

THE EPPS LAW FIRM, LLC

┆ LITIGATION ATTORNEY || LEGAL COUNSELOR ┆

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Mailing Address:
104-A Franklin Avenue
281
Spartanburg, SC 29301

February 2, 2018

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

RECEIVED

FEB 08 2018

Re: Charles P. Blackwell, Appellant, v: State of South Carolina, Respondent
Case No.: 2016-CP-11-0256 (Cherokee County)

S.C. SUPREME COURT

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

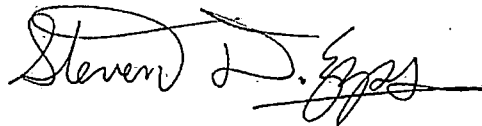
- (1) Proof of service of the notice of appeal on the respondent, and
- (2) A copy of the order which is to be challenged on appeal.

I am mailing a second set of documents to be returned to me in the self-enclosed stamped envelope once they have been filed with the Court. No filing fee is being paid regarding this matter as this is the appeal of a post-conviction relief matter.

Should you require anything further from me, do not hesitate to ask.

With warm regards, I remain,

Very truly yours,



Steven D. Epps

SDE/snh
Enclosures: As stated above

Cc: Client

Valerie G. Giovanoli, Esq.
Assistant Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Cherokee County Clerk of Court
P.O. Box 2289
Gaffney, SC 29342
(2 copies; 1 for file and 1 to return)

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

FEB 08 2018

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Grace G. Knie, Circuit Court Judge

Case No. 2016-CP-11-0256

Charles P. Blackwell

Appellant,

v.

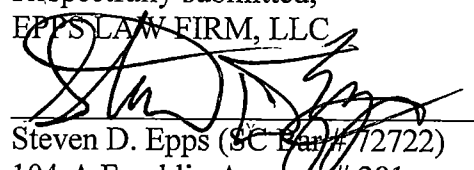
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Charles P. Blackwell appeals the amended order of the Honorable Grace G. Knie dated January 16, 2018. Appellant received written notice of entry of this order on February 1, 2018.

Respectfully submitted,
EPPS LAW FIRM, LLC


Steven D. Epps (SC Bar #712722)
104-A Franklin Avenue, # 281
Spartanburg, SC 29301

(864) 590-4848 Telephone
steven@eppslawfirm.com
ATTORNEY FOR APPELLANT

Other Counsel of Record:
Valerie G. Giovanoli, Esq.
Assistant Attorney General
S.C. Attorney General's Office
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Columbia, SC 29211

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

FEB 08 2018

Grace G. Knie, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2016-CP-11-0256

Charles P. Blackwell

Appellant,

v.

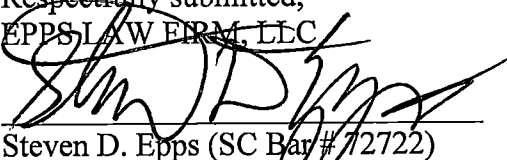
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on August 23, 2017 addressed to its attorney of record, Valerie G. Giovanoli, Esq., Assistant Attorney General, Post Office Box 11549, Columbia, SC 29211.

Respectfully submitted,
EPPS LAW FIRM, LLC


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steven@eppslawfirm.com
ATTORNEY FOR APPELLANT

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP1100256

Charles Blackwell #218728

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, SC
 2018 JAN 29 PM 1:54
 BRANDY W. MORRIS

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ Grace Gilchrist Knie
 Circuit Court Judge

2760
 Judge Code

1/29/2018
 Date

For Clerk of Court Office Use Only

This judgment was entered on 1/29/18, and a copy mailed first class or placed in the appropriate attorney's box on 1/29/18, to attorneys of record or to parties (when appearing pro se) as follows:

Steven D. Epps
104-A Franklin Avenue #281
Spartanburg, SC 29301

Alan McCrory Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Court Reporter

Brandy W. McBee - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2018 JAN 29 PM 1:54
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Charles P. Blackwell, #218728

