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APR 26 2018

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S.C. SUPREME COURT

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April 23, 2018

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Vernard Jerome Mathis, #297034 v. State of South Carolina; 2013-CP-29-051.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. An Order of Dismissal denying this client's Application for Post-Conviction Relief was filed on February 22, 2018, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e), SCRPC, which was filed with the Lancaster County Clerk of Court on March 26, 2018 and received by Counsel on March 29, 2018. I have been *retained* by the family to handle this appeal. I have already received the transcript of the PCR hearing held in this matter and therefore, request that the time limits for this appeal be set from the date this Notice of Appeal is filed. The Appellate Division of the South Carolina Commission on Indigent Defense has been copied on this correspondence so they will make note that I am retained in this case, and won't need to send me an inquiry concerning this appeal. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Deshawn Mitchell, Assistant Attorney General (w/enclosure)
Paula Murdoch, South Carolina Commission on Indigent Defense, Office of Appellate Defense (w/enclosure)
Vernard Mathis, #297034 (w/enclosure)
Vernard Sparks (w/enclosure)

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

APR 26 2018

S.C. SUPREME COURT

2013-CP-29-051

VERNARD JEROME MATHIS, #297034

Applicant,

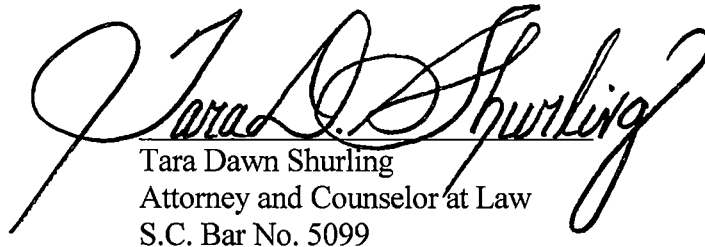
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned Counsel, giving notice of his appeal from the Final Order of Dismissal denying his Application for Post-Conviction filed on February 22, 2018, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which was filed with the Lancaster County Clerk of Court on March 26, 2018 and received by Counsel on March 29, 2018.



Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

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ATTORNEY FOR APPLICANT

This 23rd day of April, 2018.

Other Counsel of Record:

DeShawn Mitchell, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

APR 26 2018

S.C. SUPREME COURT

2013-CP-29-051

VERNARD JEROME MATHIS, #297034

Applicant,

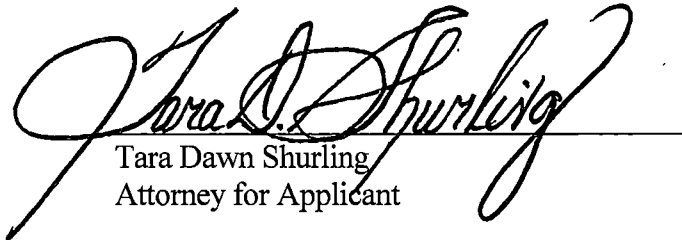
v.

THE STATE OF SOUTH CAROLINA,

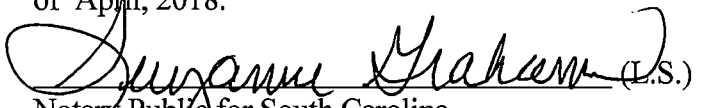
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, DeShawn Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 23rd day of April, 2018.


Tara Dawn Shurling
Attorney for Applicant

SWORN TO BEFORE me this 23rd day
of April, 2018.

 (I.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

Vernard Jerome Mathis, 297034)
Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COMMON PLEAS COURT
FOR THE SIXTH JUDICIAL CIRCUIT

C.A. #: 2013-CP-29-00451

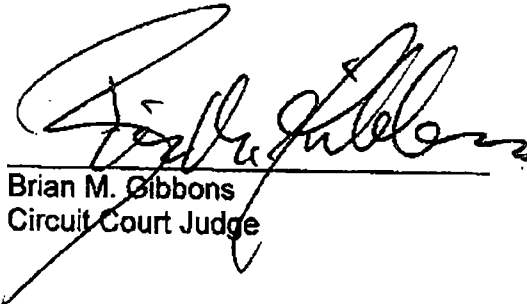
**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

After having considered Applicant's motion to alter or amend its Order of Dismissal in this case and after reviewing all of the submissions and the Court's notes, applicable statutory law, case law and evidence presented, I respectfully deny Applicant's motion.

AND IT IS SO ORDERED.

Chester, SC

March 21, 2018



Brian M. Gibbons
Circuit Court Judge

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LANCASTER, SC

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Vernard Mathis, # 297034,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No.: 2013-CP-29-0951

ORDER OF DISMISSAL

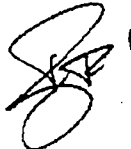
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 9, 2013. Respondent made its Return and Motion to Dismiss on January 30, 2014. An evidentiary hearing into the matter was convened on November 22, 2016, at the Lancaster County Courthouse before the Honorable Brian M. Gibbons. Tara Dawn Shurling, Esquire, represented Applicant. Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The following people also testified at the hearing: Ronnie Roberts, Applicant's trial counsel, John Clark, Esquire, Shareka Jones, Doug Barfield, Esquire and Tom Holland, Esquire. Applicant did not testify at this hearing.

At the hearing, this Court had before it a copy of the records of the Lancaster County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and Motion to Dismiss dated January 30, 2014, and the State's Amended Return and Motion to Dismiss filed July 1, 2014, the Order denying Motion to Dismiss filed October 29, 2014, the PCR Hearing Exhibits, Applicant's Memorandum in Support of PCR Application filed on October 29, 2014, the appellate records (including the Record on Appeal and the briefs filed by both parties), the trial transcript, a transcript of the November 22, 2016 PCR hearing, the certified original depositions of Thomas William Holland, Esq.

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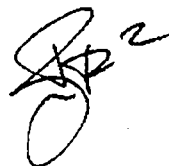
and Ronnie Ellison Roberts, both dated April 22, 2014, and all documents pertaining to Applicant's previous PCR file which were filed in the Court of Common Pleas and the Supreme Court of South Carolina.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted for Murder (2000-GS-291418), Armed Robbery (2001-GS-29-0250), Burglary -- First Degree (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Paul E. Short, Jr., after which the jury convicted him as indicted. On June 6, 2003, Judge Short sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

Applicant filed an appeal, and a brief was submitted pursuant to *Anders v. California*, 386 U.S. 738 (1967) on Applicant's behalf. Applicant also submitted a *pro se* brief. On June 13, 2005, the South Carolina Court of Appeals dismissed the appeal. *State v. Mathis*, Op. No. 2005-UP-375 (S.C. Ct. App. filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued orders denying the petition for rehearing and denying his petition for rehearing *en banc* on September 20, 2005. Applicant then petitioned the South Carolina Supreme Court for a writ of certiorari. His petition was denied in an order dated November 2, 2006. The Remittitur was sent on November 6, 2006.

