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March 12, 2018

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Roderick Germaine Wynn, SCDC# 257393 vs. State of South Carolina
Case No: 2016-CP-42-0618

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and a Proof of Service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please filed the copies that I have enclosed and return the copies to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

Rodney Richey

RWR/
enclosures
cc: Roderick Germaine Wynn, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE G. THOMAS COOPER

2016-CP-42-0618

RODERICK GERMAINE WYNN, SCDC# 257393

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Roderick Germaine Wynn appeals the denial of his Post- Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G. Thomas Cooper, Circuit Judge on November 16, 2017 and Order issued on March 2, 2018 and filed on March 5, 2018. The Appellant received notice of the judgment on March 10, 2018.

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Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE G. THOMAS COOPER

2016-CP-42-0618

RODERICK GERMAINE WYNN, SCDC# 257393

APPELLANT,

against

STATE OF SOUTH CAROLINA,

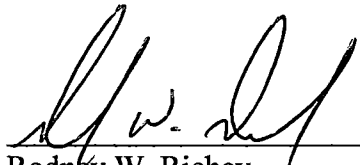
RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on March 12, 2018, addressed to their attorney of record, Valerie Garcia Giovanoli, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: March 12, 2018

RICHEY & RICHEY, P.A.



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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Roderick Germaine Wynn, #257393 Applicant, v. State of South Carolina, Respondent.	2016-CP-42-0618 **ORDER OF DISMISSAL WITH PREJUDICE**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Roderick Wynn (Applicant) on February 17, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held and also a motion for a more definite statement. An evidentiary hearing into the matter was convened on November 16, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant also called his father, Glenn B. Manning, Esquire, to testify on his behalf. Mary Shealy, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg 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

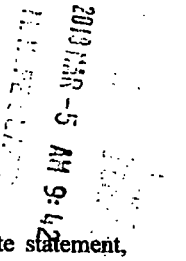
Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at

the January 2014 term of Spartanburg County Grand Jury for murder (2014-GS-42-0313). Mary Stuart Lyall (now Shealy), Esquire, represented Applicant. On August 28, 2014, Applicant proceeded to trial before the Honorable R. Keith Kelly and a jury. The jury found Applicant guilty of the lesser included offense of voluntary manslaughter. Judge Kelly sentenced Applicant to confinement for a period of 20 years.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Lara Mary Caudy, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Wynn, Op. No. 2015-UP-525 (S.C. Ct. App. filed November 18, 2015). The Remittitur was returned to the Circuit Court on December 4, 2015.

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

1. "Ineffective Assistance of Counsel"
    a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses. Counsel has a duty to investigate, See Ard v. Catoe, 642 S.E. 2d 590, 597..."



At the start of the hearing, in response to the State's motion for a more definite statement, Applicant clarified the allegations were that Counsel did not adequately confer with Applicant about him testifying and that Counsel failed to investigate and interview witnesses.

FACTS ADDUCED AT TRIAL

On August 14, 2013, Jeffrey Holt, a paramedic in Spartanburg, South Carolina, received a report of an unconscious individual situated in the parking lot of the Money Tree, and he quickly responded to the scene. (Tr. p. 39). Upon arriving, he was directed to a vehicle parked in the parking lot by several bystanders and observed a man seated in the driver's seat of the

vehicle with his head slumped down. (Tr. pp. 39-40). He then approached the vehicle, examined the man, and discovered the man had no pulse, was not breathing, and had recently vomited. (Tr. pp. 39-40). He further noticed the man had a "fairly small" contusion to his left temporal forehead, a small indention into the contusion, and a laceration above that injury. (Tr. pp. 41-42). In response, he removed the man from the vehicle, began resuscitation efforts, and quickly transported the man to the hospital by ambulance. (Tr. pp. 40-41). However, his resuscitation efforts were unsuccessful, and the man – fifty-six-year-old Curtis Goldsmith ("Victim") – was pronounced deceased at the hospital. (Tr. p. 41; p. 50; p. 153).

