her, no matter where she was, and kill her. (Tr.p.733, lines 11-17). Emily later picked Applicant from a photo line-up prepared by the police. (Tr.p.735, line 14-p.736, line 15).

Joshua Shelton Harpe (Harpe) testified at approximately 1:15 a.m. on Saturday, February 27, 2010, he received a phone call from a female claiming to be a friend's ex-girlfriend. The caller said her car had broken down in a nearby parking lot, that she had called Triple-A, and that she knew Harpe's house was close. She asked if he would come get her and let her stay in his condo until Triple-A arrived, because she didn't want to be alone. (Tr.p.763, line 24-p.764, line 21). Harpe agreed to assist the caller, but as he was walking to his car in the parking garage beneath his apartment building a man put a silver revolver in his face and told him to get on his knees. The man struck him in the back of the head with the pistol and he went to the ground. Harpe then saw two more people come from his left. All three assailants had their faces covered. (Tr.p.765, line 4-p.767, line 17).

The three men forced Harpe at gunpoint to take them up to his apartment. One man put Harper on his knees, pointed a gun at the back of his head and said now would be a good time to start praying. Harpe thought he was going to die. The assailants then duct taped Harpe's hands behind his back, duct taped his ankles together, and put a sock over his eyes secured by duct tape around his head. They ransacked his apartment looking for money and demanded Harpe tell them the PIN number for his debit card or else they would cut off his "balls." Harpe complied with their demands. (Tr.p.768, line 8-p.770, line 6; p.771, line 7-p.773, line 11). During the



attack, Harpe recognized the voice of one of his assailants, Reggie Rice. After the intruders left, Harpe was able to free himself and go for help. After being picked up by the police, Harpe was driven to another location and shown two suspects who were in police custody. He positively identified Reggie Rice: (Tr.p.778, line 15-p.784, line 11).

In addition to eliciting testimony from the three victims of these crimes, the State called Applicant's four co-defendants to the stand. Stephan Francois (Francois), Reginald Rice (Rice), Miguel Dominic Starks (Starks), and Breanna Yastace Bruster (Bruster) provided consistent testimony about a conspiracy to commit the two home invasions, including detailed descriptions of Applicant's knowledge of, and participation in, that conspiracy. Francois testified he was a student at the College of Charleston and was dating Applicant at the time the crimes were committed, and that Bruster was a mutual friend he met through Applicant. He said Starks was a high school friend from Georgia who was attending the Citadel, and that Rice was a friend of Starks whom he met shortly before the robberies. (Tr.p.137, line 17-p.142, line 25). Rice testified that although he was a couple of years ahead of Starks at the Citadel, they met in 2008 and were playing together on the football team. He said he met Francois and Applicant for the first time the day of the first robbery, and met Bruster for the first time a little later that same day, prior to the first robbery. Rice testified he knew both Herb and Harpe from his time at the Citadel and that he and Herb would sometimes hang out and smoke "weed" together. He said he also had smoked marijuana with Harpe and had sometimes purchased it from Herb. (Tr.p.306, line 9-p.315, line 24). Starks testified he met Rice at the Citadel in 2008 where they served in the same "company" together. He said he knew Francois from high school in Georgia and that while he may have seen Applicant before, his first real conversations with her were during the week of the



two robberies. Starks testified he met Bruster for the first time on the day of the first robbery when they were introduced by Francois. (Tr.p.431, line 3-p.434, line 23). Bruster testified she and Applicant were friends and classmates together at the College of Charleston, and met in June of 2009. She said she knew Francois before the robberies, but that she met Starks and Rice for the first time on the day of the first robbery. (Tr.p.586, line 12-p.591, line 20).

Rice and Starks testified that while they were on a drive from Atlanta to Charleston a few days before the first robbery, they started formulating a plan to rob someone. They initially discussed robbing Harpe, but eventually decided to rob Herb because as a seller, they assumed he would have a bunch of drugs and money. They determined they needed someone Herb did not know who could get him to come outside or allow them to get into the house, and they thought they should use a female to knock on the door. Starks suggested enlisting help from his childhood friend Francois and Francois's girlfriend (Applicant). (Tr.p.317, line 12-p.319, line 20; p.434, line 11-p.435, line 17).

Francois, Rice, and Starks testified about a meeting they had in Applicant's dorm room to discuss and to further plan the robbery. Rice, Starks, Francois and Applicant were present and participated in the discussion. Starks had even drawn up a "landscape" of Herb's apartment on a napkin, and explained the role each person should play in the plan. Applicant was expected to knock on the door and say she needed to use the phone, or her car was broken, or something to that effect. In other words, she would be the "bait" to "lure" him out, which would allow the others to enter Herb's house and rob him. (Tr.p.145, line 23-p.148, line 11; p.319, line 21-p.322, line 13; 435, line 21-p.436, line 14). Francois, Rice, and Starks also testified about picking up Bruster and going with her and Applicant to eat dinner before returning to Starks' apartment to

smoke and hang out prior to the first robbery. While at Starks' apartment, Francois, Rice, Starks and Applicant again discussed the robbery, and talked about the possibility of committing two robberies, one against Herb and another against Harpe. (Tr.p.148, line 16-p.158, line 20; p.324, line 20-p.331, line 1; p.438, line 9-p.442, line 21).

