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June 13, 2018

RECEIVED

JUN 18 2018

S.C. SUPREME COURT

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

RE: Jamal Hakeem, #364712 v. State of South Carolina  
2017-CP-24-0592

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Hyatt.

Best regards,

Ashley A. McMahan  
Attorney at Law

AAM/qpk

cc: Jamal Hakeem  
Megan Harrigan Jameson, Sr. Deputy Asst. Attorney General  
Greenwood County Clerk of Court  
Office of Appellate Offense

STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

JUN 18 2018

APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-24-0592

Jamal Hakeem, #364712 .....Petitioner,

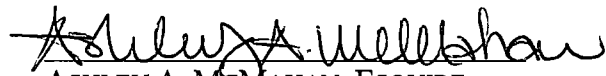
v.

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

NOTICE OF APPEAL

Applicant, Jamal Hakeem, appeals the order of the Honorable J. Mark Hayes, II, dated April 20, 2018, filed on May 7, 2018 and received by the undersigned on May 30, 2018.

June 15, 2018



ASHLEY A. MCMAHAN, ESQUIRE

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SC Bar No. 71676

ATTORNEY FOR APPLICANT

Opposing Counsel:

Megan H. Jameson, Sr. Asst. Dep. Attorney General

S.C. Attorney General's Office

PO Box 11549

Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas

JUN 18 2018

S.C. SUPREME COURT

The Honorable J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-24-0592

Jamal Hakeem, #364712 .....Petitioner,

v.

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

**PROOF OF SERVICE**

I, Quinda P. Kershaw, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Megan H. Jamieson, Sr. Assistant Deputy Attorney General  
Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

June 15, 2018



QUINDA P. KERSHAW  
PARALEGAL  
MAC | VANCE ATTORNEYS, LLC  
PO Box 5501  
West Columbia, SC 29171  
803-219-1110

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENWOOD )  
 )  
 Jamal Hakeem, )  
 SCDC # 364712 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
OF THE EIGHTH JUDICIAL CIRCUIT

2017-CP-24-0592

**ORDER OF DISMISSAL**

FILED COMMON PLEAS  
 8TH JUDICIAL CIRCUIT  
 GREENWOOD, S.C.  
 2018 MAY -7 AM 9:56

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 16, 2017. Respondent made its Return on or about October 2, 2017. Applicant filed an amended PCR application on March 2, 2018. An evidentiary hearing into the matter was convened on Tuesday, February 27, 2018, at the Laurens County Courthouse in Laurens County, South Carolina. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant and his wife, Bird Hakeem, testified. Applicant's trial counsel, Geddes Anderson, Esquire, testified. This Court had before it a copy of Applicant's records from the Greenwood County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application and Amendment, the exhibits introduced at the PCR hearing, and Respondent's Return.

**I. PROCEDURAL HISTORY**

Applicant is presently in the South Carolina Department of Corrections. Applicant was indicted at the June 2015 term of the Greenwood County Grand Jury for armed robbery (2015-GS-24-855) and possession of a weapon during the commission of a violent crime (2015-GS-24-856). Geddes Anderson, Esquire, represented Applicant. Assistant Solicitor Yates Brown,

Esquire, prosecuted the case. On July 13-14, 2015, Applicant underwent a jury trial before the Honorable Edward Miller. He was subsequently found guilty as indicted and sentenced to imprisonment for twenty-five years for armed robbery and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal and an Anders Brief was filed by Appellate Defender Katherine Hudgins. On February 8, 2017, the South Carolina Court of Appeals dismissed the appeal. State v. Jamal Hakeem, Op. No. 2017-UP-075 (Ct. App. filed February 8, 2017). The Remittitur was sent on February 24, 2017.

