

Law Offices of Jim Brown, P.A.

1600 Burnside Street, Suite 100• P.O. Box 592

Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

June 26, 2018

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

RECEIVED

JUN 28 2018

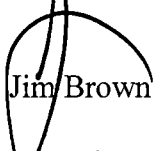
S.C. SUPREME COURT

Re: Notice of Appeal and Proof of Service, Dwayne Chisolm 2016-CP-07-02267

Mr. Shearouse:

Under cover of this letter, please find enclosed for filing in your court a Notice of Appeal (NOA) and Proof of Service (POS) in the above-referenced matter. Also enclosed please find copies of the Order of Dismissal filed on March 9, 2018 and received on March 13, 2018; and the Order Granting Rule 59 Motion in Part and Dismissing in Part filed April 25, 2018 and received on June 21, 2018. Please contact me if you have any questions.

Sincerely,


Jim Brown

w/ enclosures

cc: Beaufort County Clerk of Court, w/ NOA and POS
Christian Saville, Office of the Attorney General, w/ NOA and POS
Dwayne Chisolm, w/ All Enclosures

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh

RECEIVED

JUN 28 2018

S.C. SUPREME COURT

Case Number 2016-CP-07-2267

Dwayne Chisolm,.....Petitioner.

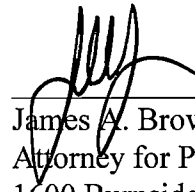
v.

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

NOTICE OF APPEAL

Dwayne Chisolm appeals the judgment of the Circuit Court, the Honorable Judge R. Lawton McIntosh, presiding, denying Applicant's request for post conviction relief. The Order of Dismissal was filed on March 9, 2018 and received by counsel for the Applicant on March 13, 2018. The Honorable Judge R. Lawton McIntosh also filed the Order Granting Rule 59 Motion in Part and Dismissing in Part filed April 25, 2018 and received by counsel for Applicant on June 21, 2018.

June 26, 2018



James A. Brown, Jr.
Attorney for Petitioner
1600 Burnside St, Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

Opposing Attorney of Record:
Christian, Assistant Attorney General
P.O. Box 11549
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh

RECEIVED
JUN 28 2018
S.C. SUPREME COURT

Case Number: 2016-CP-07-02267

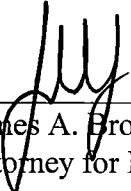
Dwayne Chisolm.....Petitioner.

v.

State of South Carolina.....Respondent

PROOF OF SERVICE

Counsel for Dwayne Chisolm hereby certifies that he has prepared and served a Notice of Appeal on this 26th day of June, 2018, upon the State, as specified in S.C. Code Section 203 (b) (1) , by depositing a copy, postage pre-paid, in the United States Mail, addressed to Attorney for Respondent, Christian Saville, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-11549, (803) 734-3970.



James A. Brown, Jr.
Attorney for Petitioner

June 26, 2018

Law Offices of Jim Brown, PA
1600 Burnside St., Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Dwayne Chisolm, #325820,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2016-CP-07-2267

**ORDER GRANTING RULE 59
MOTION IN PART AND DISMISSING
IN PART**

2018 APR 25 PM 12:27
CLERK OF COURT
BEAUFORT COUNTY, S.C.

I. PROCEDURAL POSTURE

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 24, 2016, and later amended January 3, 2017. Respondent submitted its return on April 17, 2017. An evidentiary hearing into the matter was convened on January 31, 2018, at the Beaufort County Courthouse before the Honorable R. Lawton McIntosh. Applicant was present at the hearing and was represented by James K. Arthur Brown, Jr., Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office. This Court dismissed Applicant's application with prejudice by an order of dismissal signed March 6, 2018, and filed March 9, 2018.

Applicant filed a motion to alter or amend pursuant to Rule 59(e), SCRPC, in which Applicant argues this Court's order of dismissal did not preserve the following **arguments** made at the evidentiary hearing:

That the jury instruction on constructive possession violated the South Carolina Constitutional provision prohibiting a trial judge from commenting on the facts of a case, and therefore Trial Counsel should have objected. See Article V, Section 21. Applicant also argued that but

for this failure to object, the result of the proceeding would have been different.

That Trial Counsel need not be clairvoyant to object to this charge because the limitation against trial judges providing a charge on the facts has been in existence for more than 100 years.

That State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987) is distinguishable because, when the court set forth the appropriate instruction for constructive possession, the court was analyzing the issue in the context of burden-shifting.

That this lack of objection was not part of trial strategy.

Applicant also argued in his motion that the order should not have addressed his other allegations, which he expressly waived.

Lastly, Applicant asks this Court to grant the application and reverse Applicant's convictions and sentences.