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-11-0256

**AMENDED
ORDER OF DISMISSAL
WITH PREJUDICE**

BRANDY W. MOBILE

2018 JAN 29 AM 11:45

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Charles P. Blackwell (Applicant) on April 18, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on September 19, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Steven D. Epps, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Michael Morin, Esquire, (Counsel) also testified. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application, Respondent's return, and Applicant's supplemental application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the July 2014 term of the Cherokee County Grand Jury for Trafficking in Methamphetamine, (2014-GS-11-0638). Michael David Morin, Esquire, represented Applicant. On March 4-5, 2015,

Applicant proceeded to trial before the Honorable Roger L. Couch and was convicted by a jury. Judge Couch sentenced Applicant to confinement for seven (7) years with a \$25,000 fine, to run consecutive to Applicant's current probation revocation.

A notice of appeal was filed on Applicant's behalf at the South Carolina Court of Appeals. Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The South Carolina Court of Appeals dismissed the appeal. State v. Charles Preston Blackwell, Op. No. 2016-UP-087 (S.C. Ct. App. Filed February 24, 2016). The Remittitur was issued on March 21, 2016.

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

1. "Ineffective Assistance of Counsel"
 - a. "He wouldn't bring up that I was arrested and charge and still on trespassing notice from the address in question"
 - b. "failed to call witness"
2. "Prosecutorial misconduct"

On or about July 12, 2017, Applicant, through counsel, filed a supplemental application setting forth a more specific "statement of claim." Specifically:

1. "The Cherokee County Sheriff's Department Officers ... tamper[ed] with evidence of the crime scene. All items collected are not a part of the warrant in question."
2. "The warrant they came with was for stolen property and not for any drugs such as methamphetamine."
3. "Sgt. Nick Federico testified that the defendant Kalyne Carroll admit to having the drugs."
4. "I... stated to Sgt. Nick Federico that I was not to be on the property and did not want to go to jail for trespassing and he stated you are going for trafficking."
5. "Juror: Michael Hall, #84 knew the police man Rodney Bright. They coach baseball and football."
6. "Juror: Mary Moore, #78 also in fact knew police man Rodney Bright. They went to same church."

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L. Ed. 2d 493(1967).

7. "Juror: Christopher Myles, #80, knows the witness Lynn Sizemore."
8. "Juror: Janice Booker, #1, was friends with Sgt. Nick Federico's sister."
9. "Juror: Kimberly Ramsay, #100, stated that she used to work for the detention center Cherokee County."
10. "Note: My attorney was in fact a part of Seventh Circuit Solicitor Office."
11. "Juror: Laura Pelham, #60, has a nephew and niece that are involved in a current court case on drugs. In this action according to state law all Juror #1, #78, #60, #84, #80, #100 and my attorney should had been dismissed."
12. "Juror #122, Allen Benson, was dismissed because Connie Peterson is Juror 122 sister and he also know Lynn Sizemore."
13. "They both were called as witness go to page 59 in the court trial transcript. So now as you can see the chain of custody was in fact broken and all of the officers conspired against me."
14. "CSI officer Billy Anthony testified that he got the evidence on 2-2-2015. But, they testified that this same evidence was seized on 5-23-2014, see page 198 trial transcript."

FACTS ADDUCED AT TRIAL

Detective Tracy Fowler was employed by the Cherokee County Sheriff's Office for almost 19 years. She was in criminal investigations for the last 10 years. On May 23, 2014, she executed a search warrant at 161 Garvin Lake Road in Cherokee County. She explained that she was going out to the house because she worked a burglary case that happened about a week earlier. The suspect was apprehended and gave information that the stolen property that he had taken he sold to appellant at 161 Garvin Lake Road. She did not go to the residence by herself. There were other officers from criminal investigations and narcotics. (Tr. p. 87, 1. 4- p. 88, 1. 12) Detective Fowler said she located several items that matched the descriptions of the stolen property. The property was seized and returned to the victims of the burglary. (Tr. p. 92, 1. 8- p. 93, 1. 15) Appellant was never charged with having the stolen property. (Tr. p. 95, 1. 2-5)