Francois, Rice, Starks, and Bruster testified in great detail as to how the burglary and robbery were carried out at Herb's house, including Applicant's participation. Rice and Starks gave details about the sexual assault against Emily and other events while they were inside Herb's house. (Tr.p.158, line 21-p.174, line 22; p.331, line 2-p.355, line 17; p.442, line 22-p.451, line 6; p.595, line 16-p.611, line 18). All four co-defendants further testified about driving back to Starks' apartment after the first robbery, dividing up the items stolen from Herb, and discussing plans for the second robbery. They testified as to Applicant's presence when those additional plans were discussed. Francois, Rice and Starks then described in detail how the burglary and robbery were carried out at Harpe's apartment, including Applicant's participation. (Tr.p.177, line 15-p.179, line 23; p.185, line 5-p.220, line 12; p.355, line 11-p.374, line 23; p.452, line 21-p.453, line 7; p.466, line 2-p.484, line 23; p.616, line 4-p.629, line 10; p.634, line 19-p.642, line 24).

Francois, Rice, Starks, and Bruster testified repeatedly that Applicant was a willing participant in both robberies, that she was part of the discussion when the robberies were being planned, and that she was never threatened in their presence. They testified she did not make any attempt to leave or terminate her participation in either home invasion despite having opportunities to do so. Each of the four testified they neither pointed a gun at nor threatened Applicant, and never saw any other co-defendant point a gun at or threaten Applicant. They also

testified Applicant never appeared to be threatened and never told them she felt threatened before or during the robberies.<sup>1</sup>

After the State rested, the assistant solicitor advised the trial court there was a matter of law to discuss. He said Applicant's counsel had just handed him a document provided by a doctor Applicant planned to call as her first witness. The trial court was given a copy of the document and asked Applicant's counsel to explain. Counsel said Applicant would testify as to all the facts in the document, and the doctor would answer a hypothetical question based on those facts. (Tr.p.797, line 18-p.798, line 23). The trial court said the witness cannot answer a hypothetical about what she could have done, would have done, or is capable of doing, and could only testify in general as to human behavior, and the effects of fear on the human being. The trial court added that "no expert can testify as to the propensity for someone to do something, past or future . . . that's not permissible. That's a jury question." The trial court further stated, "he cannot

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<sup>1</sup> Francois' testimony appears in the transcript as follows: Tr.p.147, line 10-p.148, line 11; p.153, line 6-p.154, line 8; p.155, lines 8-18; p.158, lines 3-20; p.159, lines 12-21; p.162, lines 10-25; p.164, lines 12-24; p.166, line 16-p.167, line 3; p.169, lines 14-24; p.171, line 11-p.172, line 12; p.173, line 14-p.174, line 10; p.175, line 22-p.176, line 15; p.188, line 18-p.189, line 12; p.191, lines 8-19; p.195, line 9-p.197, line 18; p.211, lines 2-12; p.213, line 15-p.214, line 25; p.217, line 24-p.218, line 25; p.238, line 25-p.239, line 18; p.241, lines 20-22; p.248, lines 3-8; p.259, line 22-p.260, line 3; p.261, lines 2-4; p.272, line 23-p.273, line 2; p.285, lines 12-19; & p.302, lines 12-14.

Rice's testimony appears in the transcript as follows: Tr.p.322, lines 14-20; p.325, line 24-p.327, line 21; p.330, lines 15-25; p.331, line 22-p.333, line 10; p.334, lines 2-5; p.335, lines 2-5; p.336, line 24-p.337, line 4; p.338, line 25-p.340, line 5; p.351, line 21-p.353, line 17; p.358, line 14-p.362, line 7; p.363 lines 20-24; p.369, line 24-p.370, line 5; p.373, lines 4-24; p.375, lines 13-20; p.377, line 19-p.378, line 8; p.397, lines 11-14; p. 401, lines 5-20; p.406, lines 4-9; p.424, line 24-p.425, line 2.

Starks' testimony appears in the transcript as follows: Tr.p.436, lines 5-18; p.438, line 23-p.439, line 10; p.442, lines 7-20; p.443, line 21-p.444, line 4; p.446, line 23-p.448, line 4; p.450, lines 14-p.451, line 16; p.452, line 21-p.453, line 3; p.475, lines 9-14; p.479, lines 4-21; p.482, line 3-p.483, line 23; p.488, lines 1-11; p.490, line 12-p.491, line 13; p.493, line 15-p.494, line 11; p.512, lines 19-25; p.532, lines 7-11.

