

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

1400 Laurel Street, Suite 4A
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

April 9, 2018

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

RECEIVED

APR 11 2018

S.C. SUPREME COURT

The Honorable Robert J. Harte
Clerk of Court
P.O. Box 583
Aiken, SC 29802-0583

RE: Edward Anthony v. State of South Carolina
2017-CP-02-213

Dear Mr. Shearouse and Mr. Harte:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Anthony in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Anthony in this appeal.

Yours very truly,



Lance S. Boozer

cc: Julie Coleman, AAG
Office of Appellate Defense
Edward Anthony

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 11 2018

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable William P. Keesley, Circuit Court Judge

Case No. 2017-CP-02-213

Edward Anthony,Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable William P. Keesley's Order dated March 29, 2018, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on April 9, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

April 9, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM AIKEN COUNTY
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The Honorable William P. Keesley, Circuit Court Judge

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Edward Anthony,Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 9th day of April, 2018.



Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Edward Anthony, #363714,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2017-CP-02-0213

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 2, 2017. Respondent submitted its Return and Partial Motion to Dismiss on May 16, 2017. An evidentiary hearing was held January 23, 2018, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

WAL #1

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from M. Bradley McMillian, Esquire ("Trial Counsel"). Respondent presented testimony from Solicitor Jeffrey Alan Slocum, Esquire. This Court had before it the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections, appellate records, the trial transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently serving a probationary term under the supervision of the Department of Probation, Parole, and Pardon Services. In July 2014, the Aiken County Grand Jury indicted Applicant for shoplifting (2014-GS-02-1000). M.

Bradley McMillian, Esquire and Barry L. Thompson, II, Esquire represented Applicant. Assistant Solicitor Jeffrey Alan Slocum, Esquire, prosecuted the case. On April 14-15, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh. The jury found Applicant guilty as indicted. Judge McIntosh sentenced Applicant to imprisonment for six years, suspended upon service of forty-five months with five years' probation.

Applicant filed a timely notice of appeal. Tiffany L. Butler, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 7, 2016. State v. Anthony, Op. No. 2016-UP-507 (S.C. Ct. App. filed December 7, 2016). The remittitur was issued on December 28, 2016.

Applicant filed this timely application for post-conviction relief on February 2, 2017. The State filed its Return and Partial Motion to Dismiss on May 16, 2017. An evidentiary hearing was held on September 19, 2017. At the hearing, the Honorable J. Mark Hayes dismissed the case for failing to prosecute because Applicant did not appear at the hearing. Afterwards, Applicant contacted his attorney to inform him he did not receive notice of the hearing, and if he had he would have been present. Judge Hayes vacated his oral order dismissing the case and set the case for a new hearing. The evidentiary hearing was convened January 23, 2018.

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II. ALLEGATIONS

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

1. "Probable cause never existed to make arrest or detain."
2. "Trial judge allowed hearsay testimony at trial."
3. "Both officer and store clerk gave perjured testimonies during trial."
4. "Brady Violation- Prosecutor withheld exculpatory evidence."
5. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to make timely objections."
 - b. "Counsel failed to motion for dismissal of charges."
 - c. "Counsel labored conflict of interest."

d. "Trial counsel demonstrated deficient performance on part of failure and the result of prejudice from him prejudiced the defendant."

At the outset of the evidentiary hearing, Respondent moved to dismiss the first three allegations for failure to state a claim proper for post-conviction relief, as they were direct appeal allegations that Applicant should have argued on direct appeal rather than in his PCR action. Applicant clarified that he would frame those allegations as allegations of ineffective assistance of counsel. This Court granted the motion to dismiss for any allegations framed as direct appeal issues, and Applicant proceeded forward on his allegations of Brady violations and ineffective assistance of counsel.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicants' testimony

At the evidentiary hearing, Applicant testified he was currently out on probation. He stated Trial Counsel was ineffective for failing to investigate his case. He stated the officer and store clerk who testified against him at trial gave perjured testimony, but he did not tell Trial Counsel about the perjured testimony during the trial. He stated Trial Counsel did not object or make a motion regarding the testimony, but he should have. Applicant testified the arrest warrant was invalid because it said that he went outside of the store, but he did not go outside. He stated Trial Counsel should have objected to the arrest warrant. Applicant testified that he received his Rule 5 materials after trial but did get them before the trial. He testified the receipt used as evidence at trial was dated May 21st, but the crime happened on March 16th, and Trial Counsel should have moved to suppress the receipt before trial.

