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JUL 02 2018

S.C. SUPREME COURT

June 29, 2018

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

Re: Reco Antonio Godbolt v. State of South Carolina
Common Pleas File No.: 2016-cp-43-0975

Dear Mr. Shearouse:

Enclosed are the originals and one copy each of the Notice of Appeal, with attachment, and Certificate of Service. Please file the originals and return the filed stamped copies to me in the enclosed, self-addressed, envelope. Furthermore, a draft in the amount of One Hundred and 00/100 (\$100.00) Dollars is enclosed to satisfy the filing fee.

Please contact me if you have any problems complying with my request, or have any other questions or concerns. My preferred method of communication is email at brookerlawfirm@aol.com.

Sincerely,



Thurmond Brooker, Esq.

TB/tb
Enclosures

cc: Alan Wilson, Attorney General of South Carolina
Julie Coleman, Assistant Attorney General of South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 02 2018

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

George M. McFadden, Jr., Circuit Court Judge

Case No. 20016-CP-43-0975

Reco Antonio Godbolt,

Appellant

Vs.

State of South Carolina,

Respondent,


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the NOTICE OF APPEAL was served by depositing the same with the United States Postal Service, first class mail, with sufficient posted attached thereto, on this 29th day of June 2018 addressed to the identified persons as follows:

ALAN WILSON, Attorney General
JULIE A COLEMAN, Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

James C. Campbell
Clerk of Court – Sumter County
Sumter County Judicial Center
215 N. Harvin Street
Sumter, SC 29150

June 29, 2018
Florence, SC



Thurmond Brooker, Esq.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
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George M. McFadden, Jr., Circuit Court Judge

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Reco Antonio Godbolt,

Appellant

Vs.

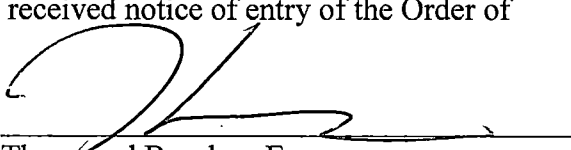
State of South Carolina,

Respondent,

NOTICE OF APPEAL
(Post-Conviction Relief)

Reco Antonio Godbolt, Appellant, appeals the Order of Dismissal dismissing/denying his application for post-conviction relief. The Order of Dismissal was entered on May 30, 2018, and Appellant received notice of entry of the Order of Dismissal or about Monday, June 5, 2018.

June 29, 2018


Thurmond Brooker, Esq.
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Florence, SC 29503-1450
(843) 679-0056 – telephone
Attorney for Appellant

Other Counsel of Record:

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Reco Antonio Godbolt, #342149,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2018 MAY 30 AM 9:11

JAMES S. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
2016-CP-43-0975

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 20, 2016. Respondent submitted its Return on February 28, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Thurmond Brooker, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Grant Smaldone, Esquire ("Trial Counsel") and Solicitor John P. Meadors ("Solicitor"). This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, Applicant's records for the Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted by the January 2012 term of the Grand Jury for Sumter County for kidnapping, first-degree burglary, attempted murder, armed robbery, possession of a

weapon during the commission of a violent crime, and criminal conspiracy (2012-GS-43-0227). Applicant was represented by Grant Smaldone, Esquire. John P. Meadors, Esquire, prosecuted the case. Applicant proceeded to a jury trial before the Honorable George C. James, Jr. and was convicted of kidnapping, first-degree burglary, armed robbery, possession of a weapon during a violent crime, and criminal conspiracy. Judge James sentenced Applicant on December 6, 2012 to twenty-five years' imprisonment for kidnapping, twenty-five years for burglary, twenty-five years for armed robbery, five years for possession of a weapon during a violent crime, and five years for criminal conspiracy, to be served concurrently.¹

Applicant filed a timely notice of appeal. An Anders brief was submitted, and the South Carolina Court of Appeals dismissed Applicant's appeal in an opinion filed May 6, 2015. State v. Godbolt, Op. No. 2015-UP-229 (S.C. Ct. App. 2015). The Remittitur was returned on May, 26, 2015.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel [failed] to object to the introduction of bad character evidence where testimony was permitted regarding defendant's possession of property stolen from another residence on the same day."
 - b. "Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant not made available for confrontation or cross examination at trial or before trial."
 - c. "Failing to subpoena Detective at trial for cross-examination."
 - d. "Counsel was ineffective based on the cumulative errors made at trial."

