



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

FEB 29 2012

S.C. Supreme Court

February 28, 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Leroy Archie v. State of South Carolina

2/28/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 15, 2012

RECEIVED

FEB 15 2012

S.C. Supreme Court

Ms. Renee H. Tollison
Circuit Court Reporter
Post Office Box 4321
Anderson, SC 29622

Dear Ms. Tollison:

Please provide us with the following transcript:

Leroy Archie v. State of South Carolina Case #: 08-CP-04-04204

County: Anderson Date of Trial: October 6, 2010

Presiding Judge: J. Cordell Maddox, Jr.

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

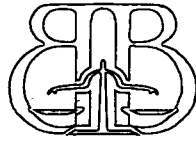
Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Loriene French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office



BABB & BROWN, P.C.
ATTORNEYS AT LAW

ATTORNEYS
EVERETTE H. BABB
J. CHRIS BROWN*
H. STEWART JAMES
*ALSO LICENCED IN GEORGIA

January 25, 2012

Ms. Janet Johnson
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29202

RECEIVED

JAN 30 2012

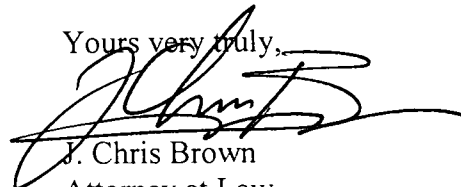
S.C. Supreme Court

RE: Leroy Archie, #317590 v. State of South Carolina
Case No. 2008-CP-04-4204

Dear Ms. Johnson:

I have enclosed a copy of Notice of Appeal, Proof of Service, and Acceptance of Service for the Notice of Appeal, and correspondence for the above-captioned matter which were mailed to Attorney General Alan Wilson on January 25, 2012. I have also enclosed a copy of the Order of Dismissal dated January 6, 2012 which is being appealed by my client, Leroy Archie. I was appointed by the Court to represent Mr. Archie in regards to his Post Conviction Relief Application on April 29, 2009. Therefore, I am requesting Mr. Archie's appeal be referred to the Division of Appellate Defense and other counsel be appointed to represent his interest in the appeal. If you have any questions, please contact my office at your convenience.

Yours very truly,


J. Chris Brown
Attorney at Law

JCB:ah

Enclosures

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JAN 30 2012

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable J. Cordell Maddox, Jr.

Case No. 2008-CP-04-4204

Leroy Archie, #317590.....Appellant,

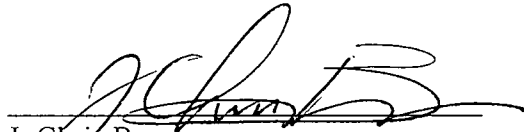
v.

State of South Carolina.....Defendant.

NOTICE OF APPEAL

Leroy Archie appeals the Order of Dismissal of the Honorable Judge J. Cordell Maddox, Jr. dated January 4, 2012. Appellant received written notice of entry of this order on or about January 12, 2012.

January 25, 2012



J. Chris Brown
505 W. Butler Road
Greenville, SC 29607
(864) 422-0022
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr.,

Case No. 2008-CP-04-4204

Leroy Archie, #317590.....Appellant,

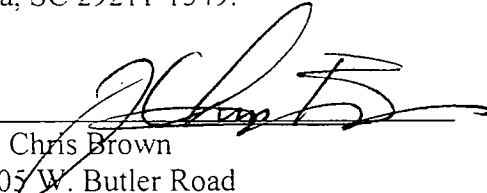
v.

State of South Carolina.....Defendant.

PROOF OF SERVICE

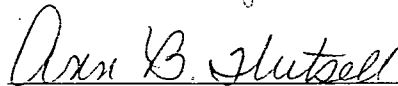
I certify that I have served one (1) copy of the Notice of Appeal of Appellant on Mr. Alan M. Wilson, Attorney General for South Carolina by depositing copies of same, certified mail, return receipt requested, in the United States Mail on the 25th day of January, 2012, addressed to Mr. Alan M. Wilson, PO Box 11549, Columbia, SC 29211-1549.

January 25, 2012



J. Chris Brown
505 W. Butler Road
Greenville, SC 29607
(864) 422-0022
Attorney for Appellant

SWORN to before me this 25th
Day of January, 2012



Notary Public for South Carolina
My Commission Expires: 9/17/18

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE SUPREME COURT

Case No. 2008-CP-04-4204

Leroy Archie, #317590)
)
Appellant,)
)
v.)