Bruster's testimony appears in the transcript as follows: Tr.p.599, lines 14-22; p.600, line 20-p.601, line 6; p.602, lines 18-20; p.603, lines 19-24; p.604, lines 19-25; p.605, line 21-p.606, line 3; p.608, line 8-p.609, line 5; p.612, lines 10-18; p.617, line 5-p.618, line 23; p.621, line 25-p.622, line 12; p.624, lines 2-11; p.625, line 5-p.626, line 20; p.638, lines 10-13; p.639, lines 2-15; p.641, lines 15-24; p.684, lines 4-10.



say he examined her and in his professional opinion she didn't do it on this date, or that she doesn't have the capacity to do it in the future because that's off limits." (Tr.p.798, line 24-p.800, line 7). Counsel said he had hoped to present the hypothetical to his witness; however, the judge ruled:

You can't do a hypothetical if it's going to have him say what she could have done or what she will do. That's a jury question.

.....  
You can always argue to the jury that, you know, of the effects of fear, and that you presented an expert as to the effect of fear, duress and coercion on a person. It's up to the jury to draw that conclusion.

The jury is the ultimate fact-finders whether something took place or didn't take place. But you can't have an expert supplant that and say that I think that they didn't do it or that they did do it or that they have the capacity to do it. That's off limits.

(Tr.p.800, line 19-p.801, line 11). Counsel said he would do his best to stay within those parameters. (Tr.p.801, lines 12-13).

Counsel then called Dr. Lewis Randolph Waid, a clinical psychologist from Mount Pleasant who is on the faculty at the Medical University of South Carolina, to testify on Applicant's behalf. Dr. Waid was admitted as an expert in neuropsychology and testified that the classic example of fear or duress is the absolute threat of loss or life to either the person, another individual, or a family member. (Tr.p.801, line 24-p.808, line 2). Dr. Waid testified that fear could result in an otherwise completely normal, reasonable, non-criminal person committing a crime, such as a burglary or armed robbery. (Tr.p.808, lines 3-15). He explained that the more reasonable the belief of imminent threat of death, the more it can mediate why a person would engage in criminal conduct, and that if the person making the threat has a gun available, or pointed at the subject, it would raise the ante that it is a reasonable threat. (Tr.p.808, line 23-

p.809, line 13). Dr. Waid said making a threat on one's life can cause a person to choose what seems to be the lesser of two evils, such as participating in a crime, and that the length of time a person may continue to engage in the participation depends on the continuing period of time he feels there is a continuing threat to himself or family members. (Tr.p.810, line 20-p.812, line 10).

Applicant testified in her own defense. She described her participation in church, school, extracurricular activities, and her academic success, including her acceptance into the College of Charleston. (Tr.p.833, line 16-p.838, line 3). She then described her relationship with Francois, her boyfriend of seven months, and meeting Rice and Starks for the first time on Wednesday, February 24, 2010, the day of the first robbery. (Tr.p.838, line 8-p.842, line 23). Applicant did not deny participating to some extent in the crimes; however, she claimed she initially thought the first robbery was a joke, and only continued participating in the crimes under duress. She testified Starks threatened to kill her or Francois if she did not do what he said. Applicant said she felt scared and that her only options were to do it or die. She testified she was afraid for her life and felt like she would be killed if she did not say yes. (Tr.p.842, line 24-p.878, line 4).

Applicant also called several witnesses who testified about her good character and reputation in the community. Alvenes Barksdale, William Eugene Delaine, III, Sa'Datrius Alson, Brenda Ligon, and Applicant's mother, Rosietta Gaskins Nance, all testified as to Applicant's good character and her reputation in her hometown community of Clinton, South Carolina. (Tr.p.814-p.832; p.940-p.968).

During closing arguments, Counsel for Applicant attempted to attack the State's case in two ways. First, he argued Applicant was a young, sweet, innocent, nice, helpful little girl who does not have the character to voluntarily commit these crimes. (Tr.p.989, lines 6-9; p.999, lines



9-10; p.1001, lines 3-22; p.1006, lines 1-9; p.1010, line 8-11; p.1018, lines 2-4). Second, although counsel acknowledged crimes were committed and that Applicant was involved in those crimes, she only did so out of fear for her life. He argued Applicant was coerced—that she acted under duress. Counsel argued on at least two occasions guns were pointed at Applicant and she was told she would be killed if she did not do as she was directed. (Tr.p.991, lines 2-11; p.992, line 25-p.993, line 16; p.994, line 23-p.1005, line 2; p.1008, line 23-p.1012, line 3).

After Applicant's counsel finished, the assistant solicitor made a closing argument, beginning with a reminder that "any words that come out of [Applicant's counsel's] mouth are not evidence. In the same vein, anything that I say is not evidence." (Tr.p.1018, line 24-p.1019, line 2). Despite an objection, the trial court noted this was an accurate statement of the law, and the assistant solicitor repeated the comment. (Tr.p.1019, lines 3-12). The solicitor noted that ninety percent of counsel's argument had been about painting Applicant as the sweetest little girl in town, but asked the jurors to save their sympathy for the victims. (Tr.p.1019, line 24-p.1020, line 15). The assistant solicitor then took a moment to "address the allegations that there has been some sort of arrangement between me or my office and those witnesses." He said:

And we are going to show them mercy and leniency for their testimony? I don't think. [Applicant] isn't near as culpable as they are, but she is just as guilty. Everything Mr. Sowell presented to you is mitigation. It's something that should be considered as sentencing, not toward guilt.