Sgt. Federico testified that he also worked for the Cherokee County Sheriff's Office. He worked in narcotics for the last three and a half years. (Tr. p. 104, l. 6-21) He helped in the search of appellant's house. (Tr. p. 111, l. 9-11) During the search they found a clear baggy with a residue of what appeared to be methamphetamine. This led to a further search and seizure of the methamphetamine for which appellant was on trial. (Tr. p. 114, l. 21- p. 123, l. 24)

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified law enforcement arrived to a house he claims was not his to search for stolen property which included leaf blower, push mower, and a weed eater. When law enforcement went into a back bedroom, they found drugs in plain view. Applicant testified the house was not his and he did not live there. He further claimed that he was on trespass notice from the residence. Applicant testified he told law enforcement about the trespass notice during the search and informed them the house was not his nor were the drugs.

Applicant testified he believed Counsel was ineffective for failing to call two witnesses on his behalf. One witness Applicant insisted Counsel should have called was "Tiny." Applicant claimed Tiny lived in the house where the drugs were found, but was not there the morning of the search. Applicant testified Tiny would have admitted the drugs belonged to him. Applicant also wanted Counsel to call Applicant's daughter-in-law, "Tracey." Applicant claimed Tiny and Tracey could have testified that the State's witnesses were lying and that the drugs were not Applicant's.

Applicant also believes Counsel's advice not to testify before the jury was erroneous advice. Applicant claimed he did not testify at trial because of the advice from Counsel.

Applicant claimed he wanted to testify regarding his trespass notice and the fact the residence was not his. Applicant testified it was Counsel's idea not to testify to that effect.

Applicant also testified the chain of custody was broken for the stolen property evidence because it was given back to the victims. Applicant claimed this evidence of stolen property should have been admitted at trial. Applicant also claimed that during the search of the residence, law enforcement took photos. However, those photos were not admitted at trial and instead, just a few days before trial the State came back to the residence to take photos.² Applicant testified the photos contradicted the testimony from law enforcement that prior to executing the search warrant, someone was seen removing something that was sitting on top of an air conditioning (A/C) unit because the photos admitted at trial showed no A/C unit. Applicant testified Counsel did not object to the photos of the house admitted at trial. Applicant also complained about various jurors who were *not* selected to sit during his trial.

On cross examination, Applicant recalled testifying during a pre-trial hearing that when officers requested consent to search the house for drugs, he told them to "kiss my ass" and "to get the fuck out of my house." (Plea Tr. p. 51). (Emphasis added). Applicant alleged Counsel told him to say that, but he wanted to testify that he said the house was not his and he was on trespass notice. Applicant also admitted that neither Tiny nor Tracey was present at the house when the search warrant was executed and the drugs were found. Applicant insisted Tiny would have claimed the drugs and exculpated Applicant. However, Applicant also said Kaylynn claimed the drugs at the time of the search because they were hers. Applicant denied Kaylynn claimed the drugs because he told her to or because she was scared of him. Lastly, Applicant

² It is worth noting that Applicant implied he was also at the subject residence when photos were taken the day before trial, despite his repeated claim he was not living there and was on trespass notice.

admitted that the A/C unit was a removable one and that the State took photos of the residence late February – early March.

II. Counsel testified to the following:

Counsel has been practicing law for twenty-five years. Criminal law has made up 80-90% of his practice. He was appointed to represent Applicant due to a conflict of interest with the public defender's office. Counsel met with Applicant 2-3 times while he was in jail and a couple times outside of jail after Applicant was released on bond. Counsel also recalls some phone conversations as well. Counsel filed a motion for discovery, received the discovery, and reviewed all of it with Applicant.

