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May 7, 2018

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

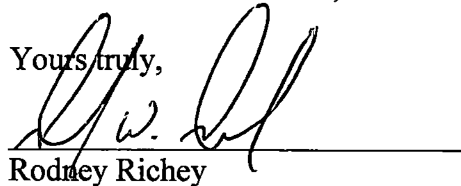
Re: John F. Kennedy v. State of South Carolina
Case No: 2016-CP-04-0610

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/
enclosures

cc: Lindsey McCallister, Esquire

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MAY 11 2018
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

HONORABLE R. SCOTT SPROUSE

2016-CP-04-0610

JOHN F. KENNEDY, SCDC# 358076,

APPELLANT,

against

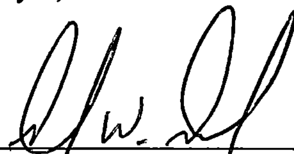
STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED
MAY 11 2018
S.C. SUPREME COURT

NOTICE OF APPEAL

John F. Kennedy appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Scott Sprouse, Circuit Judge on October 4, 2017 an Order issued on April 18, 2018 and filed on April 27, 2018. The Appellant received notice of the judgment on May 4, 2018.



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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
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HONORABLE R. SCOTT SPROUSE

2016-CP-04-0610

JOHN F. KENNEDY, SCDC# 358076,

APPELLANT,

against

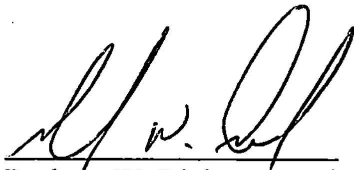
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on May 7, 2018, addressed to their attorney of record, Linsey McCallister, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: May 7, 2018



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CLERK OF COURT

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS OF THE TENTH JUDICIAL CIRCUIT
John F. Kennedy, #358076,	)	Case No.: 2016-CP-04-0610
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of Applicant's post-conviction relief (PCR) application filed June 16, 2016. Respondent made its Return on February 14, 2017. An evidentiary hearing into the matter was convened on October 4, 2017, at the Anderson County Courthouse. Rodney Richey, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Andrew Potter, Esquire, and Applicant's appellate counsel, Robert M. Pachak, Esquire, testified for the State.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the September 2012 term of the Court of General Sessions for Anderson County for one count of murder (2012-GS-04-02002). Applicant was represented by Andrew Potter, Esquire (Counsel). On December 2-5, 2013, Applicant proceeded to trial before the Honorable J. Cordell Maddox and a jury. He was found guilty as indicted. On December 5, 2013, Judge Maddox sentenced Applicant to thirty years' imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected by Robert M. Pachak, Esquire (Appellate Counsel), of the South Carolina Office of Indigent Defense – Division of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction on May 20, 2015. State v. Kennedy, Op. No. 2015-UP-256 (S.C. Ct. App. 2015). Applicant filed a petition for rehearing, which was denied by an order filed June 24, 2015. Applicant then petitioned for a writ of certiorari in the South Carolina Supreme Court, which was denied in an order dated February 16, 2016, and the Remittitur was returned on May 13, 2016.

SUMMARY OF FACTS ADDUCED AT TRIAL

On March 30, 2012, seventy-six-year-old Claud Schaffer Scott (Victim) sold a van to a woman named Margaret Conwell around lunchtime. Tr. pp. 338-40. Conwell wrote Victim a $1500 check in exchange for the van. Tr. p. 340. Police then obtained surveillance stills from the bank where Victim cashed the check. Tr. pp. 340-41. Those stills showed Victim and Applicant in the parking lot of People's Bank around 1:09 p.m. Tr. pp. 341, 456-57. The two then entered the bank, and Applicant sat in the lobby while Victim cashed the check. Tr. pp. 341-42, 458-63. Applicant and Victim left the bank around 1:15 p.m. Tr. p. 342-43, pp. 464-66. Police never recovered the $1500 Victim received from that check. Tr. p. 343.