(Tr.p.1022, lines 5-10). Counsel for Applicant objected on grounds that "he is not quoting the law." When pressed about his objection, counsel specifically argued: "He told them that coercion is not to be considered by the jury." (Tr.p.1022, lines 11-21). The trial court said: "He didn't misstate the law, he said it's something they can consider. They don't have to consider it."



Counsel responded: "I understand that. He said it has to be considered by the Judge at sentencing." (Tr.p.1022, line 22-p.1023, line 3). The trial court overruled the objection and the assistant solicitor continued his argument. (Tr.p.1023, line 17).

Much later in closing the solicitor said:

We only have one type of criminal justice system and it's the best one in the world. But it treats everybody the same. It treats 18-year-old little girls the same as grown men as far as whether they're guilty or not guilty.

Whether they are a pillar in the community, an active member of the church, or have a great reputation, that's mitigation that's to be given to the judge at sentencing, so you can either down-depart. Or if they have the opposite reputation, if they have a reputation for being a bad guy, they might get a stiffer sentence.

But that's for sentencing, that's not for you to consider, that's not for me to consider, that's for the Judge. You are not to concern yourself with sentencing, you are to concern yourself with guilt.

(Tr.p.1035, lines 5-20). Applicant's counsel made no objection.

The trial court then advised the parties she had an instruction on good character and reputation she was contemplating giving to the jury. She said she was now convinced she needed to give it, because the assistant solicitor had argued Applicant's good character could only be considered in mitigation and "that's not the law." The trial court said it did not want to leave the jury with that misapprehension, because it was actually appropriate for them to consider good character in determining whether Applicant committed the crime or not. (Tr.p.1036, lines 9-19). The trial court recited the language she planned to charge and neither party took exception. (Tr.p.1036, line 20-p.1037, line 21).

The trial court then charged the jury on the law, including correct general charges on the roles of the judge and jury, the duty to assess the credibility of witnesses, the duty to weigh the



evidence, expert witness testimony, identification, burden of proof, direct evidence, circumstantial evidence, the presumption of innocence, the crimes and the elements of those crimes, accomplice liability, intent, mere presence, and verdicts. The trial court gave the following charge on good character:

I further instruct you that the defendant has presented evidence of her good reputation and character to show that it would be inconsistent with the defendant committing the crime.

The weight you give to that testimony, like all other testimony in this case, is for you to decide in your good judgment. You may consider testimony of the defendant's good character, along with all the other evidence in the case, in deciding whether or not the defendant committed the crime.

(Tr.p.1042, lines 1-10). The trial court also specifically gave the jury the following charge on the defense of coercion or duress:

Ladies and gentlemen, the defendant has raised the defense of coercion or duress. Coercion or duress is when a person makes another person commit a crime against someone else's person or property by the threat of immediate physical violence.

The coercion or duress must be present, imminent and of the type to create a well-grounded fear of death or serious bodily harm if the act is not done. The fear of injury must be reasonable.

Coercion or duress is not a defense if there is any reasonable way, other than committing the crime, for the defendant to escape the threat of harm. If you find that the defendant was coerced into committing the crime, you must find the defendant not guilty.

(Tr.p.1055, line 20-p.1056, line 9).

At the conclusion of trial, Applicant was convicted of both counts of armed robbery and both counts of burglary in the first degree. (Tr.p.1063, line 14-p.1065, line 2). She was sentenced to four concurrent terms of imprisonment for eighteen years. (Sent.p.36, line 24-p.37, line 6).



### **ALLEGATIONS RAISED**

In her application, Applicant alleged she is being held in custody unlawfully based on allegations of:

1. "Ineffective assistance of counsel."
  - a. Insufficient time to prepare.
  - b. Investigation and presentation of witnesses; There was a witness to help the case but she was not there.
  - c. Lawyer hire a few weeks before trial.

At the evidentiary hearing, Applicant proceeded forward on additional grounds that counsel was ineffective for failing to move for severance, failing to object to testimony regarding a co-defendant committing a sexual offense against a female victim, failing to move for suppression of a video, and failing to have Applicant evaluated by a psychiatric or psychological expert.

### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant testified first on her own behalf. She testified she has completed one-and-a-half years of college. (PCR Tr. p. 7-8). She testified she did not recall her arrest date or the particular charges for which she was arrested but was aware it was for two separate incidents. (PCR Tr. p. 9). She testified her first attorney was Beattie Butler from the Charleston County Public Defender's Office and she retained private counsel shortly before trial because she was concerned about health issues with Butler. (PCR Tr. p. 10-11). She testified she met with her retained counsel twice before trial for a total of ninety minutes. (PCR Tr. p. 12-14). She testified she was unsure if counsel reviewed her charges or the elements of the offenses with her. (PCR Tr. p. 13-14). She testified counsel never discussed possible sentences with her or the possibility of being convicted of any lesser-included offenses other than accessory after the fact. (PCR Tr. 20-21). She later testified counsel "maybe" discussed these things with her. (PCR Tr. p.



