MURPHY LAW OFFICES, LLC

POST OFFICE BOX 2008
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RECEIVED
FEB 26 2018
S.C. SUPREME COURT

February 21, 2018

VIA U.S. MAIL
The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211

Re: *Darryl Drayton v. State of South Carolina*
2016-CP-10-2633

Dear Mr. Shearhouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief, and a Proof of Service regarding same. If you find everything in order, please file the original and return the clocked-in copies in the enclosed self-addressed envelope.

Please note, I was appointed to this and case and have copied the Office of Appellate Defense on this who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,

Christopher L. Murphy, Esq.
chris@chrismurphylawfirm.com

CLM/jh

Enclosures
cc (w/ encls.): Mr. Darryl Drayton
Justin J. Hunter, Asst. AG
Robert M. Dudek, Esquire, Off of Appellate Defense
The Honorable Michael G. Nettles
The Honorable Julie J. Armstrong, Clerk, 9th Jud. Cir.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

FEB 26 2018

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2016-CP-10-2633

Darryl Drayton, #238403 .... Appellant

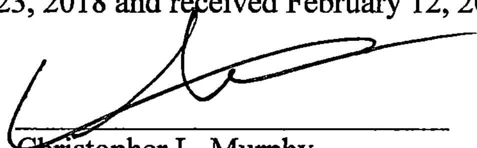
v.

State of South Carolina .... Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief. Attached is the order from the court dated January 23, 2018 and received February 12, 2018.

February 21, 2018



Christopher L. Murphy
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Email: chris@chrismurphhylawfirm.com

Other Counsel of Record:
Justin J. Hunter
Assistant Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549
Phone: (803) 734-3970
Fax: (803) 253-6283
jhunter@scag.gov

Rec'd 2/12/18

ALAN WILSON
ATTORNEY GENERAL

February 8, 2018

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

Re: **Darryl Drayton, #238403 v. State of South Carolina**
2016-CP-10-2633

Dear Mr. Murphy:

Enclosed is a copy of the **Order of Dismissal** in the above-captioned case signed by The Honorable Michael G. Nettles and filed with the Charleston County Clerk of Court.

Sincerely,

Justin J. Hunter
Assistant Attorney General

JJH/jaj
Enclosure(s)

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Darryl Drayton, #238403
Plaintiff,
vs.
STATE OF SOUTH CAROLINA
Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: **2016-CP-10-2633**

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Christopher L. Murphy, Bar No.	Justin J. Hunter, Bar No.
Address: Murphy Law Offices, LLC	Address: South Carolina Attorney General's Office
234 Seven Farms Drive, Suite 128	PO Box 11549
Charleston, SC 29492	Columbia, SC 29211
Phone: _____ Fax _____	Phone: _____ Fax _____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[signature]
Signature of Attorney for ☐ Plaintiff /☒ Defendant

January 17, 2018
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ __________

EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: __________

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

'C
AG
AT
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GS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

Darryl Drayton,
S.C.D.C. No. 238403,

Applicant,

v.

State of South Carolina,

Respondent.

2016-CP-10-2633

ORDER OF DISMISSAL

2018 FEB -1 AM 10:21

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 20, 2016. An evidentiary hearing into the matter was convened on Wednesday, December 6, 2017, at the Charleston County Courthouse in Charleston, South Carolina before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Ninth Circuit Public Defender D. Ashley Pennington, Esquire, also testified. This Court had before it a copy of Applicant's PCR application, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's appellate records, Respondent's Return, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the December 2010 term of the Charleston County Grand Jury for murder (2010-GS-10-8551). D. Ashley Pennington, Esquire, represented him. Jennifer K. Shealy, and Timothy Finch, Esquires, prosecuted the case. On October 1, 2012, Applicant proceeded to trial before the Honorable J.C.

Nicholson, Jr. and a jury. Applicant was found guilty as indicted. Judge Nicholson sentenced Applicant to incarceration for life without the possibility of parole.

Applicant filed a timely notice of appeal. An appeal was perfected by Susan B. Hackett, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 (Ct. App. 2015). Applicant filed a petition for writ of certiorari in the South Carolina Supreme Court. The South Carolina Supreme Court granted certiorari, dispensed with further briefing, and vacated the portion of the Court of Appeals' opinion addressing Applicant's expectation of privacy in his historical cell site location data. State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015). The Court affirmed Applicant's conviction and sentence. The Remittitur was returned on January 12, 2016.