Applicant initially filed an Application for PCR on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on August 25, 2008, before the Honorable Kenneth G. Goode. Applicant was present and represented by Tricia Blanchette, Esquire. Michelle Parsons,



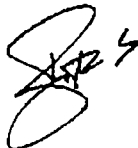
Esquire, of the South Carolina Attorney General's Office, represented Respondent. By order dated October 14, 2008, Judge Kenneth G. Goode denied and dismissed the application with prejudice. Applicant appealed this order and filed his Petition for Writ of Certiorari. By order dated December 2, 2010, the Supreme Court denied the petition. The Remittitur was sent on January 7, 2011.

Applicant filed a Petition for Writ of Habeas Corpus with the District Court of South Carolina on September 6, 2011. On July 12, 2012, the Honorable Shiva V. Hodges, United States Magistrate Judge, filed her Report and Recommendation, which recommended summary dismissal of the Applicant's habeas petition on the merits on two of the claims raised, and recommended summary dismissal of the Appellant's habeas petition due to procedural bars on two of the claims raised. Applicant timely filed objections to this Report. On August 23, 2012, the Honorable Richard M. Gergel, United States District Judge, filed an Order which largely adopted Judge Hodges' Report and granted the State's motion for summary judgment.

Applicant filed this application for post-conviction relief on July 9, 2013, and subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Applicant's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at *voir dire* and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland,

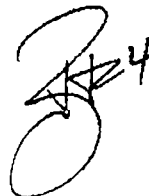


Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present and represented by Tara Dawn Shurling, Esquire. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire. After these depositions, Respondent filed an Amended Return and Motion to Dismiss on July 1, 2014. Respondent's Motion for Dismissal was denied and an evidentiary hearing was granted by Order signed by Judge Brian M. Gibbons and filed with the Clerk of Court's Office on October 29, 2014.

ALLEGATIONS

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

1. The Applicant's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.
 - a. Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. *See*, Attachment A. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff this juror failed to respond. *See*, Attachment B. The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:
 - i. Kershaw Police Department from June 26, 2000 through December 31, 2000.
 - ii. York Police Department from July 14, 1998 until April 7, 2000.
 - iii. Lake City Police Department from July 15, 1996 until July 13, 1998.
 - iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
 - v. University of South Carolina Police Department starting in 1989.
 - vi. Lancaster Police Department starting in 1982.



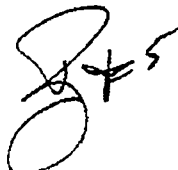
In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006. *See, Attachment C.*

- b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.
 - c. The Applicant has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court *or* Counsel for the Applicant.
 - d. The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office. *See, Attachment D.*
2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

SUMMARY OF DEPOSITIONS

Ronnie Roberts

Roberts testified he was an officer with the Lancaster Police Department from 1975 until 1982. He testified that after he left the Lancaster Police Department, he went to work as the Director of Public Safety for the Lancaster branch of the University of South Carolina Police Department until 1986. Roberts testified that he served as the Chief of the University of South Carolina Police Department in Columbia from 1986 until 1989. From 1989 until 1996, Roberts was employed as an instructor with the South Carolina Criminal Justice Academy in Columbia. In 1996, Roberts left the Criminal Justice Academy to serve as the Chief of Police for Lake City, South Carolina. He testified he remained in Lake City until 1998 when he became the Police



Chief for the city of York, South Carolina. Roberts testified he held that position until his retirement on April 7, 2000. Finally, Roberts testified he served as the Police Chief for the town of Kershaw from July, 2000 through December, 2000, at which point the town of Kershaw disbanded its police department and entered a service agreement with the Lancaster County Sheriff's Department. Roberts testified that after leaving the Kershaw Police Department, he retired from law enforcement. (Roberts Dep. 6-10). Roberts testified that at the time of Applicant's trial in 2003, he was employed by a mortgage insurance company called Assurant Group in Florence, South Carolina. (Roberts Dep. 4:4-5.)

Roberts testified at the deposition that he did not disclose his background in law enforcement because he was never asked about it, and he was only asked about his present occupation. He further testified that he would have answered any question that was asked of him. He testified that jurors are "not supposed to volunteer a bunch of stuff you're not asked to do." (Roberts Dep. 11:16-23). Roberts testified at the deposition that at the time of Applicant's trial, he had no relationship with the Sixth Circuit Solicitor's Office. He testified that during his tenure as Kershaw Police Chief, he did not have any cases that went to the solicitor's office, and he had no contact with the solicitor's office. (Roberts Dep. 12:10-11, 16-17). He testified that during his time with the Lancaster Police Department, he only met the Solicitor, John Justice, once. It was also the only time he testified as a witness during his tenure with the Lancaster Police Department. (Roberts Dep. 13:16-20). Roberts testified the trial and the meeting with Solicitor Justice took place over twenty (20) years before Applicant's trial. (Roberts Dep. 12:21-22). Roberts further testified at the deposition that during his tenure with the Lancaster branch of the USC Police Department, his department only dealt with parking and disorderlies. He testified that the Lancaster Police Department handled all criminal matters, and that nothing he was

involved in ever went to court. He testified that at the time, his employees were security guards and had no arrest powers. (Roberts Dep. 14:3-8, 15-20).

Roberts testified that when he received his summons for jury duty, he called the Sixth Circuit Solicitor's Office and asked if his background would disqualify him from jury duty. (Roberts Dep. 15:18-22). Roberts testified he did not remember with whom he spoke. (Roberts Dep. 16:2-3). Roberts testified he moved away from Lancaster in 1986. (Roberts Dep. 25:6-7). He testified he was living at the beach at the time of Applicant's trial (Roberts Dep. 18:9-10). Roberts testified he knew one of the officers who testified at the trial: Barry Faile, currently the Lancaster County Sheriff. He testified he did not recall being asked during *voir dire* if he knew any of the witnesses. (Roberts Dep. 16:13-14, 17: 1-2). Roberts testified he was not close friends with Barry Faile. (Roberts Dep. 21:4-5). He further testified he did not speak to anyone from the solicitor's office or any members of law enforcement during the trial. (Roberts Dep. 18:12-14). Roberts testified he did not disclose his background to anyone on the jury, but that he did know one juror. That juror, Eddie Lewis, did not discuss Roberts' background. (Roberts Dep. 18-19). Applicant attempted to ask Roberts about the jury's deliberation, to which Respondent objected. Roberts responded,

"There wasn't a lot of deliberation in the room. Like I say, we asked for an explanation and we got that. We came back and voted. I think it was fairly quick. I can't - It's been a long time. I can't remember. I don't know, but I did not want to use my background to entice someone to vote my way, you know what I'm saying. So I didn't. I let everyone make up their own mind. Nobody was enticed to vote. I was the most fair person in that jury room."