27). She testified she never discussed the possibility of having two separate trials with counsel. (PCR Tr. p. 14). She testified the only defense they discussed was "necessity." (PCR Tr. p. 15, 27-28). She elaborated her defense was that she was forced to participate in these crimes. (PCR Tr. p. 28-29). She testified counsel discussed her testifying prior to trial and that she did testify during her trial. (PCR Tr. p. 22). She testified counsel had her type out her version of what happened and email it to him prior to trial in preparation for her testimony at trial. (PCR Tr. 28-29). She testified she understood the risks and benefits of testifying before she took the stand. (PCR Tr. p. 26-27). She acknowledged all four of her co-defendant's testified against her at trial and could identify her as a participant. (PCR Tr. p. 26). However, she testified counsel never discussed any identification of her prior to trial. (PCR Tr. 22-23). She testified she knew her co-defendants testified she was not forced or threatened to participate in the crimes. (PCR Tr. 29). She testified her co-defendants' statements to law enforcement were inconsistent with their trial testimony and counsel "could have definitely objected to it or showed the perjury or how they lied." (PCR Tr. p. 19). She acknowledged her attorney cross-examined her co-defendants and highlighted the inconsistencies between their prior statements and trial testimony. (PCR Tr. p. 29). She testified she reviewed her co-defendants' statements prior to trial. (PCR Tr. p. 30). She testified the discovery materials she received came from her first attorney, Beattie Butler, not from retained counsel. (PCR Tr. p. 33).


Applicant testified counsel "seemed sad" prior to trial but that she did not have any concerns about his physical ability to conduct the trial. (PCR Tr. p. 15). She testified counsel informed her of "new evidence" the morning of her trial and she thinks it was her co-defendant changing his story or a new video with her co-defendants. (PCR Tr. 16, 18). She testified she did



not have an opportunity to watch the video with counsel and saw it for the first time when it was played for the jury. (PCR Tr. p. 18). She testified the trial focused more on her co-defendants and not enough on her and the part she played in the crimes. (PCR Tr. p. 19-20).

She testified she felt like counsel was not well prepare and was rushed. (PCR Tr. 17). Applicant testified she did not discuss the impact of switching attorneys so close to her trial date, but acknowledged she knew her trial was twelve days away when she retained counsel. (PCR Tr. p. 23-25). She testified her parents made the decision to switch attorneys and retain counsel. (PCR Tr. p. 31). She testified there was no discussion of her being evaluated by a psychiatrist or psychologist until the morning of trial at the suggestion of the trial court. (PCR Tr. p. 16-17). She testified she did not meet with defense expert Dr. Waid before trial. (PCR Tr. 17).

Counsel testified next. Counsel testified he has been practicing law since 1974 and a large percentage of his practice is criminal defense. (PCR Tr. p. 80). He testified he was retained to represent Applicant shortly before trial and he assumes her parents paid his retainer. (PCR Tr. p. 35-36, 80). Counsel testified he told the trial court he was ready for trial despite being retained so close to the trial date. (PCR Tr. 36-37). Counsel testified he does not think Applicant's testimony of them only meeting twice is correct, but acknowledge it was not "a whole lot of times." (PCR Tr. p. 38, 81). He elaborated he spent most of his time in Charleston preparing for trial after he was retained. (PCR Tr. p. 38, 82). He testified he believes he discussed that the charges arose from two separate incidents the first time he met with Applicant, including the elements of the offenses, possible punishments, and whether Applicant would testify. (PCR Tr. 39, 81). Counsel testified Applicant emailed him her version of events and anticipated testimony, and they then discussed this by phone multiple times. (PCR Tr. p. 82-83).



Counsel testified he did not need to file discovery motions because Applicant's prior counsel had already received discovery. (PCR Tr. p. 83-84). He testified he reviewed discovery with Applicant. (PCR Tr. p. 84-85). Counsel testified he also meet with Applicant's prior counsel and discussed the case. (PCR Tr. p. 85)

He elaborated the two homeowners were football coaches at the Citadel, where some of Applicant's co-defendant's played football. (PCR Tr. p. 39-40). Counsel testified he did not move to sever the case into two trials because he did not think it was necessary. (PCR Tr. p. 40-41, 90-91). He testified he thinks any severance motion would have been denied by the trial court. (PCR Tr. p. 40-42, 90-91). Counsel testified he did not have any medical or personal problems at the time of Applicant's trial. (PCR Tr. p. 48).

Regarding Applicant's role in the crimes, counsel testified, "Well, she admitted that she was involved in the planning, she was involved in the preparation, she was involved in the actual event. She discussed sharing of the proceeds from the thefts. She was never threatened and she could not fit into the exact parameters of the duress defense because number one she had the ability to get away. She had the ability to escape. She and the three girls the other two girls had very little part in this. She—they were left in one of the apartments by themselves while the boys went—I don't I know where they went." (PCR Tr. p. 42-43). He testified he was unaware of any potential defenses other than duress and Applicant's former public defender agreed. (PCR Tr. p. 43, 85). He elaborated Applicant had already given a statement to law enforcement admitting her involvement and all of the co-defendants were testifying as cooperating witnesses, so duress was the only possible defense that could be raised. (PCR Tr. p. 87). He testified he was worried the trial court would not allow him to raise duress as a defense because Applicant "had plenty of