¹ Applicant also pled guilty to a separate charge of first-degree burglary stemming from an incident the same day as the current charges (2012-GS-43-1314). On February 19, 2013, Applicant was sentenced by the Honorable George C. James, Jr. to ten years' imprisonment to be served concurrently with his sentence from December 6, 2012. Applicant does not challenge in this conviction in his current application.



Applicant filed an amended application on November 16, 2017, adding the following allegations:

1. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of prior bad act evidence at trial.
2. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the admission of false or perjured testimony by a witness and prosecutorial misconduct for eliciting false testimony.
3. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of testimony at trial in violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he was arrested by Robert Richburg for two burglaries, and he went to the Sumter County Police Department, where he was questioned about the case. He stated he was questioned for two or three hours, and Detective Kelly, who testified at his trial, was present during the questioning. He stated before his interrogation, he was read his Miranda rights and he waived his right to remain silent and his right to an attorney. He stated Richburg read him his rights, and he did all the questioning. Applicant testified he gave a written statement to law enforcement right after the interrogation, and he only made one statement. He testified that, although Richburg did everything at his interrogation, he was not present to testify at his trial; instead, Detective Kelly testified at trial about the interrogation. He stated it was improper for Kelly to testify about what happened because she was not the person who Mirandized him or asked the questions



Applicant testified David Sullivan represented him for three months on his charges. He stated he had no communication with Sullivan and had no discovery at that time. He testified Trial Counsel was finally appointed ten months after his arrest. Applicant testified he met with Trial Counsel a month and a half later; Trial Counsel called him on the phone and brought him his discovery a couple days later. Applicant stated Trial Counsel came to the county jail a week before trial and asked if he would testify against his codefendant. Applicant told him he would not, so Trial Counsel told him to get ready for trial. He stated Trial Counsel never brought him a plea offer from the State. He stated Trial Counsel let him listen to the 911 call recording on his laptop before the trial. He testified there was no discussion of potential witnesses. Applicant testified his codefendant pled guilty on the second day during the trial. He stated he thought they might get a plea offer, but he never got an offer from the State.

Trial Counsel's testimony

Trial Counsel testified he was appointed to this case through the Public Defender's Office in July 2012. He stated he inherited this case from another Public Defender, but it was not his first criminal trial; it was at least his third criminal trial. He stated he visited Applicant three to five times at the detention center. He could not recall the amount of time he spent with Applicant on each visit, but he stated he would have been there long enough to answer all Applicant's questions. Trial Counsel testified he had just received the CD audio tape of the 911 phone call recording that day, before the trial began, and he played it for Applicant to hear before the trial. Trial Counsel testified Applicant was arrested for a home invasion and was caught at the scene of the crime and arrested. He stated Applicant gave a statement to law enforcement admitting some involvement in the crime.



Trial Counsel testified his strategy was to request the lesser-included offense, and he had asked for second-degree burglary, non-violent. He stated law enforcement found a laptop stolen from another house in the car Applicant and his codefendant were driving, and he joined in the codefendant's motion to sever the charges about the two different robberies, and the charges were severed. He stated that, because the charges were severed, the parties should not have mentioned any evidence from the other offense. However, he stated the victim testified about the laptop at trial. ROA 150, line 18-21. Trial Counsel testified he could not recall why he did not object to this testimony, but in this situation it would only call more attention to it to object. He stated he either overlooked the comment or he did not want to call any more attention to it by objecting, but he does not know which it was.

Trial Counsel testified Applicant's statement was read into evidence at trial and included a comment that was probably about the other robbery, but it did not specifically say this in the statement. ROA 267, line 15. He stated he did not know if this was evidence of a prior bad act, but he could not recall why he did not object or ask to have it stricken from the record. He later stated saw no reason to object to the statement because Applicant did not implicate himself in the other robbery in the statement, and it was a statement *he* had made to law enforcement, so he could not object to its admission based on those grounds.

Trial Counsel testified he saw no reason to object to Detective Kelly's testimony about Applicant's interrogation because it was not hearsay testimony. He stated it was not given to prove the truth of the matter asserted, and Kelly was present during the questioning and properly testified about what she saw and heard while there. Trial Counsel testified Hue Tang testified at trial about the gunshot residue test, but he did not perform the test. He stated he did not believe Tang's testimony was a violation of the confrontation clause, but possibly more of a hearsay



issue. However, he stated no gunshot residue was found on Applicant. Trial Counsel testified he did not object to statements the victim testified Applicant and his codefendant made while they were chasing him, such as “We got a gun,” and “We are going to kill you,” because they were proper under the doctrine of *res gestae*.