#### PCR Application

In his application for post-conviction relief, Applicant alleged the following grounds:

1. Ineffective Assistance of Counsel

- a. "Failure to object to the introduction of the hooded jacket by State. The jacket was obtained by an illegal search."
- b. Failed to object to the search being illegal.
- c. "Ms. Hakeem stated Officer Strickland said he did not have a search warrant, but he could get one. He told Ms. Hakeem that if they could search the house at the time without the warrant, they would not tear up her house. Again the police used 'quiet intimidation' to search the residence illegally. Ms. Hakeem stated that the police were not 'ugly' to her, but this statement by Strickland bothered her. She signed the consent to search while the police were LEAVING, not before the search."
- d. Failure to object to Officer Strickland not being at the trial.
- e. Failure to object to the search of the applicant's cell phone when he was arrested, without a warrant.
- f. "Officer Brooks stated that the consent was signed and then they searched and Ms. Hakeem stated that she signed the consent while the police were leaving. This is a direct conflict and makes all the different in this case. The defense counsel did not raise this conflict of testimony to the court."
- g. Ineffective assistance of counsel during the testimony of Ms. Smith, the victim.
- h. "Counsel should have objected to the State's reference to SLED bringing in the 'six person photo.' This was a clear violation of the applicant's constitutional rights."

- i. "During jury deliberation, Judge Miller approached the applicant with his counsel present and asked the applicant if he would take 15 years – 'take it or leave.' Strickland v. Washington – Government shall not interfere with the defense in certain ways."
- j. "The applicant and his attorney met with the first solicitor assigned to this case. This solicitor state this case is very 'strange.' He stated he could not understand this case and that something was wrong. The applicant feels that his attorney should be questioned about this meet and the solicitor's name. The applicant cannot recall."

Applicant filed an Amended PCR Application, alleging the following grounds of relief:

1. Newly Discovered Evidence - Greenwood officer Strickland has since been arrested and indicted for Misconduct in Office:
  - a. Officer Strickland resigned as part of an ongoing SLED probe in late October 2015. He pled guilty in December 2017 to Misconduct in Office. The veracity of the statements made by Officer Strickland regarding the search warrant process has come into question since his arrest and conviction and the interests of justice would require that the Applicant's conviction be vacated accordingly.
2. Ineffective Assistance of Counsel
  - a. See State v. Hart, 403 SE2d 144, 304 SC 99, (SC Ct. App. 1991)
  - b. Counsel did not move to request a reconsideration of the sentence. Judge punished the Applicant in sentencing because the Applicant exercised his right to a trial. See Castro v. State, 417 SC 77, 789 SE2d 44 (2016).

## II. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

#### **Ineffective Assistance of Counsel**

##### **Failure to object to the introduction of the hooded jacket by State**

Applicant alleged Counsel was ineffective for failing to object to the introduction of the hooded jacket. Applicant maintains the jacket was obtained by an illegal search. Counsel

testified he challenged the search. This Court finds Applicant has failed to meet his burden of proving Counsel was deficient in this regard. The record reflects Counsel challenged this evidence by making a motion to suppress the evidence from a warrantless search prior to trial. Counsel questioned the State's witnesses and called Applicant and his wife as a witness, but the trial judge denied Counsel's motion. When a photograph of this jacket was entered into evidence, Counsel objected. This Court finds Counsel was not ineffective as he did effectively challenge the introduction of the hooded jacket pretrial and contemporaneously as it was entered into evidence. Applicant has failed to meet his burden of proving Counsel's actions were deficient in this regard and that he was prejudiced as a result. Accordingly, this allegation must be dismissed.

Failed to object to the search being illegal

Applicant alleged Counsel was ineffective for failing to object to the search being illegal. Counsel testified he did challenge the search. This Court finds Counsel was not ineffective. This Court finds Counsel made a pretrial motion to suppress the evidence that resulted from a warrantless search, and argued extensively to the trial court that the search was illegal as Applicant did not give consent and Applicant's wife was intimidated by law enforcement. After testimony from witnesses including Applicant and his wife, the trial judge denied Counsel's motion to suppress the results of the search. This Court finds Counsel was not ineffective as he did effectively challenge the search and argue in his motion to suppress. Applicant has failed to meet his burden of proving Counsel's actions were deficient in this regard and that the motion would have been successful had Counsel challenged the search differently. Accordingly, this allegation must be dismissed.