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Applicant testified Trial Counsel should have objected to the evidence about him resisting arrest because he was on trial for shoplifting, not for resisting arrest. He stated Trial Counsel requested a copy of the dash camera video from the State, but he was not given a copy

until three years later. Applicant testified Trial Counsel failed to object to the solicitor's use of the nickname "Freddy the Polo Guy" on page 211 of the trial transcript. He stated this was a conflict of interest with the evidence. He stated it was ineffective for Trial Counsel to call him his nickname, "Freddy," on the stand because it matched the solicitor's use of the nickname "Freddy the Polo Guy." Applicant stated Trial Counsel should have objected to the jury and made a Batson motion because there were no African Americans on the jury.

Trial Counsel's testimony

Trial Counsel testified he was appointed to this case through the Public Defender's office. He stated he spoke to Applicant on the phone, Applicant told him he wanted to see the video in his discovery. Trial Counsel stated he asked the solicitor for the video tape from the store where the shoplifting occurred, and he received it a week later. Trial Counsel testified he made an appointment to meet with Applicant on April 7, 2015, and Applicant did not come to the meeting. He stated he had two meetings with Applicant the week of April 10th, but Applicant left the meeting to take a phone call and told Trial Counsel he did not have time to talk about his upcoming trial. Trial Counsel stated he told Applicant that he needed to make time because the trial was coming soon, and to let him know when he could find the time to discuss his pending criminal charges. He stated he spoke to Applicant on the telephone several times.

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Trial Counsel testified the evidence against Applicant was strong, and included the report from Belk, the stolen shirts and jeans, and a video following Applicant through the store, into the dressing room, and to the exit door. Other evidence included testimony from the loss prevention agent stating that she witnessed Applicant taking the shirts out from under his shirt when he ~~was~~ ^{SAW WPK} the police officer coming. There was also a statement Applicant gave in the police car indicating that he "could have" stolen from the store but he did not. Trial Counsel testified the evidence was

especially strong when the court allowed in evidence of Applicant's prior bad acts, which included three prior shopliftings from the same store in the same manner as the current charges. Trial Counsel stated he objected to the prior bad acts, but the trial court ruled they were admissible. Trial Counsel testified it was almost necessary for Applicant to testify at trial because the case came down to whether the jury believed Applicant had the clothes on him as he was walking out the door of the store. He stated this was difficult to refute because the video tape showed Applicant getting to the door of the store to walk outside, seeing the police officer coming toward him, and turning around to go back in.

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Trial Counsel stated his investigation of this case involved going to the Belk store and looking at their cameras, security system, and store layout. He stated he discussed one potential witness with Applicant, but Applicant never gave him any information on the witness for him to investigate. Trial Counsel testified there were plea offers made in this case, but Applicant rejected them, including a plea offer for a recommendation of probation. He stated Applicant would not plead guilty and was adamant about going to trial. Trial Counsel testified that he called Applicant "Freddy" on direct examination at trial because he wanted Applicant to be comfortable on the stand, and that's what he wanted to be called. He stated he was not aware of the "Freddy the Polo Guy" nickname until it came out on cross-examination of Applicant. He stated that he was surprised by the "Freddy Polo" nickname and had never heard of him.

Trial Counsel stated there was no evidence in the record that Applicant sells Polos. He stated he did not object because Solicitor Slocum never called him "Freddy the Polo Guy," he just asked if people call him that, and Applicant answered that they did not. He stated he did not think it was prejudicial in this case because Applicant denied being Freddy Polo and explained that it was not him, and that was someone else. Trial Counsel testified he saw no issue with the

receipt used at trial because it was printed by the store several days after the incident in order to evaluate the value of the stolen merchandise, and the date had no bearing on the facts of the actual incident. He stated there was no reason to object to the valuation of the stolen items because their defense strategy was that Applicant did not steal the items.

Trial Counsel stated Carl Gaskins was going to be their witness at trial, but it was like "pulling teeth" to get his information from Applicant. Trial Counsel testified he searched everywhere for Carl Gaskins but could not find him. He stated Gaskins was a family friend who allegedly had an affair with Patsy Singletary, the Belk loss prevention agent who testified at trial. Trial Counsel stated there was no evidence of perjured testimony by any of the witnesses other than Applicant telling him that they were lying. He stated there was no legal reason to object to the warrants, the indictments, or the evidence that was collected after Applicant was arrested.