ACCEPTANCE OF SERVICE

State of South Carolina,)
)
Respondent.)
)
_____)

RECEIVED

JAN 30 2012

S.C. Supreme Court

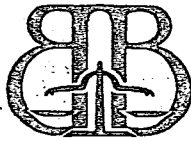
The undersigned hereby accepts service of the Notice of Appeal in the above-captioned matter.

January _____, 2012

Alan M. Wilson, SC Attorney General
P. O. Box 11549
Columbia, SC 29211-1549

SWORN to before me this _____
Day of _____, 2012

Notary Public for South Carolina
My Commission Expires: _____



BABB & BROWN, P.C.
ATTORNEYS AT LAW

ATTORNEYS
EVERETTE H. BABB
J. CHRIS BROWN*
H. STEWART JAMES
*ALSO LICENCED IN GEORGIA

January 25, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

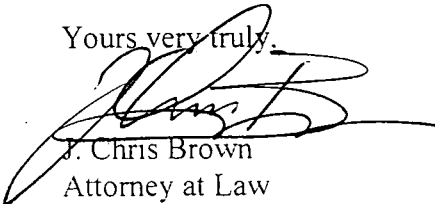
Mr. Alan M. Wilson
Attorney General for South Carolina
PO Box 11549
Columbia, SC 29211-1549

RE: Leroy Archie, #317590 v. State of South Carolina
Case No. 2008-CP-04-4204

Dear Mr. Wilson:

I have enclosed a Notice of Appeal, Proof of Service, and Acceptance of Service for the above-captioned matter. Please sign and return the Acceptance of Service in the stamped, self-addressed envelope provided. If you have any questions, please contact my office at your convenience.

Yours very truly,



J. Chris Brown
Attorney at Law

JCB:ah

Enclosures

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS)
FOR THE TENTH JUDICIAL CIRCUIT)

Leroy Archie, # 317590,)

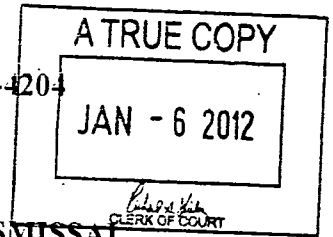
2008-CP-04-4204)

Applicant,)

v.)

State of South Carolina,)

Respondent.)



ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 10, 2008. The Respondent made its Return on April 1, 2009. An evidentiary hearing into the matter was convened on October 6, 2010, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by J. Chris Brown, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Applicant's trial counsel, Andrew T. Potter, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Anderson County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the November 2005 term of the Anderson County Grand Jury for Murder and Possession of a Firearm During the Commission of a Violent Crime (2005-GS-04-2826). He was represented by Andrew T. Potter, Esquire. On September 11,

14, 2006, Applicant proceeded to jury trial before the Honorable Alexander S. Macaulay where he was found guilty as indicted. Applicant was sentenced to life imprisonment without parole.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. Archie, Op. No. 2008-UP-572 (S.C. Ct. App. filed October 14, 2008).

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - i. "Counsel failed to object to the prosecution use of an invalid prior conviction for enhancement purposes."
 - ii. "Counsel failed to properly preserve for appellate review the issue of whether the trial judge erred in allowing the state pathologist to give speculative testimony outside his field of expertise."
 - iii. "Counsel failed to request a lesser-included jury charge or manslaughter."
 - iv. "Counsel failed to adequately summarize the evidence during closing summation."
 - v. "Counsel failed to object and request new trial when the prosecution failed to completely disclose the autopsy report of the victim."
 - vi. "Counsel failed to object to judge's jury instruction charging the jury on intent."
2. Ineffective Assistance of Appellate Counsel.
 - vii. "Appellate counsel failed to raise issue of whether the trial judge erred in denying defense motion for directed verdict based on state's failure to establish the essential elements of first-degree murder beyond a reasonable doubt."
3. Trial judge erred in denying Applicant's request for substitution of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that 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 (1985). 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.

Ineffective Assistance of Counsel

At the PCR hearing, Applicant presented exclusively allegations regarding the effectiveness of counsel provided by Mr. Potter (hereinafter "counsel") on these charges. Applicant contends counsel was ineffective for failing to investigate/present additional evidence and witnesses at trial, for failing to request a jury instruction for the lesser included offense of manslaughter and for failing to object to the introduction of a prior ABHAN conviction. These allegations are addressed individually by this Court below.