Failure to raise issue of police intimidation of Bird Hakeem

Applicant alleged Counsel was ineffective for failing to raise the issue of the police

intimidating Bird Hakeem to get her to sign a consent to search the residence. Applicant testified Officer Strickland said they would rough up his house if they had to go get a search warrant. Applicant raised the issue that she signed the consent order to search while the police were leaving. Counsel testified he challenged the search, which included challenging the police intimidation of Ms. Hakeem.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to raise this issue. This Court finds Counsel raised the issue during his suppression motion and elicited testimony from Ms. Hakeem about how the police intimidated her prior to the search. Tr. 58. The trial court denied Counsel's motion and specifically found Ms. Hakeem freely and voluntarily gave consent to search and her will was not overborne when she consented to the search of the house. Tr. 71-72. As Counsel did raise this issue during the suppression motion, this Court finds he was not deficient. Furthermore, this Court finds Applicant has failed to meet his burden of proving the motion to suppress would have been granted had Counsel argued differently. Accordingly, this allegation must be dismissed.

Failure to object to Officer Strickland not being at the trial

Applicant alleged Counsel was ineffective for failing to object to Officer Strickland not being present at trial. Applicant testified Counsel did not subpoena Officer Strickland. Applicant testified Counsel asked about Mr. Strickland's absence at trial.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to object to Officer Strickland not being at trial. This Court finds the State has the right to call its witnesses and any objection by Counsel would not have been meritorious. This Court finds it was not unreasonable for Counsel to abstain from subpoenaing and calling Mr. Strickland has a defense witness when his entire testimony would likely not be helpful to

Applicant. The record reflects Counsel made a point during his closing argument to question why Officer Strickland was not at trial, asking:

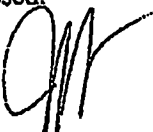
Another thing you might want to think about was where was Mr. Brandon Strickland who was the chief investigator in terms of the hierarchy of that particular unit of law enforcement. The one that was described as -- by Ms. Hakeem as being the one most involved, according -- at least that's what I got from her testimony. He didn't even show up at trial. What went on there. What's going on.

Tr. 196, ll. 19-25. This Court finds Counsel properly brought up Officer Strickland's absence to the jury in criticizing the State's case. This Court finds Counsel was not deficient for failing to object to Officer Strickland's absence and Applicant has failed to show the outcome of his trial would have been otherwise been different. Accordingly, this allegation must be dismissed.

Failure to object to the search of the applicant's cell phone when he was arrested, without a warrant

Applicant alleged Counsel was ineffective for failing to object to the officers searching his cell phone without a warrant. The record reflects Applicant testified during the suppression hearing that after he was arrested, officers took his cell phone and starting going through it. Tr. 68.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective. The record reflects there was no objection to be made, as the only testimony about a cell phone search came from Applicant during the suppression hearing and no evidence from or concerning his cell phone was used in any way at trial. Applicant has failed to meet his burden of proving Counsel was deficient for failing to object to the search of Applicant's cell phone. Furthermore, he has failed to show that such an objection would have been sustained and he has failed to show the outcome of his trial would have been different had he made this objection. Accordingly, this allegation must be dismissed.



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Failure to raise issue of conflicting testimony concerning when Ms. Hakeem gave consent to search

Applicant alleged Officer Brooks stated during trial that the consent was signed by Ms. Hakeem prior to the search, and Ms. Hakeem stated that she signed the consent while the police were leaving. He asserts this is a direct conflict and Counsel did not raise this conflict of testimony to the court.