Allegations

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance Counsel"
    a. "Counsel was ineffective numerous times throughout the trial. 15 swabs of DNA never got tested, failure to call expert witness on my behalf. There are many more. Fourth Circuit Court of Appeals has ruled that...without a warrant is violation of Cons. Rights."
    b. "Counsel was ineffective by waiving my preliminary hearing. Counsel state to me that he didn't want the press eating it up more than they already had."
    c. "Counsel was ineffective by using a cover up defense. Counsel did not discuss with me before trial, that we were using that type of defense. I stated to Counsel that I had nothing to do with the murder. After the trial was over, I ask counsel why did he use that type of defense, when I told him I was innocent. Counsel finally then state that I was up to him to decided what type of defense we use."
    d. "Counsel was ineffective by allowing the judge to allow my phone records as evidence. The Fourth Circuit Court of Appeals has ruled that obtaining historical cell site data without a warrant is a violation of your Fourth Amendment Rights. The State Supreme Court ignored my argument and vacated it. The State Supreme court also ruled that the trial judge and the Court of Appeals Erred."

e. "Counsel was ineffective by not getting the other 15 swabs of DNA tested."
f. "Counsel was ineffective by not filing a motion for a mistrial. When the juror saw misconduct by one of the state witness. Tr. P. 672-701. Also, Counsel stated that would give the state time to test the DNA that didn't get tested."
g. "Counsel was ineffective for not getting our own expert witness pertaining to my historical cell site data and the victim's toxicology report."

At the PCR hearing, Applicant's attorney informed the Court that he was proceeding on the following allegations:

1. Ineffective Assistance Counsel
    a. Counsel failed to object to testimony from three of the State's witnesses concerning how Applicant cut his hand.
    b. Counsel failed to move for a mistrial when a juror witnessed the victim's husband (Michael Bartley) give money to a State's witness (Stephen Edwards) during a lunch break at trial.
    c. Counsel referenced specific circumstantial evidence language in his opening, (from State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989)) that the trial judge did not use in his ultimate charge to the jury.
    d. Counsel failed to communicate the defense and trial strategy.

II. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in

order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Counsel failed to object to testimony from three of the State's witnesses concerning how Applicant cut his hand.

Applicant alleged that Counsel was ineffective for failing to object to testimony from three of the State's witnesses where they explained how Applicant cut his hand. During Applicant's trial, the State presented the theory that Applicant cut his finger while committing the crime, had to go to the emergency room to get stitches, and gave conflicting stories about how he cut his finger See Transcript pp. 871. Applicant's cousin, Stephen Edwards, testified at trial that Applicant saw him the morning after the incident and told asked him to take Applicant

to the emergency room because he got in a fight with three guys from Beaufort. Transcript 374. Dr. Luca Delatore testified that he treated Applicant for his finger laceration and Applicant told him it was the result of a saw injury. Transcript 416. Bluffton Pharmacist Maggie Furchak testified at trial that Applicant came in to her pharmacy to fill prescriptions from the ER, and told her that he cut his hand that morning at work on a piece of glass. Transcript 424. Jeweler Chris Golis testified at trial that Applicant sold him the victim's ring and told him that he cut his hand with a saw on a chain link fence. Transcript 432. At the PCR hearing, Counsel testified he saw no reason to object to this testimony because Applicant's false exculpatory information would have been let in at trial.

This Court finds Counsel was not ineffective for failing to object to the above testimony as it did not violate hearsay rules. Rule 801 of the South Carolina Rules of Evidence states that a statement is not hearsay if offered against a party and "(A) is the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth." Rule 801(d)(2)(A)-(B), SCRE. "As a general rule, statements or declarations made by one accused of a crime are admissible against him." State v. Beck, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) (citing State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980)). The statements at issue are not hearsay because they were offered against Applicant and consist of Applicant's own statements to the particular witnesses. This Court finds Counsel was not deficient for failing to object because there was no legitimate objection to be made to the statements. This Court finds any objection from Counsel would have caused undue attention to the witnesses' statements. This Court further finds the outcome of Applicant's trial would not have been different had Counsel objected to this testimony. Accordingly, this allegation must be dismissed.