II. CONCLUSION

As to Applicant's request that this Court grant the application and reverse Applicant's convictions and sentences, this motion is denied. Applicant has failed to prove Trial Counsel's fell below an objective standard of reasonableness for failing to object to the routinely-given instruction on constructive possession, which the South Carolina Supreme Court has specifically declared as appropriate in State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987) and has not been found to be a charge on the facts. Furthermore, Applicant has failed to meet his burden of establishing prejudice from this alleged deficiency. For these reasons, and the reasons set forth in this Court's order of dismissal, Applicant's motion for this Court to grant Applicant's application and reverse the convictions and sentences is **denied**.

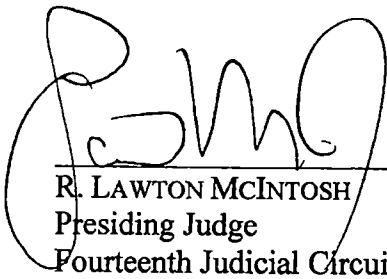
As to Applicant's request that the original order be amended to include the fact he raised the arguments enumerated in Section I of this order, that motion is **granted**. The original order of

dismissal shall be amended to include Applicant's arguments enumerated above, but to deny and dismiss Applicant's application with prejudice.

IT IS THEREFORE ORDERED:

1. For the reasons stated above, Applicant's Rule 59 Motion to Alter or Amend is **denied** to the extent Applicant requests this Court grant his application and reverse his convictions and sentences.
2. For the reasons stated above, Applicant's Rule 59 Motion to Alter or Amend is **granted** to the extent that the order of dismissal should be amended to include the above-listed arguments raised by Applicant, but not to grant the application.
3. Applicant must be remanded to the custody of Respondent.

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



R. LAWTON MCINTOSH
Presiding Judge
Fourteenth Judicial Circuit

Anderson South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP0702267**

Dwayne Chisolm		South Carolina State Of	
----------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order Statement of Judgment by the Court:

Order of Dismissal

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ R. L. McIntosh
Circuit Court Judge

2155
Judge Code

3/6/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on **March 9, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **March 12, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Dwayne Chisolm #325820 Lee Corr. Inst. F 6 1257 990
Wisacky Hwy Bishopville, SC 29010
James Kristian Falk PO Box 1058 Charleston, SC 29402
James Arthur Brown Jr. PO Box 592 Beaufort, SC 29901

Christian Aaron Saville 1000 Assembly Street Columbia, SC
29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melissa Kilby

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Dwayne Chisolm, #325820,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2016-CP-07-2267

ORDER OF DISMISSAL

2018 MAR -9 PM 12:28
JESSI ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 24, 2016, and later amended January 3, 2017. Respondent submitted its return on April 17, 2017. An evidentiary hearing into the matter was convened on January 31, 2018, at the Beaufort County Courthouse. Applicant was present at the hearing and was represented by Jim Brown, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court were the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and the application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Dwayne Chisolm ("Applicant") is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The July 2010 term of the Beaufort County Grand Jury indicted Applicant for trafficking cocaine, 100-200 grams, first offense (2010-GS-07-1251), possession with intent to distribute ("PWID") crack cocaine, first offense (2010-GS-07-1252), possession of

a weapon during the commission of a violent crime (2010-GS-07-1253), and possession of a firearm with an obliterated serial number (2010-GS-07-1254). Assistant Public Defenders Jessica Saxon, Esquire, Ari Bax, Esquire, represented Applicant at trial. Assistant Solicitors Mary Concannon, Esquire, and Julie Kate Kenney, Esquire, prosecuted the case. On October 23, 2014, Applicant was convicted as indicted after a jury trial before the Honorable Carmen T. Mullen. Judge Mullen sentenced Applicant to imprisonment for twenty-five years for trafficking cocaine, 100-200 grams, first offense, fifteen years for PWID crack cocaine, first offense, five years for possession of a weapon during the commission of a violent crime, and five years for possession of a firearm with an obliterated serial number, to be served concurrently.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 29, 2016. State v. Chisolm Op. No. 2016-UP-332 (Ct. App. 2016). The remittitur was issued on July 15, 2016.

II. ALLEGATIONS

Applicant filed a PCR application alleging the following:

1. "Failure to Mirandize me prior to questioning."
2. "Misconduct of several officers involved in my case."
3. "Affidavit refused to state grounds to warrant no info on informant."

Applicant's PCR Counsel, Jim Brown, Esquire ("PCR Counsel"), subsequently filed an amended application on behalf of Applicant alleging the following:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel failed to challenge the introduction of an inculpatory statement made by the State."
 - b. "Trial Counsel failed to argue the deficiencies in evidence seized pursuant to a search warrant that the State introduced."
 - c. "Trial Counsel failed to object to jury instructions that contained improper comments on the facts."
2. Brady Violation

- a. “The State failed to disclose impeachment information concerning misconduct to Trial Counsel.”