This Court finds Counsel was not deficient regarding Ms. Hakeem's consent to search. This record reflects Officer Brooks testified during the suppression hearing that the officers got Ms. Hakeem's consent to search, and then searched the house. Tr. 41-42. Counsel put up Ms. Hakeem as a defense witness during this hearing. Ms. Hakeem testified the officers "went in to search, after he asked me for permission they went on in and searched..." Tr. 60, ll. 14-15. Ms. Hakeem then testified the officers searched the house and "I signed that statement when they were getting ready to leave out." Tr. 61, ll. 1-2. Counsel questioned her about the timeline and Ms. Hakeem testified she told the officers they could search before she signed the document. Tr. 61. Before the jury, Counsel elicited testimony from Ms. Hakeem that the officers were searching her home before she signed consent. Tr. 174.

This Court finds Counsel was not deficient in his cross-examination on this issue. This Court finds he elicited testimony that seemed to contradict the officer's testimony concerning when Ms. Hakeem signed consent. Her testimony indicates she gave oral consent prior to the search and signed the form during or after the search. Counsel elicited testimony and any contradiction with the State's witness created a question for the jury to decide. This Court further finds Applicant has failed to meet his burden of proving he was prejudiced by Counsel's actions as he has failed to show how Counsel should have addressed this issue. This Court finds he has failed to show the outcome of his trial would have been different and this allegation must be



dismissed.

Ineffective assistance of counsel during the testimony of Ms. Smith

Applicant alleged Counsel was ineffective during the testimony of Ms. Smith, the victim in this case. He alleged Ms. Smith could not give a clear description to the 911 operator and never gave a definite description of the perpetrator until she was shown a six person photo lineup. He alleged Ms. Smith said the perpetrator had a defective lip, which Applicant does not have. He alleged she was answering leading questions when giving her description. Applicant alleged Counsel should have challenged her identification.

Counsel testified he challenged the identification and the ability of Ms. Smith to have seen Applicant. Counsel testified the surveillance video was very clear and distinctive, showing Applicant talking to the clerk while wearing a distinctive hoodie. He testified he told Applicant the hoodie alone would be enough to convict him because it was so unique. He said Applicant gave the victim his exact birthday. During the Biggers<sup>1</sup> hearing, Counsel cross-examined the victim about how exactly she was able or not able to see Applicant as he came in the store. Tr. 83-84. Counsel argued to the judge that Ms. Smith would not have been able to see the perpetrator long enough to be able to identify him. Tr. 87-88. Before the jury, Counsel cross-examined Ms. Smith concerning how long she was able to see the perpetrator, the fact that she did not give a clear facial description to the 911 operator, and what the perpetrator was wearing. Tr. 113-115.

This Court finds Counsel was not deficient. Counsel challenged the identification through a Biggers hearing. He challenged Ms. Smith concerning her ability to see Applicant, what he was wearing, and how she described him to the 911 operator. This Court finds Counsel's elicited testimony that would raise a question of fact for the jury. Ms. Smith's descriptions of Applicant

<sup>1</sup> Neil v. Biggers, 409 U.S. 188 (1972).

would go to the weight of the evidence, not the admissibility. This Court finds his questioning was reasonable, helpful to Applicant's defense, and he was not deficient. This Court further finds Applicant has failed to show he was prejudiced by Counsel's actions, as he has failed to show how the outcome of his trial would have been different had Counsel approached the victim differently. This Court finds Counsel's cross-examination was not deficient and this Court will not speculate whether a "better" cross-examination would have helped Applicant. See Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997). Accordingly, this allegation must be dismissed.

Counsel should have objected to the State's reference to SLED bringing in the six person photo

Applicant alleged Counsel was ineffective for failing to object to the State's reference to SLED bringing in the six person photo lineup.

Officer Brooks testified he took the birth date Applicant provided the clerk and ran it through his department's database and found there was only one person in their database with that birth date – Jamal Hakeem. Tr. 38, 135. Officer Brooks then testified he had SLED make a six person photo lineup that included Applicant's picture. Tr. 74, 136. He testified after he got Applicant's name he was able to see a picture of him. Tr. 74. Officer Brooks testified he showed the lineup to Ms. Smith who was able to identify Applicant's photo as the robber. Tr. 75.