Counsel failed to move for a mistrial when a juror witnessed the victim's husband (Michael Bartley) give money to a State's witness (Stephen Edwards) during a lunch break at trial.

Applicant alleged Counsel was ineffective for failing to move for a mistrial when a juror witnessed the victim's husband (Michael Bartley) give money to a State's witness (Stephen Edwards) during a lunch break at trial. During the trial the jury foreman informed the court that Juror 59 told him that during a lunchbreak he saw Mr. Bartley shake the hand of Mr. Edwards and give him money. Transcript 672. The court questioned Mr. Bartley, who told the court he gave him $20 for lunch money, shook his hand, and walked away. Transcript 675. The court also questioned Juror 59 concerning his observations. Transcript 679. Juror 59 told the court he did not think much of the interaction and thought Mr. Bartley was just helping Mr. Edwards out because his house was in dire straits. Transcript 681. The court then questioned the jury foreman who told this information would not affect his decision making and no other juror knew of this interaction. Transcript 684-686.

Before the trial judge made a decision concerning Mr. Bartley's actions, he allowed Counsel to make his argument. Counsel informed the court he discussed the incident with Applicant and decided he would not ask for a mistrial. Transcript 691. Counsel argued that the juror should stay on the case because "[the defense] didn't make this mess" and the incident in question would call into question the credibility of the State's witnesses. Transcript 691. Ultimately, the trial judge excused Juror 59 and Counsel later called Mr. Bartley as a witness to have him explain his actions toward Mr. Edwards during the lunch break.

At the PCR hearing, Counsel testified he did not ask for a mistrial because he wanted to throw a wrench in the State's case. He testified he wanted to imply to the jury that Mr. Edwards was more culpable than the State made him seem. Counsel further testified he wanted the jury to be shocked, see the rush to judgment on behalf of the State, and see that Mr. Edwards and Mr.

Bartley had things to hide.

This Court finds Counsel was not deficient for failing to ask for a mistrial after Juror 59 witnessed a money exchange between two State's witnesses during a lunch break at trial. This Court finds Counsel articulated a valid trial strategy in not asking for a mistrial because he wanted to use the situation to the defense's advantage and cause the jury to hesitate and think that the State's main witnesses were colluding. This Court finds Counsel's actions were not deficient, especially considering he was able to call Mr. Bartley as a witness and question him about the interaction and attack Mr. Edwards' credibility during closing argument based on his taking of $20 from Mr. Bartley. See Transcript 853.

Furthermore, this Court finds Applicant has failed to prove he was prejudiced by Counsel's failure to move for a mistrial. Granting a mistrial is a serious and extreme measure which should be taken only where an incident is so grievous that the prejudice can be removed no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). After lengthy discussion and investigation into the incident by the trial court, all parties involved agreed the best course of action would be to dismiss Juror 59 and replace him with an alternate. This Court finds a motion for a mistrial would have been unsuccessful because any prejudice that would have resulted from Juror 59 was removed upon his removal from the jury. As Applicant has failed to meet his burden of proving Counsel was ineffective in this regard, this allegation must be dismissed.

Counsel referenced specific circumstantial evidence language in his opening, (from State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989)) that the trial judge did not use in his ultimate charge to the jury.

Applicant alleged Counsel was ineffective for using circumstantial evidence language in his opening statement that was not used in the trial judge's jury charge. During Counsel's opening statement he stated,

> To convict, the law says that you, as a juror, have to rule out every reasonable alternative that explains the evidence other than guilt before you -- and it's only when you can rule out innocent explanations that you can begin to rely and conclude that this is true evidence of guilt of murder.

Transcript 299. This particular "reasonable hypothesis" language is found in State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989). At the end of the trial, the court charged the jury but did not use this "reasonable hypothesis" language in its charge on circumstantial evidence. Counsel objected to the court's charge and argued the court should charge the jury with the Edwards language on circumstantial evidence:

> But it is incumbent on the jury to sift the circumstances to see if the circumstances are proven beyond a reasonable doubt and are they consistent with each other, taken together and pointing conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis

Transcript 893. The trial court ultimately denied Counsel's objection and request to charge. Transcript 894.

At the PCR hearing, Counsel testified he believed the "reasonable hypothesis" language to be correct because the courts have not ruled that a judge cannot give this instruction and a recent trend showed courts going back to using the "reasonable hypothesis" language. He testified he prepared a proposed jury instruction with this language but the judge denied his request.