Meanwhile, officers from the Spartanburg Police Department arrived at the location where Victim was discovered and began speaking to the bystanders to ascertain what led to Victim's injuries and death. (Tr. pp. 45-48; pp. 133-134; pp. 139-140). After speaking with the bystanders, the officers determined Victim had just been involved in an altercation with Applicant Roderick Germaine Wynn, and they began attempting to locate Applicant. (Tr. pp. 47-48; pp. 134-135; p. 142). While searching for Applicant, Officer Christopher Banks discovered Applicant's girlfriend lived at a nearby motel and went to the motel to speak with her. (Tr. p. 134). During his ensuing conversation with Applicant's girlfriend, Applicant called her phone but refused to tell her where he was located. (Tr. p. 135). Officer Banks then took the phone and asked Applicant to meet with him at the motel in regard to an unrelated incident, and Applicant agreed to do so. (Tr. pp. 135-136; p. 139). However, Applicant never arrived at the motel to meet with the officer, and his whereabouts remained unknown. (Tr. pp. 135-136; p. 142).

Later that afternoon, Dr. David Wren, an expert in forensic pathology, conducted an autopsy on Victim's body. (Tr. pp. 150; pp. 152-153). During the autopsy, Dr. Wren discovered

abrasions along Victim's elbow, abrasions to both of Victim's knees, and an injury to Victim's right forearm that was consistent with a fall. (Tr. p. 154). Additionally, he located hemorrhages on the vertex of Victim's scalp and above Victim's left ear that were inflicted shortly before Victim's death and that could have resulted from strikes or a fall. (Tr. p. 155). Furthermore, Dr. Wren discovered Victim had sustained a subdural hemorrhage, a subarachnoid hemorrhage, and an intraventricular hemorrhage in his brain. (Tr. pp. 157-158). Based on Victim's injuries, Dr. Wren determined Victim died as a result of an altercation and Victim's specific cause of death was closed head trauma with subdural, subarachnoid, and intraventricular hemorrhages. (Tr. p. 159).

Thereafter, a tipster informed the investigating officers four days after Victim's death Applicant was hiding in an abandoned house. (Tr. p. 143). In response, officers headed to that location, found Applicant there, and apprehended and arrested him for his involvement in Victim's death. (Tr. p. 143). Subsequently, the Spartanburg County Grand Jury indicted Applicant for murder, and he elected to proceed forward to trial. (Tr. p. 7; Indictment).

During trial, Holt testified about his attempts to resuscitate Victim, and the officers from the Spartanburg Police Department testified about their investigation into Victim's death that resulted in Applicant's arrest for the killing. (Tr. pp. 39-41; pp. 46-48; pp. 133-136; pp. 140-143). Likewise, Dr. Wren testified about the injuries he discovered through the autopsy he conducted on Victim's body. (Tr. pp. 153-159). During his testimony, Dr. Wren opined Victim's injuries could have resulted from Victim falling four to five feet and were unlikely to have been caused solely by a blow from a fist. (Tr. p. 159). Based on Victim's injuries, Dr. Wren concluded Victim died as a result of an altercation and was likely thrown up against something, fell and hit something, or was hit by an object that was swung at him. (Tr. p. 159).

In addition to that testimony, Freddie Young, a resident of a motel located near the Money Tree, testified he was working on a car outside of the motel when he heard a woman pleading with someone to "just leave the situation alone" in a nearby alley and the other person responding he was "going to take care of business." (Tr. pp. 58-62). After that, Young indicated he went to investigate, saw Applicant engaged in an argument with Victim that turned physical, observed Applicant throw the first punch exchanged between the men, and heard Applicant state Victim owed him money and he was going to get it from him. (Tr. pp. 65-66; p. 68; pp. 77-78). Regarding the fight, Young testified Victim tried to protect himself from Applicant's punches, Victim seemed dizzy after he was knocked to the ground by Applicant, and Applicant picked Victim up by the legs and slammed him to the ground. (Tr. pp. 68-70; p. 85). He further stated he believed Victim hit his head on a trash can during the fight and testified Applicant struck Victim again and caused him to fall to the ground while Victim was attempting to walk back to his car. (Tr. p. 70; pp. 72-73; p. 85). However, after further questioning, Young indicated he was not sure who actually threw the first punch and noted the men were already engaged in the altercation when he arrived on the scene. (Tr. p. 65; p. 79).