At the January 31, 2018, hearing, Applicant expressly withdrew his allegations that Trial Counsel failed to argue the deficiencies in evidence seized pursuant to a search warrant that the State introduced as well as the Brady allegation.

III. SUMMARY OF ARGUMENTS PRESENTED

Applicant’s argument

Applicant informed this Court an officer who was later released from his position after facing allegations of misconduct testified at trial about Applicant’s inculpatory statement. Applicant conceded he has no reason to believe the officer’s misconduct later in his career was related in any way to this case. Furthermore, Respondent and this Court noted Applicant was mistaken about the officer’s testimony, as that officer in question did not testify about the statement at trial, nor did the officer have anything to do with Applicant’s inculpatory statement to police. Rather, it was Corporal Squires, against whom Applicant has made no allegations, who testified to Applicant’s statement at trial. See Transcript pp. 201 – 216.

Applicant further argued Trial Counsel was ineffective for failing to object to the trial judge’s charge on constructive possession, which Applicant alleged to be an improper charge on the facts. Applicant enumerated the following selections, in which the trial judge is charging constructive possession as to each of Applicant’s drug charges, as being at issue:

Constructive possession is when a person has dominion or control or the right to exercise dominion or control over either the object or the premises on which the object is located.

...possession may be inferred from the circumstances, and may be imputed to anyone who has the power and intent to control the disposition and the use of the object. In other words, possession of an object or the premises gives rise to an inference that the person charged has both the power and intent to control the use and disposition of the object.

Proof of possession requires more than proof of mere presence at the place where the controlled substance is found. Ladies and gentlemen, the State must prove the defendant had both the power, that is actual or constructive control, and the intent to control its disposition or use.

Constructive possession means that someone has the dominion and control or the right to exercise dominion or control over either the crack cocaine itself or the property on which the crack cocaine was found.

A defendant must have knowledge, and possession may be inferred when a substance is found on the property under the defendant's control.

...constructive possession means that a person has the dominion and control or the right to exercise dominion or control over either the object itself or the property on which the object is found.

A defendant's knowledge and possession may be inferred when a handgun is found on the property under a defendant's control.

Transcript p. 322, l. 19 – p. 326, l. 5.

Applicant argued the harm from the constructive possession charge was compounded by the amount of times it was given to the jury. Applicant noted the jury went to deliberate after the full jury charge, but requested the trial judge to describe constructive possession again. The trial judge proceeded to send the following the charge on constructive possession back to the jury:

Constructive possession means that the defendant had dominion and control, or the right to exercise dominion or control, over either the drugs themselves or the property on which the drugs were found.

The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control.

Transcript p. 332, ll. 1-9.

After Trial Counsel objected to the trial judge sending only the constructive possession portions of the charge back to the jury, the trial judge sent the entire jury charge.

At the PCR hearing, Applicant argued that case law such as State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), and State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), is evidence of a trend in South Carolina courts to more frequently invalidate jury charges construed

to impermissibly charge on the facts. Moreover, Applicant argued the charge at issue in Stukes was analogous to the charge given in this case.¹ Applicant asserted that the jury charge was unconstitutional, and Trial Counsel was deficient for failing to object to or challenge the charge. He further asserted Trial Counsel's failure to object prejudiced his case.

Respondent's Argument

Respondent submitted the constructive possession jury charge was an issue for direct appeal rather than PCR. Respondent characterized the allegation as an attempt to raise a direct appeal issue by improperly framing the issue as a claim of ineffective assistance of counsel, as Trial Counsel had no reason to object to the jury instruction at the time of trial. The constructive possession charge was and remains the standard charge routinely given to juries.

Notwithstanding, Respondent submitted the trial judge's constructive possession charge was appropriate under State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987) (holding the proper charge on constructive possession is to instruct the jury that the defendant's knowledge and possession may be inferred if the substance was found on the premises under his control). Furthermore, Respondent noted the trial judge explained the jury was free to accept or reject the permissible inference depending on their view of the evidence, as instructed by Adams. 291 S.C. at 135.

Furthermore, Respondent argued the present case is distinguishable from Stukes. In the present case, Respondent argued, the trial judge merely gave the commonly accepted charge that knowledge and possession *may* be inferred by whether the substance was found on the premises under his control before explaining they were free to accept or reject the permissible inference depending on *their* view of the evidence (emphasis added). In Stukes, however, the jury charge

¹ In response to this Court's request, Applicant submitted a hypothetical proposed jury charge he feels explains constructive possession without improperly commenting on the facts.

intruded upon the jury's duty to evaluate the veracity of witness testimony by charging the jury that the victim's testimony need not be corroborated due to statute. Respondent also submitted the charge in Stukes lacked the qualifying language from the present case advising the jury they were free to accept or reject the inference. Finally, Respondent noted Applicant's trial took place approximately two years prior to the Stukes opinion, and to find Trial Counsel should have objected to the jury charge based on Stukes would hold Trial Counsel to a standard of clairvoyance.