Applicant told Counsel his version of events, in that Applicant was doing work over at the house for which he was on trespass notice and there were two other women there. Counsel explained to Applicant that they should present the evidence that he was on trespass notice from the residence to the court. Counsel never told Applicant to lie. However, much to Counsel's surprise, Applicant testified during the pre-trial hearing to something totally different than what they had discussed. After Applicant stated "my house," during the pre-trial hearing, Counsel simply had no further questions and was baffled at Applicant's testimony. Counsel believed the trespass notice was their best defense. Because of the surprise testimony during the pre-trial hearing, Counsel advised Applicant not to testify. Counsel's concern was that if Applicant testified to the trespass notice and not living at the house, he would be impeached with the prior testimony he had given under oath at the pre-trial hearing. Counsel testified Applicant essentially shot himself in the arm with the unexpected testimony he gave at the pre-trial hearing. There was not much left for Counsel to do to salvage his case.

Counsel testified there was never any mention of Tiny by Applicant prior to trial and certainly not that Tiny was living in the house and would claim the drugs. Counsel testified Applicant did not give him a list of any witnesses that would be helpful to his case. Counsel testified Applicant did not mention who lived in the house, just that he did not live there. Applicant told Counsel Kaylynn claimed the drugs at the time of the search so Counsel was sure to point that out and argue that she lied during the search and therefore lying at trial.

Counsel testified the photos admitted at trial were not objectionable and could be used to the defenses advantage because the A/C unit was not shown in the photos. Counsel also had notes from *voir dire* that indicated that every juror Applicant complained of, he had written down to strike. However, none were called to serve on the jury panel.

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 had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence.”

Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 (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.

Failure to raise trespass issue

This Court finds Applicant has failed to show that Counsel was ineffective for not presenting evidence Applicant was on trespass notice from the premise searched. This Court finds Applicant's testimony on this issue absolutely not credible. It strains credulity to believe, as Applicant testified, that Applicant wanted to present testimony that he did not live at the residence searched, but that Counsel instead told him to lie and tell the trial court he told law enforcement to get the f*** out of his house. This Court finds Counsel's testimony credible.

Counsel testified he discussed the issue at length with Applicant and they decided to present the testimony in defense to the drug charges. However, Counsel was astonished by Applicant's testimony during the pre-trial hearing on Applicant's motion to suppress and felt he could not allow him to testify to the trespass issue at trial because he would be impeached based on his previous, inconsistent testimony he gave under oath at the pre-trial hearing. Counsel testified Applicant ruined his entire defense with that testimony.

Applicant was certainly prejudiced on this issue, but it was Applicant's own spur of the moment testimony, against Counsel's advice, that prejudiced his case and not any alleged deficiency by Counsel. Therefore, having failed to meet his burden of proof, this allegation is denied and dismissed with prejudice.

Failure to call witness

This Court finds Applicant has failed to show that Counsel was ineffective for either not interviewing or calling two witnesses for his trial. First, this Court notes any claims surrounding the failure to present testimony from a witness assumes the testimony from the witness would have been favorable to the defense and therefore affected the outcome of the trial. However, this contention is based on pure conjecture and speculation. 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). 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). Because Applicant failed to produce the testimony of the witnesses, any prejudiced derived from any of Counsel's actions leading to her not testifying is purely speculative.

Secondly, this Court finds Counsel's testimony on the issue more credible than that of Applicant. Counsel testified Applicant did not provide him with the names of any potential witnesses and therefore he did not know about them. Counsel cannot be expected to interview a witness he does not know exists. Therefore, Applicant has failed to prove Counsel was deficient or that he was prejudiced by any alleged deficiency.

Juror Issue

This Court finds Applicant has failed to prove Counsel was ineffective regarding any juror issue. Applicant complained about numerous "jurors," but failed to connect his complaints to what affect they had on his trial or Counsel's performance. None of the *potential* jurors about whom Applicant complained were selected to be a part of Applicant's jury. Counsel testified credibly that each juror he complained of Counsel had written down in his notes to strike – however, none of the jurors were even called to be seated.