Additionally, Kerri Blanchard, a "good friend" of Applicant's, testified about the events of August 14, 2013, noted she did not see anything that happened during the incident, and stated she called 911 after Applicant told her Victim needed help because he had punched Victim so hard Victim could no longer move. (Tr. pp. 91-93; p. 97; p. 108). Blanchard further testified Applicant informed her Victim owed him money and had swung at him, and she indicated Applicant was upset at the time. (Tr. p. 93; p. 95; p. 99; pp. 101-102).

Likewise, Katrina Price, another of Applicant's friends, testified for the State, indicated she was walking with Blanchard towards the Money Tree, and watched as Blanchard crossed the

street and began talking with Applicant. (Tr. pp. 112-113). During Applicant's conversation with Blanchard, Price stated she overheard Applicant say he "lit his ass up" and she noticed Applicant was "pretty" mad, "pretty well upset," and was speaking in a "very loud" manner at the time. (Tr. p. 113; p. 117). Price further indicated she believed Applicant had been involved in a fight while conceding she did not see any of the fight that had occurred. (Tr. p. 114; p. 116).

Furthermore, Joyce Brewton testified about the incident and indicated she went to the Money Tree on August 14, 2013, to pay her bills. (Tr. pp. 122-123). On that date, Brewton stated she saw Applicant and another man arguing before she entered the business, remained inside for a few minutes, exited, and saw the men engaged in a physical fight at that time. (Tr. pp. 123-125). Additionally, she testified she saw the other man throw a punch at Applicant followed by Applicant "whoop[ing] his ass." (Tr. p. 125). Brewton further testified Applicant's opponent appeared to be dead at the time she left the parking lot of the Money Tree, and she noted she heard Applicant state he had knocked the other man out while claiming the other man was okay. (Tr. pp. 125-127).

Subsequently, the State rested its case, and defense counsel called several witnesses to testify in Applicant's defense. (Tr. p. 163; p. 165; p. 171; p. 186). Amongst those witnesses, Matthew Teamer, a convicted felon, testified he was driving through the parking lot of the Money Tree when the incident occurred while inconsistently claiming he was and also was not present when the fight began. (Tr. p. 171; p. 178; pp. 183-184). Regarding the fight itself, Teamer stated he observed Applicant and another man arguing, the other man struck Applicant, and then both men fell to the ground. (Tr. p. 172). After that, Teamer claimed Applicant and the other man got back up before Applicant punched, threw, and kneed the other man. (Tr. p. 172).

He stated he then continued to leave the parking lot and did not perceive the altercation to be a serious one. (Tr. pp. 173-174).

Similarly, Marion Bridges, the sister-in-law of Brewton, testified about her observations during the incident and stated she drove Brewton to the Money Tree, waited in her vehicle while Brewton went inside, and saw Victim and Applicant arguing. (Tr. pp. 186-187). After that, Bridges indicated Victim "took a swing" at Applicant, Applicant and Victim "scuffled a little bit" while punching and wrestling with each other, and then Victim got into his vehicle and slumped over. (Tr. pp. 187-188). Additionally, she claimed Applicant "hollered" during the incident about how Victim owed him money and had taken a swing at him, and she stated Victim informed her he "just knocked the 'H' out of" Victim when she asked him what happened. (Tr. pp. 188-189). Furthermore, she admitted she did not see the whole argument between Applicant and Victim and noted Applicant panicked and fled when Brewton called 911. (Tr. pp. 189-190).

Following the presentation of that testimony, the defense rested, and the trial judge presented the solicitor and defense counsel with copies of his proposed jury instructions. (Tr. p. 203; p. 206). Defense counsel then moved for a directed verdict on the murder charge, arguing the killing was not intentional and Victim's injuries were not directly caused by punches. (Tr. pp. 206-209). Defense counsel further contended Applicant's actions constituted "at most a manslaughter." (Tr. p. 208). After considering the arguments of counsel, the trial judge denied the directed verdict motion. (Tr. p. 209). Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law, including on the law of murder, voluntary manslaughter, involuntary manslaughter, and self-defense. (Tr. pp. 210-249).