Later that evening, Kimberly King, a family friend and neighbor, went to look in on Victim because he had been feeling poorly when she was at his home earlier that day. Tr. pp. 146-47, 150-51. When King arrived at Victim's home around 5:30 p.m., she found the front door was closed and locked, which was unusual as the door was normally open wide or, if it was closed, unlocked. Tr. pp. 151-52. King began knocking on Victim's door. Tr. p. 152. Applicant, who was living in a camper behind Victim's home, came out from the back of the house and told King that Victim was asleep and did not want to be bothered. Tr. pp. 148, 152-

53. King noticed Applicant "was real sweaty and just looked weird." Tr. p. 152. King told Applicant she was "going in anyway" and asked if the back door was locked. Tr. p. 153. According to King, Applicant said, "no" but then "he fl[ew] around to the back" and locked the back door to prevent her from entering. Tr. p. 153.

Applicant then asked King to go with him to the store, but she refused. Tr. pp. 153-54. Applicant got into a blue car belonging to Victim and drove off. Tr. p. 153. Surveillance video from a Bi-Lo parking lot about eight miles from Victim's home shows Victim's blue Mercury Mystique enter the parking lot at approximately 6:04 p.m., and a black male parks the car and then runs away on foot. Tr. pp. 333-37, 467-68. According to Investigator Brent Simpson, the lead investigator on this case for the Anderson County Sheriff's Office, it takes about fifteen or sixteen minutes to drive from Victim's home to that Bi-Lo. Tr. p. 337.

Meanwhile, King went back around to the front of Victim's house and started beating on the door. Tr. pp. 153-54. King heard Victim say, "[G]o away. I don't want to be bothered now. Go away." Tr. p. 154. King identified herself and told Victim to open the door. Tr. p. 154. Victim complied, then immediately collapsed in the doorway. Tr. p. 154-55. King could tell Victim had been beaten very badly, and she called 9-1-1. Tr. pp. 154-55. She told the 9-1-1 dispatcher that Applicant had just left Victim's trailer and specifically identified him as "John F. Kennedy, [who] calls himself JFK" to the 9-1-1 dispatcher. Tr. p. 157. King also gave a statement that evening to Investigator Stan Ashley and identified the person she saw leaving Victim's trailer as "John Fitzgerald Kennedy, called himself JFK." Tr. p. 159. King picked Applicant's photo from a lineup that evening as well. Tr. pp. 159-60.

Another neighbor, David Evans, came over to assist King before emergency personnel arrived. Tr. pp. 157-58, 172-75. Evans testified he knelt down beside Victim and asked what happened, and Victim responded, "John, the black guy, hit me." Tr. p. 177-78.

Paramedics arrived and transported Victim to the hospital. Tr. pp. 196-98. Multiple police officers responded to the hospital, including Brandon Dunn, who overheard Victim tell emergency room staff that "John did it." Tr. p. 201, 204. Detective McKindra Bearden spoke to Victim at the hospital. Tr. pp. 206-07. Bearden testified, "I said, do you know who done it? And he said, Josh. And I said, Josh? And he goes, no, John. I had misunderstood him, but he did correct me. He said John done it." Tr. p. 208.

Investigator Simpson also met with Victim at the hospital and took Victim's statement. Tr. p. 329. Simpson recorded the entire statement using his cell phone. Tr. p. 329. In the recording, Victim identifies "John" as the man who beat him. Tr. pp. 112-14, 331. After giving his statement to Simpson, Victim went unconscious and never regained consciousness. Tr. pp. 331-32. Victim passed away from his injuries around 7:20 a.m. on March 31, 2012. Tr. p. 332.

Applicant turned himself in on April 1, 2012. Tr. p. 346. At that time, police collected the clothing Applicant was wearing and sent it to the lab at the South Carolina Law Enforcement Division (SLED) for testing. Tr. pp. 346-47. SLED forensic scientist Catherine Leisy analyzed two cuttings from Applicant's shorts and found the presence of blood. Tr. p. 311. She also developed DNA profiles from the cuttings and found that the DNA matched that of Victim. Tr. pp. 311-12. According to Leisy's testimony, there was a one in two hundred and fifty quadrillion chance of randomly selecting an individual unrelated to Victim with a DNA profile matching the DNA found on the shorts. Tr. pp. 311-12. Leisy also analyzed swabs from a skillet

found at the scene. Tr. pp. 310-11. Those swabs tested positive for blood, and the DNA matched that of Victim. Tr. pp. 310-11.