ability to escape” and “was never threatened.” (PCR Tr. p. 43). He later testified Applicant was directly involved in these crimes and had plenty of time to escape. (PCR Tr. p. 92). He testified the trial court allowed him to raise duress as a defense despite his concerns. (PCR Tr. p. 44). He testified Applicant testified she felt threatened at trial. (PCR Tr. p. 44). Counsel testified he made a strategic decision not to seek out a psychiatric expert to support his duress defense because the case law supported the defense without the need for an expert and the desire not to have a dueling expert from the State to possibly weaken their defense. (PCR Tr. p. 44, 94). Counsel elaborated, “If we had brought a psychiatrist the State would have brought their own psychiatrist and it would have magnified the impact on the jury about proof—burden of proof as to the defense.” (PCR Tr. p. 44). He testified he was also afraid a psychiatric expert would highlight to the jury that Applicant did not try to escape when she had the chance. (PCR Tr. p. 46). He testified the evidence showed Applicant cooperated and assisted in the second incident. (PCR Tr. p. 46). He testified he ultimately retained a psychological expert, Dr. Randy Waid, at the insistence of the trial court. (PCR Tr. p. 47-49, 93). He testified he called Dr. Waid as an expert at trial and attempted to elicit testimony about a hypothetical situation involving a gun being held to someone’s head. (PCR Tr. p. 50, 53, 92). He testified the trial court did not allow him to go into this line of questioning with Dr. Waid. (PCR Tr. p. 50, 92). He acknowledged he did not object or provide case law to the trial court in an attempt to elicit this testimony. (PCR Tr. p. 51-53). Counsel testified he had used a defense of duress in a burglary case previously. (PCR Tr. p. 55). Counsel acknowledged he did not object to the State’s questioning of when Dr. Waid was hired. (PCR Tr. p. 55-56). Counsel testified he also called numerous character witnesses on Applicant’s behalf. (PCR Tr. p. 88, 98, 101).



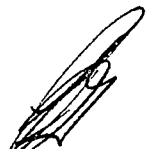
Counsel testified there was an allegation that one of Applicant's male co-defendants committed criminal sexual conduct on a victim. (PCR Tr. p. 56). He testified although she was not charged with or alleged to have committed any sexual offense, he did not object to any testimony regarding this because he thought it was relevant to the incidents in which Applicant participated. (PCR Tr. p. 57-68, 99-100). Counsel testified he elicited testimony regarding the sexual offense in an attempt to distance Applicant's involvement. (PCR Tr. p. 69-74).

Counsel testified he received a video purportedly filmed by Applicant with her co-defendants shortly before trial and he did not have an opportunity to watch it prior to trial. (PCR Tr. p. 75). Counsel testified he did not move to suppress the video because he did not think it was prejudicial. (PCR Tr. p. 75-76, 97). He testified he was provided with time to watch the video, watched the video prior to its introduction, and did not move to suppress or for a mistrial because he did not feel one was warranted. (PCR Tr. p. 76).

#### **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 hearings. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption 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. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court’s specific finding regarding each of Applicant’s allegations of ineffective assistance of counsel:

*Allegation: Failure to Sufficiently Prepare for Trial*

Applicant alleges trial counsel was not sufficiently prepared for trial, citing the short, twelve day period between when she retained counsel and the start of her trial. This Court finds



Applicant failed to show Counsel's trial preparation fell below an objective standard of reasonableness.

"[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 745 S.E.2d 378 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). Applicant elected to fire her public defender and retain private counsel less than two week prior to her trial date and she acknowledged she knew her trial was less than two weeks away. Consequently, Applicant's own actions in choosing to obtain different counsel so shortly before trial is what caused trial counsel to have so little time to prepare for trial. See Strickland v. Washington, 466 U.S. 668, 691 (1984) ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). Regardless, counsel testified he had sufficient time to prepare and meet with Applicant. Counsel testified he spent the vast majority of the twelve days between retainer and trial in Charleston preparing for Applicant's trial. Although counsel testified he did not file any discovery motions because Butler already had, counsel met with Butler, reviewed Butler's entire file, discussed the file, possible defenses, and trial theory both with Butler and Applicant, and reviewed all discovery himself and with Applicant. Though counsel did not have the information concerning the change in his co-defendants' testimony until the Friday prior to trial, he testified that when he received that information, he reviewed it and reviewed it with Applicant and discussed the potential impact on testimony and evidence at trial. He testified it was not significant and he cross-examined the co-defendants on any inconsistent statements. Counsel could not recall how many times he met with Applicant prior to trial but that it was more than twice. He also testified they mostly spoke on the phone. He testified he



discussed the State's evidence with Applicant and what the State would have to prove at trial. Counsel testified he had sufficient time to speak with Applicant prior to trial, had sufficient time to prepare for trial, and was prepared to go to trial. This Court finds Applicant has presented no evidence of any deficiency in counsel's trial preparation.