II. Prosecutorial Misconduct

This Court finds Applicant has failed to meet his burden of proving prosecutorial misconduct. Generally, prosecutorial misconduct is not an issue for post-conviction relief if the claim arises from facts known at the time of trial. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or

on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Where the claim of prosecutorial misconduct arises from facts not discovered until after the trial, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Applicant could have raised the "prosecutorial misconduct" issues about which he complains now on direct appeal because he was aware of those claims at trial. The failure to do so has waived this allegation as grounds for relief. Furthermore, Applicant's testimony and allegations law enforcement conspired against him are simply not credible. This Court finds no error in law enforcement's execution of the search warrants and investigation. Therefore, this Court finds Applicant has failed to meet his burden of proving prosecutorial misconduct.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

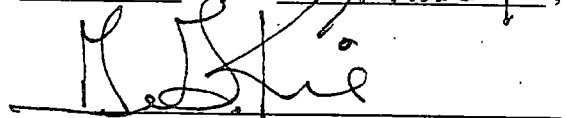
This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a

Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

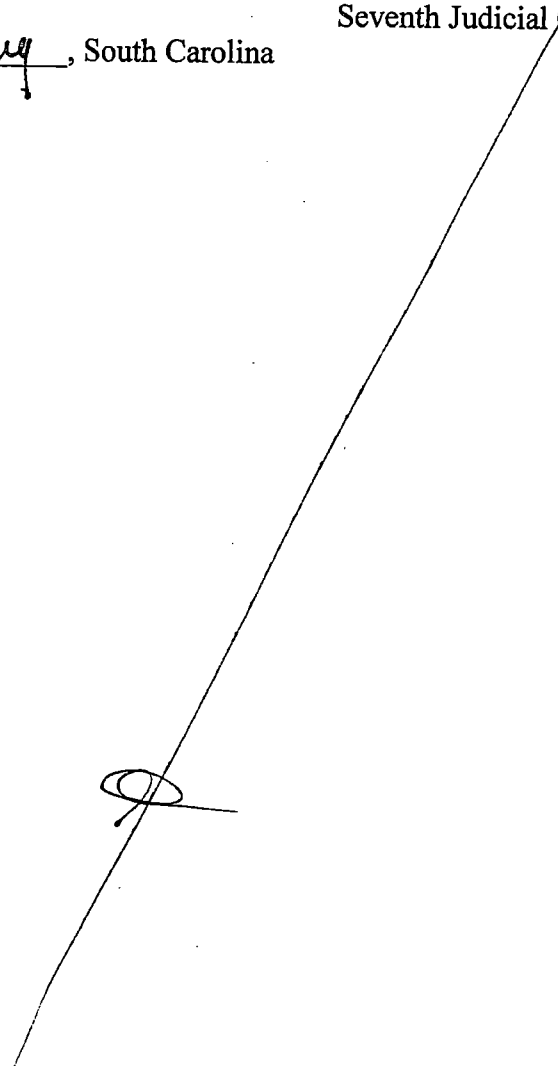
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

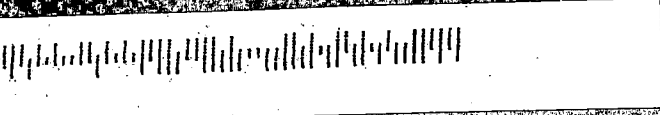
AND IT IS SO ORDERED this 16th day of JANUARY, 2018.



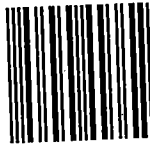
GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina





1000



29211

U.S. POSTAGE
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29306
FEB 05, 18
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\$2.47
R2304W120182-16

v Firm, LLC
anklin Ave., #281
ourg, SC 29301

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