IV. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard arguments from both parties at the post-conviction relief hearing. 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).

INEFFECTIVE ASSISTANCE OF COUNSEL

Failure to Object to Jury Instruction

Applicant alleges Trial Counsel was ineffective for failing to object to the trial judge's jury charge regarding constructive possession. "It is uniformly held that an application for post-conviction relief is not a substitute for an appeal." Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). Respondent argued this allegation should be dismissed as a matter for direct appeal rather than post-conviction relief. This Court agrees.

Furthermore, this Court finds Applicant's framing of this issue as a claim of ineffective assistance of counsel to be meritless, as Trial Counsel is not ineffective for failing to object to a correct statement of law. "The proper charge on constructive possession is to instruct the jury that the defendant's knowledge and possession may be inferred if the substance was found on the premises under his control." State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987) (citing State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981); State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976)). "The trial judge should explain to the jury that it is free to accept or reject this permissive inference of knowledge and possession depending upon its view of the

evidence.” Adams, 291 S.C. at 135-136, 352 S.E.2d at 486. In this case, the trial judge charged the jury on constructive possession in accordance with Adams, which was good law at the time of Applicant’s trial and remains good law as of the issuance of this Order.

In addition to the applicable case law finding the jury charge to be appropriate, the trial judge’s constructive possession charge also traced the language routinely submitted to juries in South Carolina courts and contained in Judge Ralph King Anderson’s widely used book of jury instructions. Ralph King Anderson, Jr., *South Carolina Requests to Charge-Criminal* (2d ed.2007). Trial Counsel’s failure to object to this correct statement of law was clearly not unreasonable under professional norms. See Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Applicant argues the charge was improper under State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), and a “trend” in South Carolina case law is without merit and not applicable to Applicant’s allegations. An attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial. See Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)). Applicant was convicted on October 23, 2014, almost two years before the Stukes opinion was issued. The Court in Stukes found a jury charge to be improper where it addressed witness veracity by instructing the jury that a victim’s testimony need not be corroborated with additional evidence. Stukes, 416 S.C. at 498. This is not analogous to the charge in the present case which did made no comment on veracity and stressed that the jury was free to accept or deny a permissive inference depending on their view of the evidence. Notwithstanding the inapplicability of Stukes to the present case, Trial Counsel cannot be required to anticipate a change or proposed change in longstanding good law.

For these reasons, this Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient under Strickland, as Trial Counsel had no reason to object to a correct statement of law and cannot be held to a standard of clairvoyance to anticipate changes or proposed changes in the law. Therefore, this allegation is denied and dismissed with prejudice.

This Court further finds Applicant has failed to show he was prejudiced by Trial Counsel's failure to object. Because the jury charge was proper under the law, any objection by Trial Counsel would have been overruled. Applicant has failed to prove that an objection would have changed the outcome of the case and thus can show no prejudice under the second prong of the Strickland test. Accordingly, because Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failure to challenge the introduction of an inculpatory statement

Applicant set forth no grounds to support the allegation that Trial Counsel was ineffective for failing to challenge the introduction of an inculpatory statement. Applicant first mistakenly informed this Court an officer who was later released from his position after facing allegations of misconduct testified at trial about Applicant's inculpatory statement. While Applicant conceded he has no reason to believe the officer's misconduct later in his career was related in any way to this case, this Court also observed that Applicant was mistaken about the officer's testimony, as that officer in question did not testify about the statement at trial, nor did the officer have any involvement with Applicant's inculpatory statement made to police. This Court notes it was in fact Corporal Squires, against whom Applicant alleges no misconduct, who took Applicant's statement and testified about it at trial. See Transcript pp. 201 – 216. Applicant failed to present any evidence that Trial Counsel was ineffective in this manner, and this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

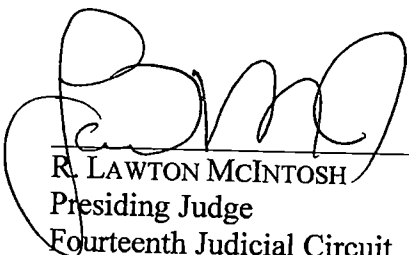
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6 day of March, 2018.


R. LAWTON MCINTOSH
Presiding Judge
Fourteenth Judicial Circuit

Anderson, South Carolina



1000



29211

U.S. POSTAGE
PAID
BEAUFORT, SC
29902
JUN 25 18
AMOUNT

\$1.84
R2304H109039-05

Law Offices of Jim Brown, P.A.
1600 Burnside St., Suite 100
P.O. Box 592
Beaufort, SC 29901

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