Failure to Investigate and Present Medical Records/Police Incident Reports

Applicant contends counsel was ineffective in failing to investigate, obtain and present at trial several pieces of evidence to bolster Applicant's self-defense theory. Specifically, Applicant alleges counsel should have obtained and presented at trial an incident report and medical records stemming from a 2003 altercation between Applicant and the victim's son, Antwon Jack Galloway ("Galloway"), as well as a toxicology report from victim's autopsy. Applicant testified that in 2003, he and Galloway got into an altercation during which Galloway beat Applicant with a chair, and as a result Applicant filed a police report and was taken to the hospital for treatment. Applicant stated his arms and ribs were fractured from the altercation, as would have been reflected in the hospital records. Applicant went on to state that he discussed the altercation with counsel during their meetings, during which he requested counsel obtain the incident report and hospital records to present at trial to prove there had been prior altercations between Applicant and Galloway. Applicant also alleged counsel failed to obtain a copy of a toxicology report from

victim's autopsy that showed she was under the influence of cannabinoids at the time of the shooting.

Counsel testified he was aware of the prior incidents between Galloway and Applicant during trial, but that he did not present either the incident report or medical records as he was able to elicit the same information through live testimony. Counsel stated he believed Applicant's live testimony at trial to the facts and results of the altercations, as well as the testimony of two defense witnesses and the cross-examination of Galloway, was a more effective way of presenting the information to the jury without having to introduce the medical records and incident reports. Counsel went on to say he called two witnesses, Patricia Martin and James Johnson, on behalf of Applicant who both testified to Galloway and victim's prior acts of violence towards Applicant, bolstering Applicant's theory of self-defense. Counsel went on to say with respect to victim's possible drug use, he never saw a toxicology report which he could have introduced at trial, nor did he recall Applicant ever mentioning victim may have been on drugs at the time of the incident, but he did cross-examine Galloway regarding his drug use in the victim's house and elicited testimony that Galloway had previous drug charges including distribution charges.

I find Applicant has failed to prove counsel was ineffective in this regard. First, I find counsel's performance was not deficient as he carried out his duties within the objective standard of reasonableness demanded of attorneys under the circumstances. Counsel was aware of and fully investigated the incident report and medical records complained of, ultimately making the strategic decision to introduce the information through the use of live testimony rather than documentary evidence. *(Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy,*

counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003).) Counsel also noted that any records from the 2003 altercation would only relate to prior acts of violence by Galloway, Applicant's son, and not by victim. Counsel therefore believed that those records (incident reports and medical records) were not "too terribly relevant" to presenting Applicant's self-defense theory regarding victim, in addition to being able to introduce the same evidence through live testimony. Counsel stated he was never in possession of nor did the State ever turn over the results of victim's toxicology report as part of the autopsy report in discovery. I find counsel's conduct was reasonable in not introducing a document that he was never aware of based on his investigation and discussions with Applicant. *(A court's measurement of reasonableness may be determined or substantially influenced by defendant's own statements or actions... Counsel's actions are usually based on informed strategic choices made by a defendant and on information supplied by defendant. What investigation decisions by counsel are deemed reasonable depends critically on such information. Strickland v. Washington, supra.)* Further, Applicant failed to prove prejudice resulting from counsel's failure to introduce these documents at trial. With regards to the incident reports and medical records, Applicant failed to produce such documents at the PCR hearing to prove that such reports are in fact in existence, or that their presentation would have made a difference at trial had they been introduced. See United States v. Cronin, 466 U.S. 648 (1984)*(when claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant... must show specific prejudice resulting from counsel's alleged lack of time to prepare)* See also Harris v. State, 377 S.C. 66 (2008)*(Applicant failed to carry burden where merely speculative that counsel's alleged deficient performance was prejudicial).*

Additionally, the documents complained of would have merely been cumulative in nature to the live testimony presented at trial had they been introduced, and therefore this Court cannot find that they would have reasonably had an effect on the outcome at trial. Regarding the toxicology report, based on the testimony of Applicant and counsel, in addition to a review of the record, I find the introduction of such a report would not have had any substantial impact on the outcome at trial as victim's intoxication would not have bolstered Applicant's self-defense theory in any way since it was based on a history of prior violence. I find Applicant has failed to prove both deficiency in counsel's representation and resulting prejudice in this regard.