Subsequently, at the conclusion of trial, the jury acquitted Applicant of murder and convicted him of the lesser-included offense of voluntary manslaughter. (Tr. pp. 251-252). Following the verdict, defense counsel renewed her motion for a directed verdict and additionally moved for a new trial. (Tr. pp. 253-254). In seeking a new trial, defense counsel contended – for the first time – the evidence presented during trial was not sufficient to prove the offense of voluntary manslaughter based on the fact there was allegedly no evidence Applicant killed Victim in a sudden heat of passion upon a sufficient legal provocation. (Tr. pp. 253-254). In response, the solicitor noted the evidence presented during trial could have supported a finding Applicant confronted Victim about money and became enraged when Victim struck him, which would have been sufficient to establish Applicant's guilt for voluntary manslaughter. (Tr. pp. 254-255). Thereafter, the trial judge denied defense counsel's post-trial motions, including the motion for a new trial, after finding ample evidence had been presented to support the jury's verdict. (Tr. p. 255). The trial judge then sentenced Applicant to a twenty-year term of imprisonment. (Tr. p. 271).

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified Counsel reviewed his discovery with him but did not give him all of his discovery. He claimed he gave Counsel names of potential witnesses, but Counsel failed to interview them. Among those names were Marion Bridges, Matthew Teamer, Fredrick Gist, and Yolanda Carter. Applicant testified Counsel told him she would schedule an interview with Teamer and Gist through their attorneys, who were also public defenders, but that never happened. Applicant also complained the State's witness, Freddie Young, lied on the stand because he did not speak to him and did not witness the fight. When Applicant brought this to

Counsel's attention, Counsel told him it would help their case. Applicant also claimed Counsel failed to cross examine Dr. Wren, the doctor who performed the autopsy of the victim.

Applicant explained the confrontation between he and victim was a fist fight and involved no weapons. However, Applicant testified the fact that the victim swung at him first was not developed at trial.[1] Applicant also testified the fight started because the victim owed Applicant money and when Applicant confronted him, the victim hit Applicant. Applicant testified Counsel should have advised him to testify because he was the only person who could explain this and without his testimony, no one could tell the jury how the fight started.[2] Applicant complained Counsel advised him not to testify because of his criminal record. Because Applicant was nervous, he followed her advice. Counsel also never discussed how they would get in the information that the victim hit Applicant first and that no one could testify to that.

II. Glenn B. Manning testified to the following:

Manning testified he is a retired attorney, Applicant's father, and the brother of the Honorable L. Casey Manning, circuit court judge. Manning testified he attended Applicant's trial, but he did not participate. He discussed the case with Applicant. He also talked with Counsel about how the case was being pursued and developed, but he was not satisfied with it. Manning believed Applicant should have testified. Manning also recalls Applicant told him about witnesses that were not present at trial. Manning referred to a letter he allegedly wrote to Counsel on August 28, 2014 memorializing some of the issues he took with the trial. When

[1] A State's witness, Brewton, and both defense witnesses, Teamer and Bridges, testified at trial that the victim threw the first punch. ((Tr. p. 125; p. 172; pp. 187-188). The State's witness, Blanchard, also testified that immediately after the fight, Applicant told her the victim threw the first punch. (Tr. p. 93, 95).

[2] The State's witness, Blanchard, testified Applicant told her the fight was because the victim owed Applicant money. (Tr. p. 99). Also, the defense witness, Bridges testified that at the time of the incident, Applicant said the victim owed him money and took a swing at him. (Tr. p. 188).

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asked if he was unsatisfied with his son's legal representation, why did he not represent him, he testified he was worried the jury would not believe what he said because he was Applicant's father.

III. Counsel testified to the following:

Counsel has been practicing criminal law for ten years. She was appointed to represent Applicant as an Assistant Public Defender. She recalled speaking to Manning a number of times on the phone, in the office, and with Applicant's mother and step-father. She gave Manning a copy of the discovery with Applicant's approval. Counsel testified Manning was more than welcome to assist with the preparation of the defense and in trial if he filed a notice of representation. She recalled speaking to Manning during breaks of the trial as well. Counsel never recalled having a discussion regarding Applicant testifying at trial with Manning present, but she did discuss it with Applicant at length. She believed he would testify. In order to prepare Applicant to testify, she used her investigator, Curtis Jones, to do a mock cross-examination in which Jones asked difficult questions. Ultimately, Applicant would decide at trial whether or not he wanted to testify. When the time came, Counsel spoke with Applicant in a holding cell for 15-20 minutes about testifying. She went over his entire criminal history and made a list of which crimes she thought would be admissible. Although she weighed pros and cons of testifying with Applicant, Counsel testified it was his decision and she could not and would not make it for him.