(Roberts Dep. 20:2-12).

Roberts subsequently testified that he knew who Solicitor Doug Barfield was, but he did not know him personally. He testified he knew him by sight, saying "I just - he dresses a certain kind of way. That's how I knew him. Everybody knows him ... He's got the mustache thing and

all that going on. That's all I know ... I've just seen him around. I knew he worked in the Solicitor's office. I didn't know him that well. He knows some of my older family but he's older than I am." (Roberts Dep. 23:1-14). Roberts testified that he had no relationship with Barfield. (Roberts Dep. 24:12-15). He further testified that he had no relationship with anyone at the solicitor's office. (Roberts Dep. 25:18-25). Roberts testified that his knowledge of law enforcement officials did not impact his ability to be a fair and impartial juror. (Roberts Dep. 29:1-3). Finally, Roberts testified that he would have disclosed his law enforcement background, had he been asked about it. (Roberts Dep. 33:15-18).

Tom Holland

At his deposition, Thomas Holland testified he was employed as an Assistant Solicitor in the Sixth Circuit from 2001-2006. (Holland Dep. 4:8-9). Holland testified his only involvement in the case was to question one witness, who was a DNA expert from SLED, and that he did not otherwise participate in Applicant's trial. He testified he was not involved in jury selection. (Holland Dep. 4-5). He testified John Justice and Doug Barfield prosecuted the case. (Holland Dep. 4:15-21). Holland testified he asked someone who was either a bailiff or a law enforcement officer how the jury looked, and the person told him the jury looked good because the foreman was prior law enforcement. (Holland Dep. 6:1-5). Holland testified he heard similar comments from other people in the courthouse, but there was never any long discussion of the fact. (Holland Dep. 6:20-25). Holland testified it is typical to ask how a jury looks. (Holland Dep. 18:8-11). He further testified Roberts' status as a juror was not the topic of the day. (Holland Dep. 22:2-7). Holland testified he brought the subject up to either Justice or Barfield, but he could not remember which one. Holland testified it would likely have been Barfield with whom he spoke. Holland testified he thought he asked Barfield if the defense attorney knew of Roberts'

background in law enforcement, to which Barfield replied that he was not aware if the defense attorney knew. Holland testified that he believed it was Barfield who told him they did not need to disclose Roberts' background because Roberts answered all of the questions that were asked of him during *voir dire* and the jury questionnaire only asked about current employment. Thus, Holland testified Barfield said the law was followed. (Holland Dep. 9:1-19). Holland testified he brought the subject up with Barfield out of an abundance of caution, and he did not remember whether he brought it up prior to the start of testimony in Applicant's trial. (Holland Dep. 10:1-9). Holland testified he did not feel like the decision not to disclose Roberts' background to the defense was illegal or a violation of any rule. (Holland Dep. 10:15-19). Holland further testified he did not consider informing defense counsel because he knew the decision not to disclose was not illegal. (Holland Dep. 12:1-6). Holland testified he was not aware that a potential juror had called the solicitor's office and asked if his background would disqualify him, and that he did not receive such a call. (Holland Dep. 19-20). He further testified he would never talk to anyone who called about jury duty; he would refer them to the clerk's office. (Holland Dep. 20:20-21). Holland further testified that seating a law enforcement officer on the jury is not always good for the prosecution. He testified that people involved in law enforcement could possibly overanalyze the prosecution's case. (Holland Dep. 21:3-10). Holland further testified that he did not know anything about Roberts. (Holland Dep. 29:23-24).

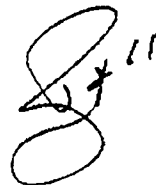
SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Ronnie Roberts' Testimony

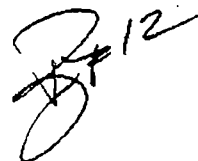
Ronnie Roberts, the foreman of the jury testified in this evidentiary hearing. Roberts testified he had been called for jury service in the trial of the Applicant. PCR tr. 15. Roberts testified that upon receiving notification he had been called for jury service he telephoned the

solicitor's office and asked to be dismissed because he figured they would not let him serve anyway being a former police officer. PCR tr. 15. He testified he asked to be dismissed. PCR tr. 15. Roberts testified it was not his intent to try to get out of jury service but he figured they would not allow him to serve. PCR tr. 16. Roberts then testified he could not remember who he spoke to when he called the solicitor's office. PCR tr. 16. He testified he told the person he spoke to from the solicitor's office he had previously been in law enforcement but could not remember if he told them how many years. PCR tr. 16. Roberts testified he did not recall who he spoke with and he did not recall if they knew he was former law enforcement already. PCR tr. 17. Roberts testified the person from the solicitor's office told him he had to report and if they had issues with his background he would be dismissed or struck. PCR tr. 17. Roberts testified he recalled his prior deposition and saying he was told as a result of the telephone conversation he had to show up and he might be able to be let go but he ended up being kept all day. PCR tr.17. Roberts testified he did not know who the person was that he was talking to on the telephone but when he arrived at jury duty, the solicitor, Mr. Justice was in charge. PCR tr. 18. He testified he did not know whether Solicitor Justice knew about his prior phone call to the solicitor's office. PCR tr. 18. Roberts testified after having his deposition taken he was told the solicitors who tried the case were Mr. Justice, Mr. Barfield and Mr. Holland. PCR tr.18. Roberts testified when asked if he knew John Justice that he had one previous case in general sessions when he was a young officer with Mr. Justice. PCR tr. 19. Roberts was then asked about his law enforcement career. PCR tr. 19 Respondent stipulated to Roberts' law enforcement background as reflected in prior pleadings. PCR tr. 19. Roberts then testified he had retired after twenty-five years and was retired a couple of years before Applicant's trial. PCR tr. 20. Roberts testified he had worked for six and a half years with Lancaster and six months for Kershaw. PCR tr. 20. When asked what