Solicitor Slocum's testimony

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Solicitor Slocum testified he represented the State in Applicant's trial. He testified he turned over all Rule 5 and Brady material to attorney Andy Smith, who represented Applicant before Trial Counsel took over the case. He stated Trial Counsel had everything that he gave to Andy Smith, and there was nothing he failed to turn over that he should have. Solicitor Slocum testified that he was informed by one of his investigators ^{WPK} during Applicant's direct examination that Applicant was "Freddy Polo" who sold Polo shirts on the street, so he asked Applicant if he was "Freddy Polo" during his cross examination. He stated he was not aware of any perjured testimony by the police officer or the store clerk who testified at trial.

IV. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. ~~With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).~~

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V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions ~~NOT~~ to be ~~not~~ credible. In contrast, this Court finds Trial Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Failure to object in general

Applicant alleges Trial Counsel was ineffective for failing to object to the arrest warrants, to the indictments, and the evidence obtained from Applicant after his arrest. He further alleges Trial Counsel should have objected to what he asserts was perjured testimony by the Belk loss prevention agent and the officer who testified at trial, as well as to hearsay testimony presented at trial. This Court finds Applicant has failed to meet his burden of proving any deficient performance or resulting prejudice under Strickland on any of these grounds. The testimony

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presented and the record before the Court show no merit to his allegations, and this Court finds there was no legal basis to raise objections to these potential issues. Accordingly, these allegations are denied and dismissed with prejudice.

Failure to object to Solicitor's use of "Freddy Polo" nickname

Applicant alleges Trial Counsel was ineffective for failing to object to the solicitor's use of the nickname "Freddy the Polo Guy" or "Freddy Polo" at trial. This Court finds that although Trial Counsel was deficient in failing to object or request curative instruction or a mistrial, Applicant was not prejudiced by the failure to do so, and the allegation must be denied.

At the trial, Applicant testified on his own behalf. On cross-examination, Assistant Solicitor Slocum asked Applicant if he went by the nickname "Freddy," and Applicant admitted he did. The solicitor continued:

- Q: They also call you Freddy the Polo Guy, don't they?
A: Huh-uh.
Q: Because you sell Polos on the corner of 15th and MLK in Augusta?
A: No.
Q: That ain't you?
A: No, that's another Freddy.
Q: You know who I'm talking about, though, don't you?
A: No, that's another Freddy.
Q: Uh-huh.
A: He sells shoes. Fake bootleg shoes, too.

ROA 211, line 18 – 212, line 3. Trial Counsel did not object to the question.

At the evidentiary hearing, Trial Counsel testified that he was surprised by the "Freddy Polo" question and had never heard anything about it before that moment. Solicitor Slocum testified that he was not aware of the nickname before the trial, but during Applicant's trial testimony, he was informed by an investigator that Applicant was "Freddy Polo," and this was his basis for asking Applicant the question to see if it was true. Trial Counsel testified that he did not object to the question because the solicitor never called Applicant "Freddy Polo;" he only

asked if people call him that, so he did not believe there was any basis for an objection. He stated he did not believe it was prejudicial in this case because of the other evidence against Applicant, and because Applicant denied it, and explained to the jury that he was not Freddy the Polo Guy.

After Applicant was convicted, the trial judge mentioned this nickname during sentencing. The trial judge commented:

THE COURT: But what is at issue is that Mr. Anthony, I think it's clear – I mean, although it wasn't the strongest case, granted. There was some gaps, too, but this gentleman, Freddy Polo, and he's out there on the corner selling shirts and he's stealing from Belk's and other places in my mind. And, Mr. Anthony, you disagree with me.

THE DEFENDANT: Yes, I do.

THE COURT: The jury found you guilty.

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ROA 261, line 3-11. Trial Counsel did not object or ask the judge not to consider that there was no evidence in the record that Applicant was "Freddy Polo" who sold shirts on the street corner. However, Applicant explained to the trial judge that he was not selling Polos on the street corner: "It's like she said I was on the corner. It's another man named Freddy out there on the corner doing the same thing, got Polo shirts with the name on it in plastic. He orders them. I don't sell Polo clothes. I work for my grandfather and Carl knows that." ROA 263, line 10-15. The trial judge allowed Applicant a chance to explain anything else he thought needed to be placed on the record before imposing his sentence. ROA 264, line 1-2. Although Applicant was facing up to ten years' imprisonment, the trial judge sentenced Applicant to six years' imprisonment suspended on forty-five months active with five years' probation.

Applicant now alleges Trial Counsel was ineffective for failing to object to the question that implied Applicant was selling stolen polo shirts on the street corner, and for possibly moving for a mistrial or, in the alternative, requesting a curative jury instruction. This Court finds Trial

Counsel was deficient in failing to object and/or move for a mistrial or curative instruction when the solicitor asked Applicant is he was "Freddy Polo." Using a nickname implying that the accused is someone who steals and sells stolen merchandise was objectionable and inappropriate. However, Applicant has failed to prove prejudice as defined in Strickland.