This Court finds Counsel was not ineffective for using this language in his opening statement. This Court finds that Counsel's actions were not deficient, as Counsel had no way of knowing the trial court would later deny his request for this language to be included in the jury instruction. This Court finds Counsel acted reasonably in using this language as he later objected to the court's jury instruction and moved to include his own requested instruction on circumstantial evidence, which the trial judge ultimately denied. Counsel also protected this issue

for appellate review by the Court of Appeals.[1]

This Court further finds Applicant was not prejudiced by Counsel's actions as this one sentence was a minor part of his opening statement. This Court finds the outcome of Applicant's trial would not have been different had Counsel employed different language in his opening, given the overwhelming circumstantial evidence in this case including the victim traveling with "D" the night of the incident, Applicant's conflicting stories about how he cut his finger and hand, Applicant's blood DNA found on the victim's car, the victim's blood found on the victim's car, Applicant's blood DNA found on the victim's shoe and belongings, the victim's belongings being discarded at Applicant's cousin's house, Applicant pawning the victim's ring the morning after the incident, and cell phone data showing Applicant's phone being used the night of the incident near the location of the victim's body. Additionally, the trial judge charged the jury that opening statements by attorneys are not the evidence. Transcript 882. Applicant has failed to prove that the outcome of the trial would have been different had Counsel used different language in his opening statement. As Applicant has failed to meet his burden of proving Counsel was ineffective in this regard, this allegation must be dismissed.

Counsel failed to communicate the defense and trial strategy.

Applicant alleged Counsel was ineffective for failing to communicate the defense and trial strategy and whether Applicant should testify in his own defense. Applicant testified he was in jail for two years prior to trial and only met with Counsel five times. He testified Counsel did not discuss any defense strategy with him. Applicant testified they went over the DNA results from the State, but testified that he was known to be around the victim and her car prior to this incident. Applicant testified he told Counsel he had nothing to do with the crime. Applicant

[1] The Court of Appeals ultimately found no reversible error in the trial judge's circumstantial evidence charge, holding the charge as a whole properly conveyed the applicable law. See State v. Drayton, 411 S.C. 533, 546, 769 S.E.2d 254, 261 (Ct. App.), cert. granted in part, judgment vacated in part, 415 S.C. 43, 780 S.E.2d 902 (2015).

testified he gave Counsel the name of potential alibi witnesses and was not sure if Counsel got in touch with them. Applicant testified Counsel spoke with Applicant's ex-girlfriend and maybe one or two other witnesses. Applicant testified he was not aware Counsel would be using a "cover up" defense at trial, where Counsel argued that the evidence only showed that Applicant may have covered up another person's crime.

Applicant testified he did not talk to Counsel about whether he should take the stand and testify at trial. Applicant testified he had a colloquy with the trial judge about his right to testify. He testified he had discussions with Counsel about the advantages and disadvantages of Applicant testifying. Applicant testified Counsel told him the State could use his prior record against him. He testified he was served with the State's notice to seek a sentence of life without parole and he discussed this Counsel.

Counsel testified he met with Applicant every other month prior to the trial. He testified their meetings would last one to two hours. He testified they discussed all of the evidence and tried to get as much information as he could on the circumstances and any witnesses he had in common with the victim. He testified they discussed potential defenses Applicant could have against the State's evidence. Counsel testified he discussed with Applicant the pros and cons of testifying at trial in the months leading up to the trial date. He testified Applicant did not want to testify at trial and was concerned he would get convicted. Counsel presented a memo he sent to Applicant on April 5, 2012 detailing their conversations.

Counsel testified he was concerned about Applicant's case because of the cell phone and DNA evidence against Applicant. He testified Applicant maintained he was not involved, but did not realize his blood was at the scene of the crime. He testified he discussed the strength of the State's case. Counsel testified the defense's main challenge was Applicant's DNA, including his

blood found on a bag containing items belonging to the victim. Counsel testified he hired a Ph.D. expert to review the State's DNA evidence and the expert found there were no errors with the DNA analysis.

Counsel testified he went out to the scene of the crime and tried to contact Applicant's cousin, Mr. Edwards. He testified Applicant gave him the names of witnesses, who mostly consisted of Applicant's relatives who lived in his area. He testified he was able to track these witnesses with investigators in Bluffton and Hollywood.