ALLEGATIONS

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

1. Ineffective Assistance of Trial Counsel
   a. Failure to thoroughly investigate and pursue facts and circumstances regarding third-party guilt defense.
   b. Failure to "properly challenge breaks in chain-of-custody upon correct grounds."
   c. Failure to "identify specific U.S. Constitutional violations upon which Applicant bases his claims."
2. Ineffective Assistance of Appellate Counsel
   a. Failure to "raise and argue the trial court's ruling on the Batson[1] challenge regarding defendant's right to be afforded an impartial jury comprised of a fair cross-section of peers and society."
   b. Failure to "raise and argue other meritorious issues which, through contemporaneous objections, were preserved for review."
3. 14th Amendment Due Process violation
   a. "Applicant suffered due process violations and was prejudiced by breaks in chain-of-custody and mishandling of clothing and blood evidence."
   b. Applicant suffered "due process violations and was prejudiced by law enforcement's flawed investigations and mishandling of potential exculpatory evidence."

In its Return, the State moved for summary dismissal of Applicant's Due Process claims on the ground that such claims are direct appeal issues which are not proper in a PCR

[1] Batson v. Kentucky, 476 U.S. 79 (1986).

proceeding. That motion was not ruled on prior to the evidentiary hearing and is addressed below.

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 and arguments presented at the PCR hearing. This Court also had before it the records of the Oconee County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the application, the State's Return, and the trial transcript. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "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. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. A PCR applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

1. **Ineffective Assistance of Trial Counsel**

Applicant alleges Counsel was ineffective for failing to properly investigate and pursue a third-party guilt defense, for failing to properly challenge the chain-of-custody of the State's evidence, and for failing to identify specific violations of Applicant's Constitutional rights.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that trial counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy).

Counsel's strategy is reviewed under "an objective standard of reasonableness." Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

Applicant testified his position is that he did not commit this murder, and he told Counsel this. Applicant testified he gave Counsel the names of potential witnesses Julia Moore, Ron Curry, and John and Jaime Manning, but to Applicant's knowledge, Counsel did not do any investigation. Applicant testified he did not have concrete evidence implicating anyone in that group, but he had heard them discussing what they were going to do to Victim. Applicant testified he believed they were involved.

Applicant further testified Counsel told him he could not get in contact with any of those people, even though Applicant told him where to go and who to look for. Applicant testified Counsel told him it was his (Counsel's) decision as to who to subpoena to testify. Applicant also testified he spoke briefly to an investigator and gave him the same information, but the investigator told him he could not find any of these people.

Applicant introduced a document purporting to be an affidavit from Ron Curry, which Applicant testified he sent to Counsel while he was in jail awaiting trial. Applicant testified he knew Counsel had received it because it was in the documents sent back to Applicant when he requested a copy of his file after the trial. Applicant testified Counsel never mentioned the affidavit or discussed it with him. On cross-examination, Applicant testified he met with Counsel three or four times, all of which were before July 25, 2012, which was the date he sent the affidavit to Counsel.

Applicant testified he felt the chain-of-custody for the DNA evidence introduced at trial was improper because Julia Moore and Ron Curry were stopped in the car by police, and the car

was later returned to Victim's sister. According to Applicant, no DNA testing was ever conducted on the car.

Counsel testified he discussed the third-party guilt issue with Applicant multiple times, including meetings after Counsel received the purported affidavit from Ron Curry. Counsel explained all of Applicant's information was third- or fourth-hand from other people who were talking about the case. Counsel testified, according to Applicant, there was a lot of talk about this incident in the jail, but Applicant was the only person who ever said so.

Counsel testified he hired an investigator to help him speak with Applicant and gather information on the third parties. Counsel testified the investigator got the names from Applicant and attempted to get statements but was unsuccessful. In addition, Counsel testified he felt it was unlikely anyone would admit to being involved if they were called as witnesses. Counsel testified he explained to Applicant the difficulty he had with locating the witnesses, either in person or by letter. Counsel also testified he still felt he could argue third-party guilt without having a specific person to name as the perpetrator.