Trial Counsel testified there was never a solid plea offer from the State, but there was a “soft offer” for a range of twelve to twenty or twenty-five years if Applicant would testify against his codefendant, and Applicant chose not to testify. Trial Counsel opined the evidence of Applicant’s guilt was very strong for the changes of which he was convicted, but there was not much strong evidence of attempted murder, of which he was acquitted.

Solicitor’s testimony

Solicitor Meadors testified he believed Applicant would have been convicted of the crime even if the last paragraph of his statement had not been admitted into evidence, even if it were a prior bad act. He stated the victim’s comment about the neighbor’s laptop in the car was completely admissible because it was *res gestae*, not evidence of a prior bad act, it was just part of his story. He opined that no defense attorney would have objected to the comment about the laptop. Meadors testified he had been practicing law for thirty years and from his experience he knows it is unethical to make an improper objection. Solicitor Meadors testified Detective Kelly was present when Richburg read Applicant his Miranda rights and questioned him, and she took part in the investigation on the case. He stated her testimony was proper because she testified about her personal knowledge and did not misrepresent the information. He testified he was not misleading the jury by having Kelly testify at trial instead of Richburg. Solicitor Meadors testified that Trial Counsel did an outstanding job on this case.



IV. APPLICABLE LAW

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

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

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



V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

INEFFECTIVE ASSISTANCE OF COUNSEL

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

The record before the Court and the testimony presented show Trial Counsel was fully prepared for trial, he made the proper objections, and properly argued the case according to his trial strategy. Before the trial, he met with Applicant, reviewed the discovery and evidence with him, and offered him the opportunity to testify against his codefendant to attempt to negotiate a plea offer from the State. Trial Counsel's actions were well within reasonable professional norms, and his representation was not ineffective. Each individual allegation is addressed below.

Failure to object to testimony about neighbor's laptop

Applicant alleges Trial Counsel was ineffective for failing to object to the victim's trial testimony about a laptop from a neighbor's house inside the car Applicant and his co-defendant had parked in the driveway of his home while they were burglarizing his house. He claims the comment was evidence of a prior bad act, which was inadmissible under the South Carolina



Rules of Evidence, because it suggested the laptop had been stolen from another house in the neighborhood.

At the evidentiary hearing, Trial Counsel testified he did not feel the need to object to this testimony because he believed it was proper under the doctrine of *res gestae*, and he may have believed that if he objected to it, his objection would draw more attention to the testimony in front of the jury. "Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy." State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rules 401 & 402, SCRE). "The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. McGee, 408 S.C. 278, 287, 758 S.E.2d 730, 735 (Ct. App. 2014) (citing State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999)). "The evidence admitted must logically relate to the crime with which the defendant has been charged." Id. (citing Wiles, 383 S.C. at 158, 679 S.E.2d at 176).

This Court finds the victim's testimony regarding the laptop was admissible as *res gestae*, and there was a sufficient nexus between the laptop and the burglary occurring inside the victim's home. See McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014). Accordingly, this Court finds Trial Counsel was not deficient in failing to object. This Court further finds no prejudice to Applicant from any failure to object based on the strength of the evidence against him. Applicant was arrested at the scene of the crime after a police chase on foot. The victim identified him as one of the two people who broke into and robbed his home, then chased him from the home, shooting at him as he ran. Applicant also gave a statement to law enforcement admitting at least some involvement in the crime. Accordingly, Applicant has failed to prove deficiency or prejudice, and this allegation is denied and dismissed with prejudice.



Failure to subpoena Detective Richburg or object to Detective Kelly's hearsay testimony

Applicant alleges Trial Counsel was ineffective for failing to object to Detective Kelly's alleged hearsay testimony regarding his interrogation and for failing to subpoena Detective Richburg to testify at trial about the interrogation. The evidence shows Richburg conducted the interrogation and advised Applicant of his Miranda rights, which he waived and proceeded to give a statement to law enforcement in which he admitted his involvement in the crime. Detective Kelly did not Mirandize Applicant or ask him questions in the interrogation, but she was present throughout the entire interrogation and observed Richburg's interactions with Applicant. At trial, she testified that she was present at the interrogation and she observed Richburg Mirandizing and questioning Applicant.