Counsel testified he told Applicant a "cover up" defense was the best theory given the evidence. He testified Applicant was not happy with the defense at trial, but as Applicant's attorney he has to argue the best evidence to achieve a not guilty verdict. Furthermore, Counsel testified the judge properly conducted a colloquy about Applicant's right to testify and he was not surprised that Applicant chose not to take the stand.

This Court finds Counsel was not deficient for failing to communicate defenses and a defense strategy. This Court further finds Counsel was not deficient in his preparation for trial and his communication with Applicant concerning his right to testify. This Court finds Counsel saw Applicant at least twelve times in jail or via video prior to trial and discussed with Applicant the evidence, facts, investigation, elements of the charge, circumstantial evidence, DNA, and cell phone data. Counsel also discussed the State seeking life without parole, his trial strategy, the defense's challenges (outlined in detailed notes from their last meeting), and how the State could prove their case. This Court finds Counsel undertook a tremendous amount of investigation including hiring his own DNA expert and looking for alibi witnesses with his investigator. This Court finds although Applicant did not have a firm alibi defense, Counsel fully investigated. This Court finds Applicant has failed to show Counsel's communication was deficient as he

thoroughly went over all aspects of Applicant's case, including his defense strategy. This Court finds Counsel articulated a valid trial strategy to argue the evidence only showed a cover-up, since Applicant was biologically tied to the scene of the crime. This Court finds Applicant has failed to show how Counsel's communications with him were deficient or that the outcome of his trial would have otherwise been different.

This Court further finds Counsel was not deficient in his advice to Applicant concerning his right to testify. This Court finds Counsel did discuss the pros and cons of testifying with Applicant and the trial judge conducted a full colloquy as well to ensure Applicant's decision was made knowingly and voluntarily. See Transcript 590-594, 794-795. This Court finds Applicant has failed to show that Counsel's advice was deficient and that he relied on the advice to his detriment. This Court finds Applicant has failed to show the outcome of his trial would have otherwise been different and this allegation is dismissed.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

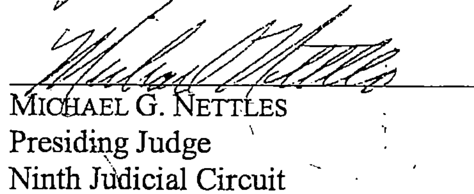
of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of Jan, 2018.



MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

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

DARRYL DRAYTON, #238403 Applicant,

v.

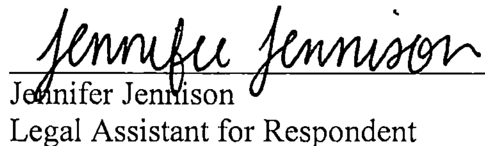
STATE OF SOUTH CAROLINA, Respondent.

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:

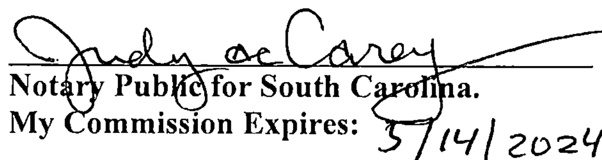
Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

This 8th day of February, 2018.



Jennifer Jennison
Legal Assistant for Respondent

SWORN to before me this 8th day of February, 2018.



Notary Public for South Carolina.
My Commission Expires: 5/14/2024

RECEIVED
FEB 26 2018
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2016-CP-10-2633

Darryl Drayton, #238403 .... Appellant

v.

State of South Carolina .... Respondent

PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 21st day of February, 2018, on the following:

Justin J. Hunter, Esquire
Assistant Attorney General
SC Office of the Attorney General
PO Box 11549
Columbia, SC 29201

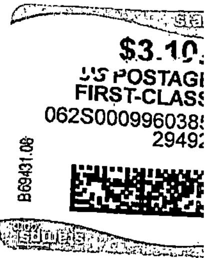
The Honorable Michael G. Nettles
Florence City-County Complex
180 North Irby Street, MSC-XX
Florence, SC 29501

The Honorable Julie J. Armstrong
Clerk of Court, Ninth Judicial Circuit
100 Broad Street, Suite 106
Charleston, SC 29401

Robert M. Dudek, Esquire
Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Mr. Darryl Drayton (#238403)
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

er L. Murphy



The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
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