Additionally, Applicant failed to show how the alleged failure to adequately prepare prejudiced her. Applicant presented no evidence of that any additional preparation time or investigation could have discovered or how it could have aided in her defense. Where an applicant fails to offer any evidence of how additional preparation or communication would have resulted in a different outcome, he cannot show prejudice. Smith v. State, 404 S.C. 493, 745 S.E.2d 378 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding applicant failed to show prejudice resulting from counsel's lack of preparation where applicant presented no evidence of what counsel could have discovered or what other defenses applicant would have requested counsel pursue had he been more fully prepared for trial). Pure conjecture is insufficient to support a finding of prejudice. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (“[A]pplicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.”).

Therefore, this Court finds Applicant has failed to show either deficiency or prejudice with respect to this allegation. Accordingly, Applicant has failed to demonstrate he received ineffective assistance of counsel and this allegation is denied and dismissed.

*Allegation: Failure to Move to suppress video*

Applicant alleges Counsel was ineffective for failing to move to suppress a video, purportedly shot by Applicant with her co-defendant(s), that was turned over to the defense the



Friday prior to trial. Applicant has presented no evidence that counsel was deficient for not moving to suppress the video. Applicant failed to show on what basis counsel could have objected to the video. Counsel testified and the record reflects he had an opportunity to view the video before it was introduced as evidence. Counsel also testified he did not know how he could have kept the video out and he did not think it was irrelevant because it showed her demeanor between the incidents.

Further, Applicant has failed to show that had Counsel moved to suppress the video, there is a reasonable probability the trial judge would have granted the motion to suppress. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (finding applicant failed to establish that had he moved to suppress applicant's statement, there is a reasonable probability the trial judge would have granted the motion). Therefore, this Court finds Applicant has failed to satisfy her burden of proving either deficiency or prejudice with respect to this allegation. Accordingly, this allegation is denied and dismissed.

*Allegation: Failure to Have Applicant Evaluated*

Applicant alleges trial counsel was ineffective for failing to have her evaluated by a psychiatric or psychological expert and then calling that expert as a witness during trial. However, Applicant failed to present such an expert at her evidentiary hearing or offer any evidence of how such an expert would have aided her defense and led to her acquittal.

Because Applicant neither produced such an expert "nor offered [his] testimony in some other manner consistent with the rules of evidence," what his additional testimony would have been is "purely speculative." Bannister v. State, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). This Court finds this allegation must be denied and dismissed.



*Allegation: Failure to Move for Severance*

Applicant alleges trial counsel was ineffective for failing to move for a severance, essentially arguing she was entitled to separate trials for each incident. She argues the State would not have been able to present evidence from the other incident in each trial, making acquittal likely. Counsel testified he did not move for severance because he had no valid grounds to do so and the trial court would have denied a motion, as the two events were so intertwined. This Court agrees with counsel and finds this allegation must be denied and dismissed with prejudice.

Where “two offenses [are] of the same general nature involving connected transactions closely related in time, place, and character[,] the trial judge [has] power, in his discretion, to order them tried together over [a defendant’s] objection in the absence of a showing that [her] substantive rights would have been thereby prejudiced.” McCrary v. State, 249 S.C. 14, 36, 152 S.E.2d 235, 246 (Ct. App. 1967)) (citations omitted). In addition, “joinder of offenses in one trial is ‘proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) required the same or similar proof.’” State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) (quoting State v. Carter, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996)). Here, the burglaries were days apart, occurred in the same city, were carried out by the same people according to the same plan and in the same general manner. Counsel testified he did not move to sever because he did not believe the motion would have been successful. This Court finds that Counsel’s decision not to move to sever the burglary charges into two separate trials was not professionally unreasonable. Likewise, Applicant failed to show that had Counsel moved to sever, the court would have



granted the motion. See State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) (finding trial judge did not abuse discretion in refusing to sever burglary indictments where offenses were close in time and proximity, arose out of a single chain of events, were of the same nature, and were proved by the same evidence and witnesses); Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (finding applicant failed to establish that had he moved to suppress applicant's statement, there is a reasonable probability the trial judge would have granted the motion). Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation: Failure to object to testimony regarding a co-defendant committing a sexual offense*

Applicant alleges trial counsel was ineffective for failing to object to and indicting testimony about the sexual assault of a female victim by a co-defendant. Applicant asserts she was never charged with criminal sexual conduct and that this testimony was therefore irrelevant. Applicant also asserts the testimony was prejudicial and directly influenced the jury's verdict.

Counsel testified there was an allegation that one of Applicant's male co-defendants committed criminal sexual conduct on a female victim, and although Applicant was not charged with or alleged to have committed any sexual offense, he did not object to any testimony regarding this because he thought it was relevant to the incidents in which Applicant participated. He further testified he elicited testimony regarding the sexual offense in an attempt to distance Applicant's involvement in the crimes.

This Court finds Applicant has failed to meet her burden of establishing either deficiency of counsel or prejudice, and that this allegation must be denied and dismissed the prejudice. Initially, this Court finds counsel was not deficient for failing to object or inducing this testimony, as it was part of a valid trial strategy to distance Applicant's involvement in the

crimes and show she was a more peripheral member of the group while he co-defendants were the ringleaders. See Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (Internal citations omitted) (“When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel.”). Moreover, this Court finds Applicant cannot establish any resulting prejudice from this purported deficiency, as this was an ancillary issue not central to Applicant’s involvement in the case, was irrelevant (as Applicant herself concedes), and did not contribute to the verdict. Therefore, this allegation is denied and dismissed with prejudice.