This Court finds Counsel was not deficient for failing to object to the State's reference to SLED bringing the six photo lineup. This Court finds Applicant has failed to articulate what objection Counsel should have made and how an objection to this testimony would have been successful. The Biggers hearing challenged the lineup procedure and the trial court found no issues. Ultimately, this Court finds Counsel's actions were not deficient for failing to object to the SLED reference, and this Court finds Applicant has failed to meet his burden of proving the

outcome of his trial would have been different had Counsel made such an objection. Accordingly, this allegation must be dismissed.

Failure to raise issue of trial judge approaching Applicant and Counsel during jury deliberations and asking if he would take a fifteen year plea

Applicant alleged Counsel was ineffective for failing to raise the issue of the trial judge asking Applicant and Counsel during jury deliberations if he would take a fifteen year plea. Applicant alleged Counsel should have raised this issue because the government should not interfere with the defense. Applicant testified he believed the trial judge's plea offer negatively affected his sentence. Ms. Hakeem testified she was with Applicant and Counsel during jury deliberations. She testified Counsel wanted Applicant to take a ten to fifteen year plea. She testified the trial judge went to their room and asked "yea or nay" but she could not recall if he specifically said he was offering Applicant a plea.

Counsel testified he talked with the solicitor during jury deliberations about a possible guilty plea offer. Counsel testified the trial judge stuck his head in their room but did not come in their room during deliberations to offer a plea. He testified he explained what an Alford plea was to Applicant but Applicant never wanted to accept a plea deal.

This Court finds Applicant has failed to meet his burden of proving Counsel was deficient for failing to raise the issue of the trial judge's actions during deliberations. This Court finds Applicant has failed to show the judge committed any misconduct and that his conduct was objectionable. Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of his trial was affected by this interaction. This Court finds Applicant has failed to show his conviction or sentence was affected by the judge's actions during deliberations. Accordingly, this allegation must be dismissed.



Failure to question the solicitor concerning his meeting with Counsel

Applicant alleged Counsel was ineffective for failing to question the solicitor about a meeting with Counsel where the solicitor stated the case was strange and felt something was wrong with it. This Court finds Applicant has failed to meet his burden of proving Counsel was deficient. Applicant has failed to show how the solicitor's comments affected his case and how Counsel should have addressed it with the court. This Court finds Applicant has failed to show the solicitor said anything objectionable. This Court further finds Applicant has failed to meet his burden of proving these comments and Counsel's actions affected the outcome of his trial. Accordingly, this allegation must be dismissed.

Failure to utilize *State v. Hart*, 403 S.E.2d 144, 304 SC 99, (S.C. Ct. App. 1991) in challenging the identification.

Applicant alleged Counsel was ineffective in failing to utilize *State v. Hart* concerning the victim's identification. *State v. Hart* was overruled by *State v. Hart*, 306 S.C. 344, 412 S.E.2d 380 (1991). The Supreme Court's opinion holds a defendant is allowed to exhibit his physical characteristics to the jury without being subject to cross-examination in order to counter the accuracy of a witness's identification. This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective. There was no indication Applicant requested to show his physical characteristics to the jury and Counsel would not let him. Counsel testified the video was clear, Applicant's hoodie was distinctively shown in the video, he immediately recognized Applicant in the video, Applicant wore sunglasses during the robbery, and Applicant gave his actual birth date to the victim store clerk. Furthermore, Applicant has failed to show what he should have exhibited to the jury and how this would have affected the outcome of his trial. As Applicant has failed to meet his burden of proving Counsel was deficient and the outcome of his trial would have been different, this allegation must be dismissed.

Failure to file a motion to reconsider

Applicant alleged Counsel was ineffective for failing to file a motion to reconsider the sentence. He testified the trial judge punished Applicant for exercising his right to a jury trial. Counsel testified he did not file a motion to reconsider and testified he did not believe the trial judge would have changed his sentence.