The Court notes prejudice for this allegation should be considered in two parts: (1) the lack of objection to the solicitor's question and the potential impact it had on the jury; and (2) the lack of objection to the indication that the trial judge might have considered this factor while determining Applicant's sentence and its potential impact on the length or terms of the sentence.

First, this Court finds the solicitor's question did not change the jury's verdict because Applicant denied having the nickname on the stand, and answered the question by explaining to the solicitor and the jury that he was not "Freddy the Polo Guy" and he did not sell polos on the street corner. Applicant has not met his burden of proving that this question alone ~~changed~~ ^{AFFECTED} the jury's verdict, and had it not been asked, he would have been found not guilty. This Court finds credible Trial Counsel's testimony that this question was not prejudicial to Applicant based on the evidence against him and the fact that he denied selling stolen polo shirts. The evidence in the record of Applicant's guilt was very strong, and this Court finds no resulting prejudice on the outcome of the trial based on the evidence against him.

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At trial, the loss prevention officer from Belk testified that not only had she seen Applicant shoplift from Belk on *three* prior occasions, but she saw him enter the store, follow the same behavior pattern that he had on the other three occasions, grab an entire stack of polo shirts in various sizes off the table without looking at them, take them into a dressing room and leave empty handed within a short amount of time, and immediately walk toward the door with a bulge under his clothing. She testified that she witnessed him turn around before he could exit when he

saw a security officer approaching, and then he pulled the polo shirts out from under his sweatshirt and dropped them as the officer approached, and he held his hands in the air and yelled that he did not have anything on him and they could search him. Surveillance video was presented to the jury that showed Applicant walking through the store in a manner that matched her testimony. The State introduced photographic evidence of the polo shirts that were found in the store with holes in the shirts where the security tags had been forcibly removed. The arresting security officer also testified about searching Applicant and finding a magnet and a pair of pliers in his pocket, which he implied could be used to remove security tags. A prison official also testified at trial about how Applicant had tools, which could have been the pliers, on him when he came to the jail.

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Based on this evidence, this Court finds this deficiency by Trial Counsel did not affect the jury's verdict. Accordingly, even though Trial Counsel was deficient for failing to object to the "Freddy Polo" question, there is ^{WPK} ~~certainly~~ no prejudice under the circumstances. Applicant has failed to meet his burden of proving that raising that nickname tainted the trial to the extent that it created a reasonable probability that the outcome would have been different.

Secondly, Trial Counsel's failure to object to the trial judge's possible use of the "Freddy Polo" nickname during sentencing was not ineffective because Applicant has failed to meet his burden of proving that the nickname affected his sentence, resulting in prejudice. Although the judge's reference to the nickname at sentencing is troubling, the transcript reveals sufficient correction of the trial judge's misunderstanding. This Court finds the sentence imposed by the trial court was reasonable under the circumstances on this case, and Applicant has failed to prove that the trial court abused his discretion or used any improper factors to enhance Applicant's sentence.

A trial judge generally has broad discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. U.S. v. Magliano, 336 F.2d 817 (4th Cir. 1964); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072 (1969). Appellate courts have no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). ~~In order to succeed in proving prejudice in this case, Applicant must show the trial court did, in fact, use the "Freddy Polo" nickname to enhance the sentence, and if Trial Counsel had objected, Applicant's sentence would have been lighter.~~

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Here, Applicant was convicted of shoplifting \$2,000 or less, enhanced to third or subsequent offense based on his prior record of three prior shoplifting convictions. Under the statute, Applicant was facing a potential sentence of ten years. S.C. Code Ann. § 16-13-110 (1976); S.C. Code Ann. § 16-1-57 (1976). In evaluating Applicant's sentence, the trial court considered several factors, some of which are indicated in the record, including the presence and participation of the victims, the fact that Applicant had not filed a tax return since 2012, and, ultimately, the fact that the jury found that Applicant had stolen shirts from Belk's. Trial Counsel offered mitigation in asking for a lesser sentence, including the fact that Applicant graduated high school and does electrical work and welding, and is the father of three children. ROA 260, line 9-14.

After the trial judge commented on the "Freddy Polo" nickname during sentencing, Applicant explained again to the trial court that he was not "Freddy Polo" and did not sell stolen polo shirts on the street corner. "And now I'm getting locked up for a crime I never committed,

never committed. It's like she said I was on the corner. It's another man named Freddy out there on the corner doing the same thing, got Polo shirts with the name on it in plastic. He orders them. I don't sell Polo clothes. I work for my grandfather and Carl knows that." ROA 263, line 10-15. The trial judge heard this explanation, and ultimately gave it whatever weight he believed was proper within his discretion. Although he could have sentenced Applicant to ten years' imprisonment, the sentence he imposed required Applicant to serve only 45 months in prison, with a five year term of probation.