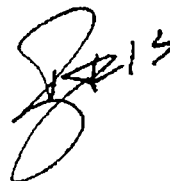
effort did you make to make the Court, the presiding judge, aware of the law enforcement background that had caused you to be concerned enough to call the solicitor's office, Roberts testified as a juror he did not have any interaction with the Court. PCR tr. 20. Roberts testified during jury selection there were numerous points where questions were asked and jurors were asked to stand if they were pertinent to them, and if they stood they were then addressed individually by the court. PCR. tr.20. He testified he answered every question the court asked him. PCR tr. 21. Roberts testified he did not have any connection with the Sixth Circuit Solicitor's Office at the time of trial and this was the reason he did not stand when asked this question during *voir dire*. PCR tr. 21. Roberts testified he had no connection with any law enforcement agency at that time as he had retired in 2000. PCR. tr. 22. Roberts then testified during the *voir dire* he knew Mr. Justice and Mr. Barfield by sight. PCR tr. 22. Roberts testified he recognized Mr. Barfield by sight because of his long, different type mustache. PCR tr. 22. Roberts testified he guessed he had older siblings who knew or were acquainted with Mr. Barfield because they were older than him. PCR tr. 22. Roberts testified he did not recall being asked on *voir dire* whether he had any special relationship with any of the witnesses after solicitor Justice read a list of the potential witnesses. PCR tr. 23. Roberts testified he was not concerned he was not qualified to serve as a juror when he got notice but was concerned that most of the time when a policeman is called and they are not seated so they're really wasting time to be there as jurors when they are never utilized on the jury. PCR tr. 23. Roberts testified he did not remember hearing a complete list of witnesses during the *voir dire*. PCR tr. 24. When asked if he had any explanation why he could not recall a long list of the State's potential witnesses being read out by Solicitor Justice if he was listening, Roberts testified no saying it had been a long time ago and he did not remember a lot of things that happened that far back. PCR



tr.25. Roberts testified he remembered being asked on *voir dire* about whether or not he had any connection with the solicitor's office during his deposition but he did not have any independent memory of it. PCR. tr. 25. Roberts then testified that if he had heard the question about having any connection with the solicitor's office, he would not have stood and answered because he had no connection with the solicitor's office at the time. PCR tr. 26. Roberts testified to acknowledging he believed at the time of his phone call to the solicitor's office that no one, no defense attorney would want him on their jury if they knew his background. PCR tr. 26. Roberts then testified he was never asked about his background only if he had any connection that would prevent him from issuing a fair verdict as a juror. PCR tr. 26. Roberts then testified he did not have any connection with the solicitor's office or contact about the case after being asked the question from *voir dire* which asked "Do any members of the petit jury panel have any relationship or contact with Solicitor John Reed Justice or any member of the Sixth Circuit Solicitor's Office, if so please stand.". PCR tr. 29. Roberts testified he had not contacted the solicitor's office about this case. PCR tr. 29. Roberts then testified that in his deposition he stated the only witness he knew was the one who was now the sheriff and his name was Barry Faile. PCR tr. 30. Roberts testified he did not hear the question during *voir dire* which asked whether or not he had any relationship to any of the witnesses. PCR tr. 30. Roberts then testified he knew Barry Faile by name but had no relation with him. PCR tr. 30. Roberts testified he did not know any other trial witnesses. PCR tr. 30. Roberts again testified he did not have any connections with the solicitor's office as he had been retire since 2000. PCR tr. 32. Roberts further testified he had no connections to anyone involved in the case as far as he was concerned. PCR tr. 32. Roberts testified he knew there was a distinct possibility no defense lawyer wanted him on the jury panel if they knew he was a former law enforcement officer. PCR tr. 32. Roberts testified

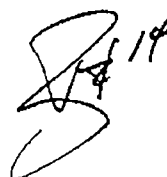


when asked if law enforcement and prosecutors were on the same side, that they all want justice. PCR tr. 32. Roberts testified law enforcement presents the facts and the judge or jury makes a decision about guilt or innocent. PCR tr. 33. When asked if he called the public defender's office, Roberts testified "I didn't know how to get in touch with them. I didn't know who the defense attorneys were. Did not know which jury I would be called to serve on. I made that call specifically because I was called to a jury pool. There was no specific trial mentioned or I had no idea what trial would be coming up." PCR tr. 33. Roberts testified he notified the only person he knew would have control over jury duty when asked if he did anything to advise the court about his concerns about his law enforcement background. PCR tr. 34. Roberts testified he had a good general working knowledge of the judicial system and the court process. PCR tr. 35. Roberts testified he admitted in his previous deposition he was familiar with jury strikes and it was very possible a defense attorney would have struck him from the jury if they had known his background. PCR tr. 35. Roberts testified that at the time of his call to the solicitor's office he kind of was trying to get out of jury duty thinking he did not think they would let him serve. PCR tr. 36. Roberts testified that during the period when he was chief of police in Kershaw, this area was under the umbrella of the Sixth Circuit Solicitor's Office as well as the time he spent working for Lancaster county. PCR tr. 36. Roberts testified he had one case in general sessions with John Justice but his captain presented all cases and he never came as a witness. PCR tr. 36. Roberts testified that by 1982 he knew John Justice was the chief solicitor for the circuit. PCR. tr. 37. Roberts testified he knew one person on the jury before the trial took place and his name was Eddie Lewis. PCR tr. 37. Roberts then testified again he knew Doug Barfield by sight. PCR tr. 39. Roberts testified he assumed because of Doug Barfield's age that some of his older brothers knew him. PCR. tr. 39. Roberts again testified he was told when he called the solicitor's



office that he might be released from jury duty but he was kept all week. PCR tr. 40. Roberts testified he did not remember who he spoke to when he called the solicitor's office but he knew Mr. Justice was over the solicitor's office. PCR tr. 41. Roberts testified he did not know how he came to be selected as the jury foreman. PCR tr. 41. Roberts then testified the judge told him you are now the foreman and he was appointed. PCR tr. 41. Roberts testified other than Mr. Lewis no one on the jury panel knew he had a law enforcement background. PCR tr. 42. Roberts testified he could not remember if he told any jury members about his law enforcement background. PCR tr. 42. Roberts testified he worked for Assurant Group as a training department manager in insurance during this time. PCR tr. 42. Roberts then testified he trained people to operate the computers to input people's information into their insurance. PCR tr. 42. Roberts testified he did not know any members of the Steele family or Jimmy Taylor prior to trial. PCR tr. 44-45. Roberts testified in his job in law enforcement he interacted with people in the probation office. PCR tr. 45. Roberts testified when asked if he had any recollection of a Mr. Jimmy Taylor who he may have interacted with in probation, that many years ago there was a person in probation but he only knew him by nickname. PCR tr. 46. Roberts testified he did not know if Jimmy Taylor was the same guy or not but the guy he knew nickname was Bull. PCR tr. 46.