This Court finds Applicant has failed to meet his burden of proving Counsel was deficient. This Court finds the sentence imposed was within the statutory limits and there is no evidence the judge sentenced Applicant harshly for exercising his trial rights. Applicant has failed to demonstrate that he requested Counsel file a motion to reconsider or that Counsel had a duty file a motion to reconsider, and therefore, he has failed to show any deficiency of counsel. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments"). This Court finds Applicant has failed to show there was any basis for Counsel to file a motion to reconsider and has failed to show the motion would have been granted or that the outcome would have been different. Accordingly, this allegation must be dismissed.

**Newly Discovered Evidence**

Applicant asserts a claim of newly discovered evidence. He asserts Greenwood County Officer Brandon Strickland had since been arrested and indicted for Misconduct in Office. Officer Strickland resigned as part of an ongoing SLED probe in late October 2015. Applicant attached to his PCR application news articles from *The Greenwood Index-Journal* that describe these offenses. Applicant asserts the veracity of the statements made by Officer Strickland regarding the search warrant process has come into question since his arrest and the interests of justice would require that Applicant's conviction be vacated accordingly.

Respondent represented Officer Strickland was indicted in Greenwood County for misconduct in office (2016-GS-24-1112) alleging that Strickland mishandled evidence and public funds while serving as a Lieutenant in the Greenwood County Sheriff's Office from April 1, 2015 to on or about October 12, 2015. Officer Strickland was also indicted in Greenwood County for embezzlement (2016-GS-24-1113) alleging that he withdrew and converted for his own use public funds designated for the use of the Sheriff's Office and Drug Enforcement Unit, resulting in a loss to the Greenwood County Sheriff's Office and Drug Enforcement Unit of an amount of less than ten thousand dollars from April 1, 2015 to on or about October 12, 2015. Officer Strickland pled guilty to misconduct in office on December 13, 2017.

This Court finds Applicant has failed to meet his burden of proving his conviction should be vacated based on newly discovered evidence. A party requesting a new trial based on after-discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983). First, this Court finds Applicant has failed to show a sufficient nexus to the present matter as Officer Strickland's conduct is unrelated to Applicant's case. The allegations concern Strickland's conduct from April 1, 2015 to October 12, 2015, and Applicant's crime and the subsequent search took place on April 11, 2013. Furthermore, this Court finds such evidence does not directly affect Applicant's guilt or innocence because it could only be used at a new trial to impeach Strickland's testimony or

truthfulness. This evidence does not pass the Hayden factors. This Court finds that Applicant has failed to meet his burden of proving that these indictments constitute newly discovered evidence that would warrant a new trial and this allegation must be dismissed.

#### IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

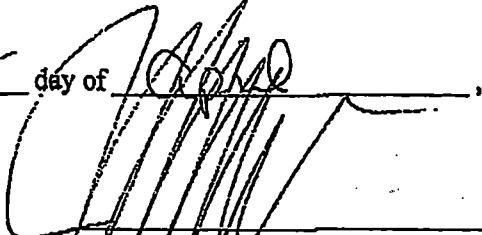
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**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
J. MARK HAYES, II  
Presiding Judge  
Eighth Judicial Circuit

Dreerwood, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENWOOD )  
 )  
 )  
JAMAL HAKEEM, #364712 )  
 Plaintiff, )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT  
 CASE NO.: 2017-CP-24-0592  
 MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET

FILED COMMON PLEAS  
 8TH JUDICIAL CIRCUIT  
 GREENWOOD, S.C.  
 2018 MAY -7 AM 9:56

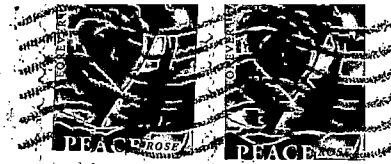
Plaintiff's Attorney: Ashley A. McMahan, Bar No. _____ Address: Post Office Box 5501 West Columbia, South Carolina 29169 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<i>[Signature]</i> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	April 18, 2018 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	



MAC | VANCE ATTORNEYS, LLC  
PO Box 5501  
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29171

COLUMBIA SC 29201

15 JUN 2018 PM 3:11



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

29211-133030