Based on the length of the sentence imposed, as well as the fact that Applicant was given multiple opportunities to deny the allegation that he was "Freddy Polo" who sells stolen goods on the street corner, both during the trial and during sentencing, it is clear that there was no prejudice to Applicant from these comments or from Trial Counsel's failure to object to them. Applicant's sentence was reasonable under the circumstances of the case. Furthermore, Applicant has failed to prove that the trial court would have imposed a lighter sentence if Trial Counsel had made some objection to the judge's "Freddy Polo" comment during sentencing. Applicant has failed to meet his burden of proving that raising the nickname had a prejudicial effect on the sentence.

Accordingly, although Trial Counsel was deficient, this Court finds Applicant has failed to prove prejudice resulting from Trial Counsel's failure to object, and this allegation is denied and dismissed with prejudice.

Failure to request to dismiss charges

Applicant's allegation that Trial Counsel was ineffective for failing to move to dismiss the charges against him is meritless. Applicant has failed to present any credible evidence that there was any meritorious basis to move to dismiss the charges that would have been successful.

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The record before the Court and the testimony presented show Trial Counsel represented Applicant vigorously at trial and made the proper motions to defend him against and challenge the charges he faced. This Court finds there was no reasonable basis to move to dismiss the charges, as they were properly made and Applicant was properly noticed of the charges, the indictments, and the evidence against him. Applicant has failed to meet either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Conflict of interest

Applicant alleges Trial Counsel was ineffective for representing him although he had a conflict of interest and should have recused himself from the case. This allegation is meritless, and Applicant has failed to prove Trial Counsel had any conflict of interest. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

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Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); see also Burger v. Kemp, 483 U.S. 776, 783 (1987)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). A defendant need not demonstrate prejudice if there is an actual conflict of interest." Id., 364 S.C. at 153, 612 S.E.2d at 450.

This Court finds Applicant has failed to prove an actual conflict of interest that should have precluded Trial Counsel from representing him. Accordingly, this allegation is denied and dismissed with prejudice.

BRADY VIOLATION

Applicant alleges the solicitor withheld exculpatory evidence from him in violation of Brady v. Maryland, 373 U.S. 83 (1963). This allegation is meritless.

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady¹ claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

This Court finds Applicant has failed to prove the existence of any Brady materials that were not turned over to the defense in Applicant's case. The testimony presented and the record before the court show Solicitor Slocum delivered all Rule 5 and Brady material to Trial Counsel and Applicant before the trial and did not withhold any exculpatory information he was required to provide. Accordingly, this allegation is denied and dismissed with prejudice.

¹ Brady v. Maryland, 373 U.S. 83 (1963).

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VI. CONCLUSION

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

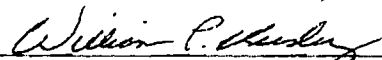
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

#17

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29th day of MARCH, 2018.



 WILLIAM P. KEESLEY
 Presiding Judge
 Second Judicial Circuit

LEXINGTON, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
 Edward R Anthony,)
 Plaintiff(s),)
 -vs-)
 South Carolina State Of,)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 2nd JUDICIAL CIRCUIT
 CASE NO.: 2017CP0200213
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Edward R Anthony, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other:

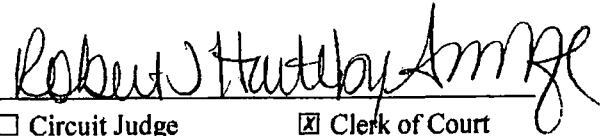
Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 April 12, 2017


 Circuit Judge Clerk of Court

Plaintiff Attorney:

Lance Boozer	Edward R Anthony # 363714
1400 Laurel Street Sute 4a	TCI
Columbia SC 29201	84 Greenhouse Rd
	Trenton SC 29847

Defendant Attorney:

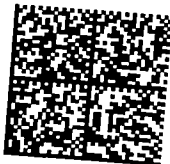
Julie Amanda Coleman	
PO Box 11549	
Columbia, SC 29211	

FILED
 APR 12 2017
 CLERK OF COURT
 2ND JUDICIAL CIRCUIT
 COLUMBIA, SC

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

THE BOOZER LAW FIRM, LLC

1400 Laurel Street, Suite 4A
Columbia, SC 29201



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