On cross-examination, Roberts testified he was sixty-nine years old and that it had been a long time since this trial took place, almost thirteen years. PCR tr. 46-47. Roberts then testified it had been a long time too since he was deposed. PCR tr. 47. Roberts testified he did not have a perfect memory of every line of his testimony in the trial or the deposition. PCR tr. 47. Roberts testified he got a letter in the mail concerning jury duty. PCR tr. 47. Roberts testified once he got the letter in the mail he looked up the phone number for the solicitor's office in Lancaster County and he called the office. PCR tr. 48. Roberts testified his reason for calling the solicitor's



office was twofold. PCR tr. 48. He testified he did not seem to think they would let him serve, but he also had a responsible job in Florence and he kind of was under pressure to be at work however, he really didn't think they would let him serve because of his law enforcement background. PCR tr. 48. Roberts testified he did not know of any cases that were coming up and that he could give the defendant a fairer trial than most people. PCR tr. 48. Roberts testified he thought law enforcement in general should be able to serve on juries. PCR tr. 49. Roberts testified he did not know why the judge asked each of the questions he did during *voir dire* and he did not stop and ask. PCR tr. 49. Roberts testified the question of whether there were any prior law enforcement officers on the jury was never asked and if it has been he would have answered fairly and honestly. PCR tr. 49. Roberts testified he did not when asked during *voir dire* if he had any special relationship by blood or marriage or otherwise any special relationship with any of the witnesses called to trial. PCR tr. 50. Roberts testified if someone asked him today if he had any relation or contact with the Sixth Circuit Solicitor's Office he would say he has none. PCR tr. 50. Roberts testified he had contact with John Justice once for a case when he interviewed him for five minutes before trial and then he testified which was twenty five years before this trial. PCR tr. 51. Roberts testified he worked as the chief of police for the town of Kershaw for six months during which time he did not have any cases go to the Sixth Circuit Solicitor's Office. PCR tr. 51. Roberts testified he was not trying to get on the jury. PCR tr. 52. Roberts then testified he answered all the questions from the *voir dire* as honestly as he could. PCR tr, 52. Roberts further testified he told the truth during his deposition. PCR tr. 52. Finally Roberts testified he tried to tell the truth as best as he could remember it during this hearing. PCR tr. 52.

On redirect Roberts testified he received a copy of his deposition from the court reporter

and he testified that he did not report any errors in the deposition to the court reporter. PCR tr. 53. Roberts testified he did not review his copy of the deposition in preparation for this hearing. PCR tr. 53. He testified had not reread his deposition after receiving a subpoena to testify at the evidentiary hearing. PCR tr. 53.

After Roberts's testimony concluded, a bench conference was held. PCR tr. 56. This Court allowed both sides to question Roberts further. PCR tr. 56. Upon further questioning, it was revealed Roberts had documents with him on the stand. PCR tr. 56. Roberts testified he had letters Applicant's counsel sent him and also a red folder which contained a copy of his deposition. PCR tr. 57. Roberts then testified he had not opened it today or yesterday and denied he had been sitting on the witness stand reading it. PCR tr. 57. Roberts was then required to give Applicant's counsel the folder of documents he had with him on the witness stand. Applicant's counsel noted for the record the folder contained a condensed copy of Juror Roberts' deposition dated April 22, 2014. PCR tr. 57-58. This Court noted on the record that counsel for the Respondent had reported to the Court he had seen Roberts looking at those materials in the courtroom during the hearing, and this disclosure prompted the Court to allow further questioning of Roberts as he had previously denied reviewing his deposition prior to his testimony. PCR tr. 57-58. Counsel for the Applicant asked the record reflect counsel for Respondent reported he observed Roberts looking at a document in a red folder which may or may not have been the deposition in question. PCR tr. 58 This Court noted, at the request of counsel for Applicant, the copy of the deposition contained in a red folder could not be seen if it was inside the document folder. PCR tr. 58-59.

Trial Counsel's Testimony

Applicant's Trial Counsel, John Clark, testified at the evidentiary hearing held in this

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matter. Trial counsel testified he recalled representing the Applicant during his trial. PCR tr. 60. Trial Counsel testified he could not recall how many strikes he utilized in the jury selection process. PCR tr. 60. He testified he absolutely would have used a strike to remove Ronnie Roberts from jury service had he known about his twenty-five year background in law enforcement. PCR tr. 61. He testified that there was "no question at all" that he would have struck Roberts from Applicant's jury. PCR tr. 61. Trial counsel testified that he did not receive any additional information about Roberts from the Solicitor's Office, Roberts or any other source prior to the jury selection at this trial. PCR tr. 61.

Shareka Jones' Testimony

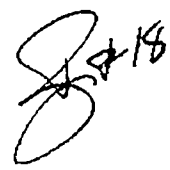
Ms. Jones testified that she had previously been represented on a forgery charge by Thomas Holland, Esquire. PCR tr. 62. Attorney Holland gave her a ride to court in September, 2012. PCR tr. 63. Ms. Jones testified that during that ride, she brought up the fact she believed he was one of the prosecutor's in the Applicant's case. PCR tr. 63. She testified at the time she was represented by Holland she was already a friend of Applicant's family PCR. tr. 62. She testified she had looked her lawyer, Attorney Holland, up on the internet and saw the references to Applicant's case. PCR tr. 63. Ms. Jones testified Attorney Holland confirmed he had been one of the prosecutors and informed her he handled the DNA part of the case. PCR tr. 63. Ms. Jones then testified Attorney Holland told her he did not believe Applicant was guilty of the charge and the prosecution knew that Mr. Roberts was a former police officer and they assigned him to be the foreman on the case and they absolutely knew what they were doing as to give him an unfair trial. PCR tr. 63. Ms. Jones testified later that day she had a cell phone conversation with Applicant and was able to put him on the phone with Attorney Holland. PCR tr. 65. She testified she heard their entire conversation and heard Attorney Holland convey to Applicant the

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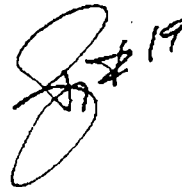
information concerning one of the jurors in his case having been a career law enforcement person. PCR tr. 65. Ms. Jones testified that she had neither been given, nor promised, any form of compensation for testifying in this matter other than the witness fee and mileage money given by Applicant's counsel. PCR tr. 66.