This Court finds Kelly's testimony was not improper hearsay testimony. Kelly did not state anything Richburg directly said in the proceeding, and none of her testimony was used to prove the truth of the matter asserted. She merely explained to the jury that she was present and observed Applicant being read his Miranda rights, waive them, and answer questions. Accordingly, this Court finds Trial Counsel was not ineffective for failing to make a hearsay objection to her testimony. This Court further finds Trial Counsel did not deprive Applicant of his constitutional right to confront witnesses under the confrontation clause of the United States constitution by failing to object to Kelly's testimony or subpoena Richburg to testify about the interrogation. Applicant was given a full opportunity at trial to confront and cross-examine Detective Kelly about her testimony and the proceedings at the interrogation that she observed. Applicant has failed to prove either prong of the Strickland test or any violation of his constitutional rights that would entitle him to post-conviction relief, and this allegation is denied and dismissed with prejudice.



Failure to object to false or perjured testimony

Applicant alleges Trial Counsel was ineffective for failing to object to the false or perjured testimony of Detective Kelly at trial, and that she improperly testified that she Mirandized Applicant and questioned him at his interrogation, when these things were actually done by Detective Richburg. This allegation is meritless. Kelly's testimony is clear that she was present and observed these parts of the interrogation. At no point does she falsely testify about her involvement or intentionally mislead the jury about her involvement in the proceeding. Taken as a whole, her trial testimony is clear about her involvement in the proceeding, and she does not give perjured testimony. Accordingly, Trial Counsel cannot be ineffective for failing to object to the testimony. Applicant has failed to meet his burden of proving this allegation, and the claim is denied and dismissed with prejudice.

Failure to object to GSR analyst testimony

Applicant alleges Trial Counsel was ineffective for failing to object to the testimony of Special Agent Hue Tang, who testified at trial as an expert in trace evidence and gunshot residue. Tang testified about the gunshot residue test of Applicant taken at the crime scene. Tang did not conduct or administer the test, but he testified that he peer reviewed the examinations and the results that John Roberts, who took the test, got from his examination. ROA 341, line 19-22. Roberts did not testify at trial. Tang testified that the results of this test did not indicate the presence of gunshot residue on Applicant's hands. ROA 344, line 12-17.

Applicant claims that, because Tang did not administer the test but only peer reviewed the results, it was improper for him to testify at trial about the test, and the testimony from Tang instead of Roberts violated his constitutional rights under the confrontation clause. This Court finds Tang's testimony was proper, as he testified about his personal knowledge from reviewing



the results of the specific test. He testified in general about how tests are typically administered and the evidence is usually gathered. He did not testify about how this specific test was collected, but only what the results from the lab showed, which is his proper knowledge and background to do.

This Court finds Trial Counsel was not deficient for failing to object to his testimony. Furthermore, even if Tang's testimony were improper, this Court finds no prejudice for a failure to object, because the results of the gunshot residue test showed Applicant had no gunshot residue on his hands, and Applicant was acquitted of the attempted murder charge. Accordingly, none of Tang's testimony harmed Applicant at trial or affected the result of his convictions on the other charges. Applicant has failed to meet his burden of proving either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Applicant alleges prosecutorial misconduct for presenting false or perjured testimony. It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant failed to carry his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed. Applicant's assertion that Solicitor Meadors knowingly presented perjured testimony from Detective Kelly at trial regarding her participation in the interrogation of Applicant during her investigation is meritless. The record shows Detective Kelly was present in the room during the interrogation and observed Detective Richburg advise Applicant of his Miranda rights and question him. Her testimony properly recounted her personal knowledge of the proceedings at the interrogation and was not presented to mislead the jury. Applicant has failed to prove Kelly's testimony was misleading or false, and that Solicitor Meadors acted improperly in presenting her testimony. He has further



failed to prove the violation of any constitutional right regarding this witness. Accordingly, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

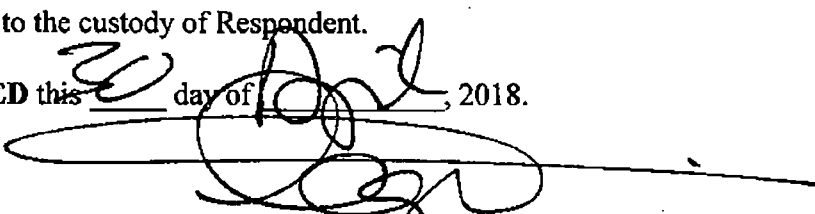
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, 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; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 20 day of April, 2018.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit


_____, South Carolina

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"Dilligent, Loyal & Honest"

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