#### **CONCLUSION**

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

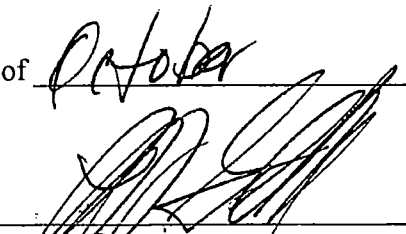
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides 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.


A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant Sasha Gaskins shall remain in the custody of the State.

AND IT IS SO ORDERED this 30 day of October, 2017.

  
\_\_\_\_\_  
BROOKS R. GOLDSMITH  
Presiding Judge  
Ninth Judicial Circuit

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



ALAN WILSON  
ATTORNEY GENERAL

November 7, 2017

The Honorable Julie J. Armstrong  
Charleston Clerk of Court  
100 Broad St Ste 106  
Charleston, SC 29401-2210

Re: Sasha Gaskins, #345415 v. State of South Carolina  
2014-CP-10-2879

Dear Ms. Armstrong:

Enclosed please find the original Order of Dismissal signed by the Honorable Brooks P. Goldsmith, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Megan Harrigan Jameson  
Senior Assistant Deputy Attorney General

MHJ/jaj

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
SASHA GASKINS, )  
 )  
Applicant. )  
 )  
-versus- )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )

IN THE SUPREME COURT OF SOUTH CAROLINA

Case #: 2014-CP-10-2879

**RECEIVED**

DEC 19 2017

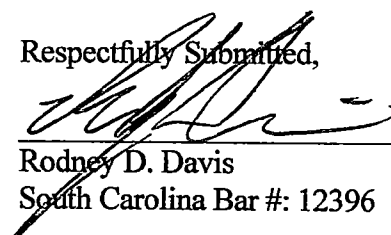
REQUEST FOR REPRESENTATION ON APPEAL  
S.C. SUPREME COURT

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that she may request assistance from the SCCID Appellate Division in perfecting her appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that she cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting her appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

  
Rodney D. Davis  
South Carolina Bar #: 12396

Charleston, South Carolina  
December 11, 2017.



Lowcountry Law Office

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: [Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

December 14, 2017

**RECEIVED**

DEC 19 2017

S.C. SUPREME COURT

Kimberly McCall  
South Carolina Commission on Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

RE: Sasha Gaskins v. State of South Carolina; Case #: 2014-CP-10-2879

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to the PCR cases pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you have any questions, please do not hesitate to contact me.

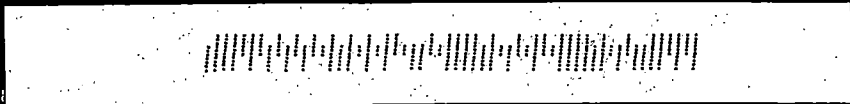
Thank you for your assistance with this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar # 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
[Davis@LowCountryLawOffice.com](mailto:Davis@LowCountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt



RECEIVED

DEC 19 2017

SUPREME COURT

Lowcountry Law Office  
Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405

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

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Brooks P. Goldsmith

Case #: 2014-CP-10-2879

FILED  
2017 DEC 13 PM 2:24  
JULIE A. AMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Sasha Gaskins,

Appellant.

v.

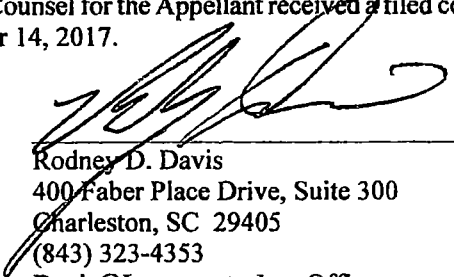
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Sasha Gaskins appeals the denial of her Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Brooks P. Goldsmith on April 27, 2017. Counsel for the Appellant received a filed copy of the Order of Dismissal on or about October 5, 2017. Upon review of the Order of Dismissal, Counsel for the Appellant filed a Motion to Amend Judgement on October 13, 2017. Counsel for the Appellant received a filed copy of an Amended Order of Dismissal on or about November 14, 2017.

December 8, 2017

  
Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Alicia Olive, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Brooks P. Goldsmith

Case #: 2014-CP-10-2879

Sasha Gaskins,

Appellant.

v.

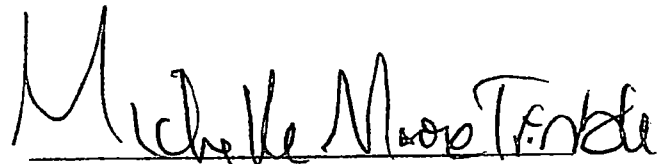
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Megan H. Jameson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 11, 2017.

December 11, 2017



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Alicia Olive, Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

FILED  
2017 DEC 13 PM 2:24  
JULIE W. AUSTIN RONG  
CLERK OF COURT  
BY \_\_\_\_\_