Doug Barfield's Testimony

Douglas A. Barfield, Assistant Solicitor for the Sixth Judicial Circuit at the time of Applicant's trial, also testified at the evidentiary hearing held in this matter. He testified he remembered being one of the prosecutors who tried Applicant case. PCR tr. 75. Attorney Barfield testified he had no recollection of being contacted by Roberts concerning his receipt of a jury summons prior to this trial. PCR. tr. 76. He further testified he had no recollection of receiving a message from anyone in the solicitor's office concerning Roberts having called the solicitor's office. PCR tr. 76. When asked if during the course of this trial had it been brought to his attention by Assistant Solicitor Holland that various members of court personnel and law enforcement were talking about the fact that a former chief of police was on the jury, and had been made jury foreman, Attorney Barfield testified he did not "recall that it was but I would not be surprised that it was. This was 13 years ago". PCR tr. 76. He testified he had no independent recollection of discussing that matter with Tom Holland. PCR tr. 76. Attorney Barfield testified he knew who Roberts was, and was aware he was retired law enforcement officer when he was selected for this jury. PCR tr. 77. He further testified he did not feel it was in any way incumbent upon him to notify defense counsel of that fact. PCR tr. 77. When asked whether he was concerned about Roberts failure to respond to the question about having any connection with the solicitor's office, Attorney Barfield testified that the question at *voir dire* was asked in the present tense and Roberts answered it truthfully and that did not give him any concern. PCR tr.



78. He went on to testify that a clear reading of the *voir dire* question demonstrated it was limited to the present tense. PCR tr. 78. Attorney Barfield testified about Jimmy Taylor a retired agent in charge of the Lancaster County Office of Probation and Parole who hung around the solicitor's office and watched them in court. PCR tr. 78. He testified Mr. Taylor received a small monthly check for sitting in court with the office and telling them what he knew about jurors as he grew up in Lancaster County and knew everybody there. PCR tr. 78. He further testified he had no recollection of whether Mr. Taylor was involved in Applicant's jury selection. PCR tr. 78. Attorney Barfield again went on to testify he had no independent recollection he and Tom Holland had a conversation about Roberts or whether he had one with Solicitor Justice. PCR. tr. 80. He further testified that if he thought there was an ethical dimension or obligation to disclose information about Roberts he would have. PCR tr. 80. Attorney Barfield testified had Roberts been asked the question, has anybody -- any member of the jury panel a present or former law enforcement officer and he had not stood up then he would have if Solicitor Justice had not. PCR tr. 80. He testified it was probably fair to say generally defense attorneys in criminal cases do not want current or former police on the jury. PCR tr. 81. He further testified he believed he has had former law enforcement officers on criminal juries in Lancaster County. PCR tr. 81. Attorney Barfield testified in his experience defense attorneys utilize strikes to get rid of people with law enforcement careers, school teachers and principals. PCR tr. 82. He testified after Roberts was subpoenaed in Applicant's PCR Roberts called him and wanted to know what it was all about. PCR tr. 82. He further testified he did not know what it was about because he had not heard of the filing of Applicant's PCR as of the time Roberts was going to be taking his deposition. PCR tr. 82. Attorney Barfield testified he did not give Roberts any advice concerning the scope of his testimony or statements to be made in the deposition. PCR tr. 83. Finally, he testified looking

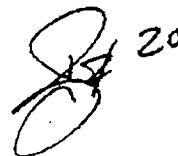
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back at the time the jury in Applicant's trial was being selected, he had no issue with Roberts' lack of response to the *voir dire* question. PCR tr. 83.

On cross-examination, Attorney Barfield testified he had been with the solicitor's office for thirty years in some capacity. PCR tr. 84. Finally, he testified there was nothing unusual about Roberts calling the solicitor's office when he got his summons as he was not the first and certainly was not the last person to do that. PCR. tr. 84.

Tom Holland's Testimony

Thomas Holland, a former Assistant Solicitor and prosecutor at Applicant's trial, testified at the evidentiary hearing held in this matter. Attorney Holland testified he tried the case along with Solicitor John Justice and Assistant Solicitor Doug Barfield. PCR tr. 90. Attorney Holland testified he and Doug Barfield handled a DNA witness and that was the extent of his involvement in the actual trial. PCR tr. 90. He testified he was in and out of the court room during the early part of the trial and did not believe he was present for all of the jury selection portion of the trial. PCR tr. 90. Attorney Holland testified at some point, after the jury was selected, he came back into the court and one of the deputies told him we have a good jury and we got a real good foreman. PCR tr. 91. He testified he asked the deputy why he thought that and the deputy responded he used to be the former Chief of Police of Kershaw. PCR tr. 91. Attorney Holland testified he was surprised the defense did not strike Roberts. PCR tr. 91. Attorney Holland testified at some point after the jury was selected he discussed this issue with either one of the senior prosecutors on the case, or possibly, both together. PCR tr. 91. He testified he could not remember for certain whether he had taken it up with both, Solicitor Justice and Assistant Solicitor Barfield, or just one of them. PCR tr. 91. He testified he asked whether this was something that needed to be disclosed and he was told no. PCR tr. 91. Attorney Holland

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testified he was told Roberts, "answered the questions the way they were asked, so he didn't say anything untruthful so no, we don't need to say anything." PCR tr. 91. When asked if he would have left the decision about disclosure to the senior members of the prosecution team, or made the disclosure himself, if he had felt disclosure was appropriate, Attorney Holland testified:

Well, yeah, they had been doing this a whole lot longer than I had. I think that was my first year that I was in Lancaster and I think I only was a prosecutor for only two years at the time and the question was more of I guess a learning thing. I was seeing if that was, you know, do we have to do this or is that something, you know -- it wasn't that I thought anybody was being unethical. I was just asking the question and they said no. I don't know who said it. I don't know if it was Doug or John. No, everything was done above board. There was no -- they didn't -- he didn't answer anything incorrectly. He answered the questions that were posed to him. So, I don't know if that is responsive to your question or not.

PCR tr. 92.

Attorney Holland testified he left the Solicitor's Office in 2006 and went into private practice in 2011. PCR tr. 93. He testified at some point he represented Shareka Jones. PCR tr. 92. Attorney Holland testified on the day he drove Ms. Jones to Spartanburg, for her guilty plea, he was telling her "if it was a trial in Spartanburg he would want to know who the jurors were." PCR tr. 93. He further testified in the case of a jury trial he would have wanted a local lawyer to help him pick the jury because they know the potential jurors. Attorney Holland testified he mentioned Applicant's case to her by way of example. PCR tr. 93. He testified he told her the foreman of the jury in that case was a former police officer and the defense attorney was from out of town and would not have had that knowledge. PCR tr. 93. Attorney Holland testified Ms. Jones made him aware she knew Applicant either in the car ride or later on when she walked into his office and handed him a cell phone to talk to Applicant. PCR tr. 93. Attorney Holland testified he did not feel this information about Roberts was something Applicant needed to know, but testified at the time it happened, if he was the defense attorney he would like to have known.