Counsel testified Applicant was originally charged with ABHAN, which was later enhanced to murder after the coroner determined the cause of death was the fight. However, Applicant was acquitted of murder and convicted of voluntary manslaughter. Counsel got a charge on voluntary and involuntary manslaughter, self-defense, and mutual combat. Counsel

testified that she interviewed every witness Applicant gave to her. She also went to the scene with her investigator and found a witness the State luckily had not found. The attendant at the Money Tree store told Counsel and her investigator she saw Applicant murder the victim, however, the State never located that witness. Counsel testified many of the witnesses gave the same story as Applicant. Some were called as State's witnesses and she called some as defense witnesses.

When sent the complete discovery, she reviewed all of it with Applicant and provided him a copy. She also gave additional copies to Manning upon his request. Counsel recalls giving Applicant and his family 4 copies of discovery in total. Counsel denied ever receiving the letter Manning referred to in his testimony.

When asked why she did not cross examine Dr. Wren, she explained that Dr. Wren usually testifies for the State and his testimony is usually damaging for the defense. However, Dr. Wren actually testified that the head trauma could have been caused by a blow to the head from being hit with something, not how the State's star witness claimed – being slammed into a dumpster. Counsel believed the inconsistent testimony was beneficial to the State and felt no need to cross-examine him when he could potentially say something damaging.

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 adequately advise Applicant about testifying at trial

This Court finds Applicant has failed to show that Counsel was ineffective in her advice regarding him testifying in his trial. This Court finds Applicant's self-serving testimony on this issue not credible as the record clearly contradicts Applicant's testimony. Applicant complained Counsel did not develop testimony regarding why and how the fight started. He claimed the only way the jury could know was if he had testified and therefore Counsel was deficient by telling him not to testify. First of all, numerous witnesses, both for the State and the defense testified that they saw, or heard Applicant claim, the victim owed Applicant money and the victim hit Applicant first. Furthermore, this Court finds Counsel's testimony regarding her discussions and advice about testifying to be credible. Counsel is correct it was Applicant, and Applicant alone, who had to make the decision whether or not to testify. This Court finds Applicant made that decision after much discussion and sound advice from Counsel weighing the pros and cons of testifying.

Additionally, Applicant could not have been prejudiced by not testifying. The two facts to which he wanted to testify, were that the victim owed him money and when he confronted the victim, the victim hit him first. These facts were presented to the jury from numerous witnesses. Had Applicant taken the stand to tell the jury the same thing, he would only open the door for the State to admit evidence of his prior criminal history, which included crimes of dishonesty. Therefore, having failed to meet his burden of proof, this allegation is denied and dismissed with prejudice.

Failure to interview witnesses

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 she spoke to each and every witness she knew of and even found a witness that would have been very helpful to the State that the State didn't even know about. Counsel was not deficient in this regard, and Applicant cannot show how he was prejudiced even if she was deficient. Therefore, this allegation is denied and dismissed with prejudice.

Failure to investigate

This Court finds Applicant has not met his burden to prove Counsel was ineffective by failing to properly investigate his case. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully

investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

First, Applicant has failed to present evidence to show what Counsel could have discovered had he more fully investigated. Furthermore, the record shows Counsel discussed the case with Applicant as Counsel had a full grasp of the evidence and the facts at the time of trial. Counsel also testified credibly she reviewed all the discovery, spoke to all the witnesses, and went to the scene and spoke to an additional, unknown witness. Her performance at trial is also indicative of her proper investigation and familiarity with the facts of the case. This Court having found Applicant has failed to prove either prong of Strickland, finds this allegation meritless. Therefore, this claim is denied and dismissed with prejudice.

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), SCRCP. 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 2nd day of March, 2017.

G. Thomas Cooper, Jr.
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina

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