Failure to Call Witnesses at Trial/Properly Question Witnesses to Bolster Self-Defense Theory

Applicant also alleges counsel was ineffective in failing to investigate/call at trial, or otherwise properly question, several people to bolster his self-defense theory based on prior acts of violence by victim. The first witness Applicant alleges counsel failed to investigate was Chester Crane ("Crane"), Applicant's supervisor at work. Applicant testified Crane wrote Applicant a letter saying he would testify at trial and told Applicant he had even tried to contact counsel several times to inform him of the same, but was never contacted back by counsel. Applicant alleged Crane could have testified to prior acts of violence by victim against Applicant. The second witness Applicant said counsel failed to investigate was Julie Rogers ("Rogers"). Applicant stated he gave counsel Rogers' name, after which counsel contacted Rogers to discuss her ability to testify on Applicant's behalf at trial. Applicant went on to say counsel then informed him that Rogers had said she didn't know anything about the incident nor could she provide any helpful testimony for Applicant. Applicant also alleges he gave counsel the name of Sherman Guyton as a potential witness. Applicant stated counsel told him that Guyton also said he did not know anything about Applicant and victim's history, nor could he

provide testimony that would be helpful at trial. Applicant stated his best friend, Dayton Williams ("Williams") was called at trial by the State to testify, but counsel failed to properly question Williams on cross-examination to elicit testimony regarding his knowledge of victim's prior acts of violence against Applicant and the filing of incident reports with police.

Counsel testified Applicant did in fact give him a list of potential witnesses which he used in his preparation of Applicant's case. Counsel stated he had an investigator that did a lot of the "leg work" in locating and preliminarily interviewing the potential witnesses. Counsel went on to say his investigator tried to locate Crane, as well as an additional witness named Troy Verner, but was unable to locate either person after extensive efforts were exhausted. He went on to say he was never contacted by Crane as Applicant alleged, as there would have been a note in his file from any witness who contacted his office, and there was no such note in his file. Counsel said he was able to locate and interview both Guyton and Rogers in July of 2006, but that both said they did not know anything about Applicant and victim's relationship, nor could they provide any helpful testimony for Applicant. Regarding Williams and an additional witness named Scott Richardson, counsel stated he located and spoke with both witnesses, but both refused to cooperate in any way in discussing the matter. Counsel went on to say that the testimony of Williams which Applicant complains of was elicited through several other witness' testimony, including Applicant's own testimony. Counsel testified that he called the only two witnesses (Patricia Martin and James Johnson) at trial that were also able to provide helpful testimony for Applicant. Counsel stated that their testimony was able to adequately establish a history of violent acts by victim towards Applicant to bolster Applicant's self-defense theory.

I find Applicant has failed to carry his burden in proving counsel was ineffective in his investigation of potential witnesses or cross-examination of Williams at trial. Further, I find the

testimony of counsel to be credible, while I conversely find Applicant's testimony to not be credible. Counsel conducted reasonable investigation into each of the potential witnesses provided by Applicant, and ultimately presented the testimony of the only two witnesses who were willing to cooperate that could provide helpful testimony. Additionally, counsel was not ineffective in his cross-examination of Williams as the information Applicant complains of was sufficiently introduced through the testimony of Applicant and other witnesses. (*The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian*, 824 F.2d 1294, 1321 (2nd Cir. 1987). [*A*] *defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result. United States v. Rodriguez*, 53 F.3d 1439, 1449 (7th Cir. 1995).) The Applicant has failed to prove prejudice as well, as he did not proffer any questions counsel allegedly failed to ask, nor did he present any testimony showing what the witnesses' answers at trial would have been different. Further, Applicant failed to produce the testimony of any of the witnesses he now alleges would have testified favorably at trial. Therefore, he has not proven prejudice in this regard either. (*Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Bassette v. Thompson*, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). *The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). *An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness'*

failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).) Accordingly, these allegations must be denied and dismissed.

Failure to Request Jury Instruction for Lesser-Included Voluntary/Involuntary Manslaughter

Applicant claims counsel was ineffective in failing to request the trial judge charge the jury with the lesser included offense of manslaughter. Applicant testified counsel only presented a self-defense theory at trial and refused to try for a voluntary or involuntary manslaughter verdict from the jury.

Counsel started by testifying that he and Applicant developed a self-defense theory early on in their meetings based on the facts and evidence in the case. Counsel stated there was no dispute that the victim was shot and killed, there was a law enforcement officer that testified at trial to hearing shots and seeing Applicant standing over victim while firing several more shots, and Applicant had given an incriminating statement to law enforcement, all of which was evidence that severely limited their defense options. Counsel went on to say Applicant was facing life without parole if convicted of voluntary manslaughter anyway, so he decided to go with an “all or nothing approach” where either the jury would buy into the self-defense theory or not. Counsel stated he was very concerned with the potential of compromising the jury’s verdict by allowing lesser-included charges to be included in the jury’s deliberations, and that his request to charge would have been denied anyway had he made it as Judge Macaulay told him during a bench conference that he had not heard enough evidence to charge voluntary manslaughter. Counsel finished by stating that he “knew [he] provided effective assistance of counsel” to Applicant in this matter based on his investigation, preparation and presentation at trial.