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PCR tr. 94. He testified he had a telephone conversation with Applicant and told him the foreman on his jury was a former chief of police of Kershaw, but wasn't in law enforcement anymore at the time of Applicant's trial. PCR tr. 94. Attorney Holland testified he felt sure the entire prosecution team knew this information from the beginning. PCR tr. 94. He testified Applicant asked him to represent him and he offered him a fee. PCR. tr. 95. He testified he told Applicant he could not represent him because it would be a conflict of interest as he participated in the original trial. PCR tr. 95. ~~Attorney Holland testified he might have told him what steps he could take to pursue this but Applicant may have had a lawyer at the time.~~ PCR tr. 95. He testified after being questioned about his deposition, he did not know how many strikes the defense had left doing jury selection of Applicant's trial. PCR tr. 96.

On cross-examination, Attorney Holland testified he had one witness in Applicant's trial. PCR tr. 98. He testified he saw bits and parts of *voir dire* ultimately testifying he probably would not have sat through it. PCR tr. 98. When asked whether he disclosed the information about Roberts out of an ethical obligation, Attorney Holland testified:

Well, right. What I talked with the client it was learning opportunity. When I approached John or Doug, or both, it wasn't out of sense that they were -- I assumed they weren't doing anything unethical. I never saw them do anything unethical, so there was never a question about ethics. It was just about whether or not we should or shouldn't from a practical standpoint if -- because sometimes things you can err on the side of caution and sometimes you don't have to do things over.

PCR tr. 99.

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 hearings. 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).

When allegations arise concerning a juror's failure to reveal information in response to *voir dire* questions, courts look to whether the concealment was intentional and consider the nature of the information concealed. *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001); *State v. Guillebeaux*, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004). Provided a claim is timely raised, a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. See *State v. Woods*, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001); *McCoy v. State*, 401 S.C. 363, 371, 737 S.E.2d 623, 627-28 (2013). The first part of the Woods test requires a showing of intentional concealment because it is not a juror's responsibility to anticipate what an attorney might be seeking by asking a particular question. *Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 760 S.E. 2d 111 (2014). A determination that a juror did not intentionally conceal the information ends the court's inquiry. *State v. Sparkman*, 358 S.C. 491, 497, 596 S.E.2d 375, 377-78 (2004). "[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." *Woods*, 345 S.C. at 588, 550 S.E.2d at 284. On the other hand, unintentional concealment occurs "where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." *Id. Lynch*, 409 S.C. at 154, 760 S.E. 2d at 116.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations juror and prosecutorial misconduct. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel and due process violation:

Initially, this Court finds Applicant has failed to show he filed this application within one year of discovering the alleged misconduct. Applicant's allegations of juror and prosecutorial misconduct require that Applicant file his Application within one year of discovering the alleged misconduct, or within one year of the date the facts could have been discovered by the exercise of reasonable diligence. *S.C. Code Ann. § 17-27-45(C)* reads:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

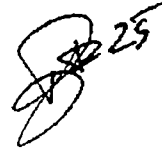
This Court finds because Roberts' law enforcement background was discoverable at the time of Applicant's trial, Applicant should have raised this issue at his first PCR hearing. Roberts' made no attempts to hide his background. At no point during *voir dire* were the members of the petit jury panel asked if they had any law enforcement background nor did the jury questionnaire ask about their former occupations. The questionnaire merely asked their current occupation which Roberts answered truthfully. The responsibility for obtaining sufficient background information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 760 S.E. 2d 111 (2014). Just because no one thought to ask him what his

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background was does not mean the information was not discoverable. As such, this Court finds Roberts' background could easily have been discovered by the exercise of reasonable diligence.

Second, assuming *arguendo* this Court deems the information was not discoverable at the time of trial, Applicant's application is still untimely because he has not satisfied his burden of proving that he filed this application within one year of discovering the information, or when it could have been discovered. Thomas Holland was an assistant solicitor in the Sixth Circuit during Applicant's trial. At his deposition, he testified he did very little work on Applicant's case but he and the other solicitors handling the case were made aware by court personnel that Roberts had a background in law enforcement. Holland testified at his deposition some years later, after he entered private practice, he was taking a client to enter a plea in Spartanburg when a discussion came up regarding jury selection. Holland's former client was familiar with Applicant's case, and at some point the client handed Holland a cell phone with Applicant on the other end of the line. At that point Applicant apparently asked Holland about Roberts' seating on his jury.¹ This Court finds the date of that telephone conversation, or sometime prior to it, starts the timeline of when Applicant learned of the facts on which he is basing the current PCR application. Holland testified that subsequent to his conversation with Applicant, at some point he was contacted by Applicant's private investigator, Dave McDougal. Holland testified that his contact with McDougal took place one and a half to two years prior to the deposition. The deposition occurred on April 22, 2014. Applicant's PCR application was filed on July 9, 2013. In order for his claim to be timely, Applicant's discovery of the alleged new evidence would have to have occurred after July 9, 2012. This Court finds given the timeline of events testified to by

¹ This Court notes that Applicant had to have been incarcerated at the time of the cellular phone conversation. This witness, however, conceded he had no way of knowing whether Defendant was on a cell phone.



Holland at his deposition and evidentiary hearing Applicant has failed to show that this PCR application was timely filed.

Juror Misconduct

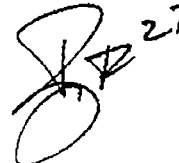
Applicant has failed to uncover any evidence of misconduct by Mr. Roberts. In order for his claim to be granted, Applicant must show that Roberts intentionally concealed information during *voir dire*. See State v. Kelly, 331 S.C. 132 (1998). However, Roberts truthfully filled out the jury questionnaire, which only asked about his occupation and "Present or Former Employer". Additionally, at no point during *voir dire* were the members of the petit jury panel asked if they had any law enforcement background, or if they were related to anyone involved in law enforcement. Roberts testified at the deposition and the evidentiary hearing that he would have disclosed his background, if the question had been asked. A potential juror has no duty to disclose background information when he is not asked to do so; rather, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 760 S.E. 2d 111 (2014). Roberts testified that he retired from law enforcement when he left the Kershaw Police Department in 2000 and was working as a training manager for a mortgage insurance company at the time of Applicant's trial. Certainly that would not qualify as any type of law enforcement work.