Counsel testified he did not believe the chain of custody issue was viable on appeal. The record reflects Counsel made the appropriate objections, all of which were overruled on the basis the State had established a substantial chain. Tr. pp. 291-94. Counsel also testified he made a Batson motion, and the State gave a race-neutral reason for striking the juror. The record reflects that issue was argued at the close of jury selection and was preserved for appeal. Tr. pp. 44-45.

Counsel further testified the evidence against Applicant was "challenging," particularly because Victim identified Applicant while he was still conscious at the hospital. Counsel testified he explained to Applicant the concept of a dying declaration and how that could be used

at trial. Counsel also testified Applicant had been seen coming out of the house, and he had no way to explain his appearance.

Counsel testified he prepared for trial by reading the autopsy report, reviewing the files, and preparing cross-examination for the State's witnesses. Counsel testified he argued third-party guilt, and in his opinion, he did not think locating the witnesses would have helped his argument. Counsel also testified he did not believe the DNA testing of the car discussed by Applicant was necessary in this case.

This Court has reviewed the trial court record and has heard the testimony of both Applicant and Counsel. The Court finds Counsel's testimony on these issues to be credible, while also finding Applicant's testimony is not credible. The Court finds Counsel was not deficient in his investigation of the third-party guilt issue as he hired an investigator to attempt to track down the witnesses named by Applicant, and when he was unable to do so, he communicated that fact to Applicant. Further, Counsel still presented and argued a third-party guilt defense to the jury using the information and witnesses he had available. The Court also finds Counsel appropriately handled the chain-of-custody issue at trial by making timely objections, which were overruled. The Court does not find any constitutional violations which Counsel failed to identify or protect on the record for appeal.

Therefore, this Court finds no deficiency in Counsel's representation, and the Court notes even without the forensic evidence, the State's case against Applicant was overwhelming – namely, Victim's dying declaration naming Applicant as the perpetrator and Kimberly King's testimony regarding Applicant's behavior immediately prior to her discovery of Victim's injuries. Applicant's allegations of ineffective assistance of counsel are hereby denied and dismissed.

2. **Ineffective Assistance of Appellate Counsel**

Applicant also alleges Appellate Counsel was ineffective for failing to brief meritorious issues. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). When analyzing a claim of ineffective assistance of appellate counsel, this Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Id. at 616, 524 S.E.2d at 836. Thus, Applicant must show (1) Appellate Counsel's performance was deficient, and (2) Applicant was prejudiced by Appellate Counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Applicant testified he felt he had a valid Batson issue for appeal because his jury was all white. Applicant testified two jurors were disqualified "over things that happened ten-plus years ago." Applicant also testified he wanted Appellate Counsel to raise the issues of third-party guilt, chain of custody, and flawed investigation by the Sheriff's Office. Applicant testified the photo lineup issue actually raised by Appellate Counsel was "frivolous." Applicant testified he believed the outcome on appeal would have been different had Appellate Counsel raised the other issues, though he did not offer any evidence other than his conclusory assertion.

Appellate Counsel testified he had been practicing law for twenty-eight years, and represented Applicant through his position as an appellate defender with the South Carolina Commission on Indigent Defense. Appellate Counsel explained his practice for determining

which issue or issues to raise is to read the transcript and take notes regarding preserved issues, then conduct legal research, and write the brief.

Appellate Counsel testified he could not recall any issues regarding chain of custody. He also testified both the Baston issue and the issue of third-party defense were preserved and could have been raised, but he felt there was no merit to those issues. Appellate Counsel explained the juror struck by the State had a conviction for petit larceny, which was an issue in Applicant's case. He explained, in his opinion, the juror was legally excluded. Additionally, Appellate Counsel testified he agreed with the trial court's analysis of the third-party guilt issue. Appellate Counsel opined he did not think the testimony proffered by Counsel was proper under the Holmes[2] standard, which was cited by the trial court in denying Counsel's request to question the investigator regarding Ron Curry and Julia Moore. Tr. pp. 348-57.