After a thorough review of the testimony presented at the hearing and the record before this Court, I find Applicant has also failed to prove counsel was ineffective in this regard. Counsel articulated a valid, well developed trial strategy for opting not to request a charge on lesser-included manslaughters, especially in light of the evidence and the fact that Applicant was facing life without parole for either a murder or a manslaughter conviction. (*Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530 (1992). See also *Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005) and *McLaughlin v. State*, 352 S.C. 476, 575 S.E.2d 841 (2003).) Further, where Applicant would have received the same sentence that he is currently serving under the murder conviction had the jury found him guilty of voluntary manslaughter, Applicant has failed to prove how counsel's failure to request such a jury charge prejudiced him. Therefore, Applicant has failed to prove either prong of the Strickland test. Accordingly, this allegation is without merit and must be denied and dismissed.

Failure to Object to Introduction of Prior ABHAN Conviction

The final allegation raised by Applicant in his application is counsel was ineffective in failing to object to the introduction of an Assault and Battery of a High and Aggravated Nature ("ABHAN") conviction on Applicant's record from 2002 presented by the solicitor during cross-examination of Applicant. Applicant presented no testimony on the matter at the PCR hearing; however, the Court will address this matter herein as the allegation was raised in the application and counsel was questioned extensively on the subject at the hearing. Counsel stated that in his preparation for trial, he discussed with Applicant that in order to effectively present a self-defense strategy, it would be imperative for Applicant to testify at trial. Counsel went on to say

he discussed Applicant's potential testimony with him during their pre-trial meetings as well. Counsel testified he did not object to the state's introduction of the prior conviction as he did not see anything objectionable, and he believed the conviction to be admissible against Applicant under the Rules of Evidence when Applicant took the stand to testify.

I find counsel's conduct was not deficient in this regard. Under Rules 609(a)(1) and 609(b), SCRE, "evidence that an accused has been convicted of [a crime punishable by death or imprisonment in excess of one year] shall be admitted if the court determines that the probative value of admitting [the] evidence outweighs its prejudicial effect to the accused" and the conviction is less than ten (10) years old. The Applicant received this ABHAN conviction in May of 2002, roughly three years and four months before the start of this trial, falling well within the ten year time limit. Additionally, ABHAN carried with it at the time a maximum ten (10) year sentence under S.C. Code Section 17-25-0030 (prior to the Code being revised in 2010). Further, the trial court undertook a Rule 403, SCRE, analysis and found the probative value of introducing the conviction outweighed its prejudicial effect to Applicant. Therefore, this prior conviction was in fact admissible under the Rules. Therefore, counsel did not act unreasonably, nor was Applicant prejudiced by counsel's failure to object as the evidence was properly admitted.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective. Further, I find that counsel at all times during his representation of Applicant acted within the range of competence demanded of attorneys in criminal cases, and Applicant was unable to establish resulting prejudice from any alleged deficiency. Therefore, these allegations of ineffectiveness are without merit and must be denied.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. Specifically, Applicant failed to address his allegation regarding “prosecutorial misconduct” as set forth in his PCR application. The Applicant's failure to address this and any additional issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

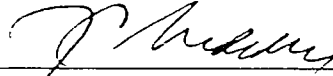
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[Signature on Next Page]

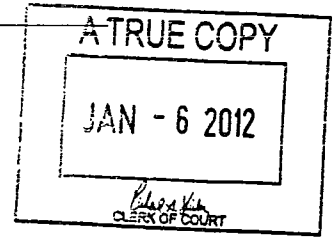
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 4th day of January, 2012.



J. Cordell Maddox, Jr.
Presiding Judge
Tenth Judicial Circuit



Anderson, South Carolina.

CLERK'S OFFICE
JAN - 5 A 10:21
CRIMINAL SESSIONS

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

LEROY ARCHIE, #317590,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**J. Chris Brown, Esquire
505 West Butler Rd.
Greenville, SC 29607**

This 18th Day of January, 2012.

Lena Pelishenko

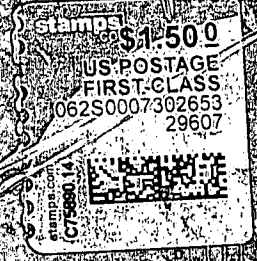
Lena Pelishenko
Legal Assistant for Respondent

SWORN to before me this 18th Day of January, 2012.

Laura Meana

Notary Public for South Carolina.

My Commission Expires: 9/25/2019



BABB & BROWN, P.C.
ATTORNEYS AT LAW
505 W. BUTLER RD., GREENVILLE, SC 29607

Leroy Archie

Ms. Janet Johnson
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29202