Applicant further argues Roberts committed misconduct by not responding affirmatively when the petit jury panel was asked, "Do any members have any relationship or contact with Solicitor John Reid Justice or any member of the Sixth Judicial Circuit Solicitor's Office? If so, please stand." However, Roberts testified he had no relationship with the Solicitor's Office. Roberts testified repeatedly the call he made to the Solicitor's Office was the only contact he had

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with anyone from that office since he testified in a trial over twenty years before. Roberts testified at his deposition that he moved away from Lancaster in 1986 and was living at the beach at the time of the trial. Roberts testified that he had no idea who he spoke to at the solicitor's office, and he further testified that once he was told to appear for jury duty, he did not have any more contact with the solicitor's office. Applicant claims Roberts was involved in cases prosecuted by the Sixth Circuit Solicitor, but Roberts testified that when he was with the Kershaw Police Department, he did not have any cases that went to the solicitor's office. Before his brief stint with the Kershaw Police Department (July-December, 2000), the last time Roberts was employed in any law enforcement capacity within the Sixth Circuit was in 2000, when he was in charge of security guards at USC Lancaster. Certainly Roberts' testimony that he did not have any type of relationship or contact with the Sixth Circuit Solicitor's Office, or with any employee thereof, at the time of Applicant's trial was credible.

Applicant also alleges Roberts intentionally hid a relationship he had with one of the prosecution's witnesses (Barry Faile). However, Roberts did not stand when the potential witnesses were named because he did not have a special relationship with Faile. The question asked by the trial judge was, "Is any member of the petit jury panel related by blood or connected by marriage or have any special relationship with any of the potential witnesses for the state of South Carolina?" (Tr tr. 6-7). Roberts testified at the evidentiary hearing he did not hear the question during *voir dire* which asked whether or not he had any relationship to any of the witnesses. PCR tr. 30. Roberts then testified he knew Barry Faile by name but had no relation with him. PCR tr. 30. Moreover, Roberts testified he had no special relationship with Faile. At the deposition, Roberts testified he was not close friends with Faile, and they had no special relationship. As such, Applicant has failed to elicit any evidence supporting the existence of a

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relationship between Roberts and Faile, much less a special relationship. The fact that Faile and Roberts knew of each other is not evidence any kind of special relationship, and even if Roberts had heard the question he did not need to stand up. Accordingly, Applicant has failed to show any intentional concealment by Roberts.

Prosecutorial Misconduct

Applicant claims the solicitors involved in the case committed misconduct by failing to divulge Roberts' background to the judge or the defense. Even, assuming *arguendo*, that anyone involved in Applicant's prosecution was aware of Roberts' background during jury selection, the solicitors involved in the case were under no duty to disclose Roberts' background to Applicant or to the Court. Again, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. *See Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 760 S.E. 2d 111 (2014) nor did the non-disclosure amount to a *Brady* violation. The holding in *Brady v. Maryland* requires disclosure only of evidence that is both favorable to the accused and "material either to guilt or to punishment." 373 U.S. 83 (1963). The prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial. *United States v. Agurs*, 427 U.S. 97, 108, (1976). The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish "materiality" in the constitutional sense. *See Agurs*, 427 U.S. at 109-10.

Applicant failed to elicit any testimony at the depositions or evidentiary hearing to show the prosecution's non-disclosure of Roberts' background was improper. At his deposition and testimony from his evidentiary hearing, Holland testified his only involvement in the case was to

question one witness, who was a DNA expert from SLED, and that he did not otherwise participate in Applicant's trial. He testified he was not involved in jury selection. He testified John Justice and Doug Barfield prosecuted the case. Holland testified he asked someone who was either a bailiff or a law enforcement officer how the jury looked, and the person told him the jury looked good because the foreman was prior law enforcement. Holland testified he brought the subject up to either Justice or Barfield, but he could not remember which one. Holland testified it would likely have been Barfield with whom he spoke. Holland testified he thought he asked Barfield if the defense attorney knew of Roberts' background in law enforcement, to which Barfield replied that he was not aware if the defense attorney knew. Holland testified that he believed it was Barfield who told him they did not need to disclose Roberts' background because Roberts answered all of the questions that were asked of him during *voir dire*, and the jury questionnaire only asked about current employment. Holland testified he did not feel like the decision not to disclose Roberts' background to the defense was illegal or a violation of any rule. Holland further testified he did not consider informing defense counsel because he knew the decision not to disclose was not illegal. Furthermore, Attorney Barfield testified he knew who Roberts was, and was aware he was retired law enforcement officer when he was selected for this jury. He further testified he did not feel it was in any way incumbent upon him to notify defense counsel of that fact. When asked whether he was concerned about Roberts failure to respond to the question about having any connection with the solicitor's office, Attorney Barfield testified that the question at *voir dire* was asked in the present tense and Roberts answered it truthfully and that did not give him any concern. He went on to testify that a clear reading of the *voir dire* question demonstrated it was limited to the present tense. Attorney Barfield testified had Roberts been asked the question, has anybody -- any member of the jury panel a present or

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former law enforcement officer and he had not stood up then he would have if Solicitor Justice had not. As such, Holland's and Barfield's testimonies failed to elicit any evidence of prosecutorial misconduct.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. There was no juror or prosecutorial misconduct. Additionally, Applicant's application was filed untimely. Therefore, this PCR application must be denied and dismissed with prejudice.

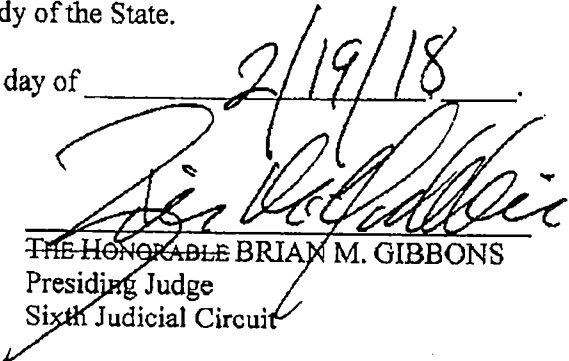
The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate 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, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this _____ day of _____ 2/19/18.

Alento, SC


THE HONORABLE BRIAN M. GIBBONS
Presiding Judge
Sixth Judicial Circuit

LAW OFFICE OF



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April 16, 2018

Deshawn Mitchell, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-

RE: Vernard Jerome Mathis, #297034 v. State of South Carolina; 2013-CP-29-051.

Dear Mr. Mitchell:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. The family has retained me to handle this appeal. If you will not be handling this appeal for any reason, please let me know. Since I already have the PCR hearing transcript, my Certiorari Petition will be due thirty (30) days from the filing of the Notice of Appeal. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina ✓

Vernard Jerome Mathis, #297034

Vernard Sparks



Law Office of
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The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
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