Appellate Counsel further testified he chose to file a merits brief, which is more favorable for Applicant than a brief pursuant to Anders.[3] Appellate Counsel testified he raised the strongest issue Applicant had. Appellate Counsel explained he chose the photo lineup issue because Counsel made the appropriate objections, and he felt its admission prejudiced Applicant because it improperly put Applicant's character in issue by implying he had a previous criminal history.

In Smith v. Robbins, the United States Supreme Court explained that appellate counsel "who files a merits brief need not (and should not) raise every non-frivolous claim, but rather may select from among them in order to maximize the likelihood of success on appeal." 528 U.S. 259, 288 (2000). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to

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[2] Holmes v. South Carolina, 547 U.S. 319 (2006).
[3] Anders v. California, 386 U.S. 738 (1967).

appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

This Court has reviewed the trial record and finds Appellate Counsel was not deficient. Appellate Counsel articulated sound strategic reasons for why he chose not to raise the Batson and third-party defense issues requested by Applicant. See Thrift v. State, 302 S.C. 535, 539-40, 397 S.E.2d 523, 526 (1990) ("The testimony of petitioner's appellate attorney that she reviewed the requested charge and the charge as given and consciously decided not to brief the issue, clearly supports the PCR judge's finding that appellate counsel was not ineffective."). Further, Counsel testified he did not believe the chain-of-custody issue had any merit, and based on this Court's review of the transcript, this Court agrees. Appellate Counsel also explained his reasoning for raising the photo lineup issue. Appellate Counsel filed a merits brief, and the Court of Appeals found the issue was preserved and indeed ruled on its merits. Applicant has not provided any evidence whatsoever to meet his burden of showing the issues not raised were "clearly stronger than those actually raised on appeal." This allegation is therefore denied and dismissed.

3. **Due Process Violations**

Applicant also alleges he "suffered due process violations and was prejudiced by breaks in chain-of-custody and mishandling of clothing and blood evidence. . . and was prejudiced by law enforcement's flawed investigations and mishandling of potential exculpatory evidence." To the extent these claims can be construed as distinct from Applicant's allegations of ineffective assistance of trial counsel, this Court finds they should be dismissed as they raise direct appeal issues which are not proper in PCR.

Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). "Errors in a[n Applicant's] trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings." Id. "In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party's motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel." Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000). Therefore, when an applicant asserts the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, he generally must frame the issue as one of ineffective assistance of counsel. Id. (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993) (holding issues that could have been raised at trial or in direct appeal cannot be asserted in PCR application absent a claim of ineffective assistance of counsel); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983) (same); Richardson v. State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993) (explaining that defendant who pleads guilty upon advice of counsel may only attack the voluntary and intelligent character of plea by showing that advice he received from counsel was not within range of competence demanded of attorneys in criminal cases)).

Applicant could have raised these issues at trial or on appeal, and his failure to do so has waived these allegations as grounds for relief. Notwithstanding the procedural bar, this Court finds Applicant has not presented any evidence to substantiate these claims, and therefore deems them abandoned. Therefore, these allegations are denied and dismissed.

CONCLUSION

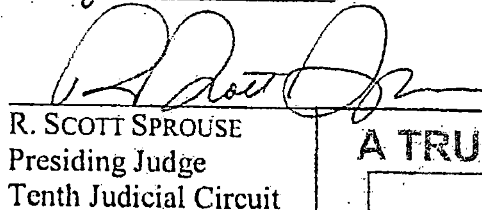
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel and Appellate Counsel were not deficient, nor was Applicant prejudiced by either counsels' representation. 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:

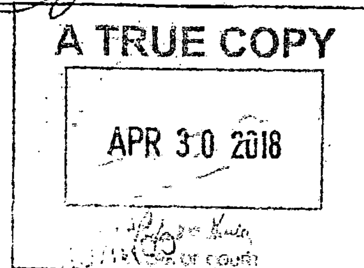
1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 18 day of April, 2018.



R. SCOTT SPROUSE
Presiding Judge
Tenth Judicial Circuit

Walhalla, South Carolina



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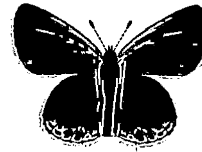

The Honorable Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211