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AUG 22 2018  
S.C. SUPREME COURT

August 21, 2018

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

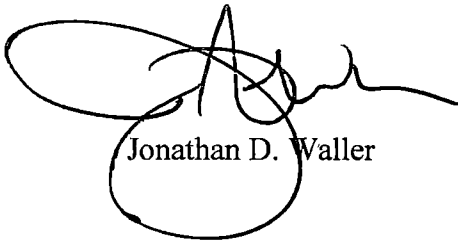
Re: Christian Coleman vs. State of South Carolina  
C/A No: 2013-CP-38-0720

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Coleman in this matter and am also enclosing a copy of the Order of Dismissal as well as the Order Denying 59(e) Motion. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Christian Saville, South Carolina Office of Attorney General

Enclosures

Waller Law Group  
1116 Blanding Street, Suite 2B  
Columbia, SC 29201

803-520-7278  
www.wallerlawgroup.com  
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Maité Murphy, Circuit Court Judge

2013-CP-38-0720

RECEIVED  
AUG 22 2018  
S.C. SUPREME COURT

Christian Coleman, #344192,

Appellant,

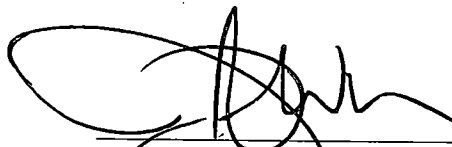
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Christian Coleman, #344192, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed November 9, 2015, and the Order Denying Rule 59(e) Motion to Amend filed January 31, 2018 and served on counsel for Applicant August 1, 2018, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

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SC Bar No.: 76290  
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ATTORNEY FOR PETITIONER

August 21, 2018

Other Counsel of Record:  
Christian Saville, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Maité Murphy, Circuit Court Judge

2013-CP-38-0720

**RECEIVED**  
AUG 22 2018  
S.C. SUPREME COURT

Christian Coleman, #344192,

Appellant,

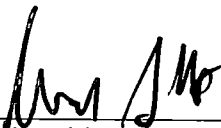
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Christian Saville, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to his office located at P.O. Box 11549, Columbia, SC 29211.

  
\_\_\_\_\_  
M. David Scott

August 21, 2018

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

Case no. 2013-CP-38-0720

Christian Coleman, #344192, )  
Applicant, )

**ORDER DENYING RULE 59(e)  
MOTION TO AMEND**

v. )

State of South Carolina, )  
Respondent. )

FILED FOR RECORD  
WINNIE B. CLARK  
2018 JAN 31 A 11 56  
CLERK OF COURT  
ORANGEBURG, SC

This matter comes before the Court by way of Petitioner's Motion to Amend from the Honorable Maité Murphy's Order of Dismissal pursuant to Rule 59(e), SCRS, filed November 20, 2015. This Court finds the following:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was true bill indicted during the May 2010 term of the Orangeburg County Grand Jury for Armed Robbery (2010-GS-38-802), Burglary – First Degree (2010-GS-38-803), Possession of a Weapon During the Commission of a Violent Crime (2010-GS-38-804), Murder (2010-GS-38-805), and Kidnapping (2010-GS-38-806). Richard E. Lackey, Esquire, represented Applicant. On December 10-17, 2010, Applicant proceeded to trial before a jury. Applicant was found guilty of Armed Robbery, Burglary – First Degree, and Murder. The charges for Possession of a Weapon and Kidnapping were dismissed prior the trial. The Honorable Edgar W. Dickson sentenced Applicant to confinement for a period of thirty years for Armed Robbery, forty-five years for Burglary – First Degree, and forty-five years for Murder, with the sentences to be

served concurrently.

A Notice of Appeal was filed on Applicant's behalf on December 27, 2010. The South Carolina Court of Appeals dismissed the appeal. *State v. Coleman*, No. 2012-UP-645 (Ct. App. December 5, 2012). The Remittitur was issued on January 4, 2013.

Applicant filed an application for post-conviction relief on June 17, 2013. The Honorable Maité Murphy dismissed Applicant's motion on October 28, 2015 after an evidentiary hearing held on May 20, 2015. On November 20, 2015, Applicant filed a 59(e) motion to amend through PCR counsel. On January 3, 2017, Respondent filed its Return to Respondent's 59(e) motion.

## II.

This Court finds the Final Order of Dismissal previously signed by this Court contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCP. See also *McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Accordingly, this Court denies Applicant's 59(e) motion to amend.

## III.

In his motion, Applicant alleges counsel was ineffective for failing to object to hearsay testimony introduced during the testimony of Lieutenant James Shumpert. No meritorious defense has been delineated by Applicant. Trial counsel adequately explained the reasoning and strategy behind his decision not to object. Even assuming there was error, Applicant has failed to establish prejudice from trial counsel's failure to object. Furthermore, trial counsel's failure to object to parts of Shumpert's testimony based on trial strategy was addressed on page 8 of the Order of Dismissal. This Court finds Applicant has failed to present evidence proving facts essential to entitle him to relief or require amendment to the standing order of dismissal; therefore, the motion is denied. Bowers, supra.

V.

Based on the foregoing, this Court finds and concludes Applicant has not established grounds requiring this Court to amend its Order of Dismissal. Therefore, this motion is denied.

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

AND IT IS SO ORDERED this 25 day of Jan., 2018.

Maite' Murphy  
MAITE MURPHY  
Presiding Judge  
1<sup>st</sup> Judicial Circuit

St. Mary, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Christian Coleman, #344192,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2013-CP-38-0720

ORDER OF DISMISSAL

FILED FOR RECORD  
JAN 9 2014  
CLERK OF COURT  
ORANGEBURG COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 17, 2013. Respondent made its Return on October 17, 2013, requesting an evidentiary hearing be convened. Jonathan D. Waller was appointed by the Orangeburg Clerk of Court. An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel Richard E. Lackey, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, appellate records, the PCR application, amended application, the Return, and the transcript.

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was true bill indicted during the May 2010 term of the Orangeburg County Grand Jury for Armed Robbery (2010-GS-38-802), Burglary – First Degree (2010-GS-38-803), Possession of a Weapon During the Commission of a Violent Crime (2010-GS-38-804), Murder (2010-GS-38-805), and

ATTEST: TRUE COPY  
*Wingja B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY

Kidnapping (2010-GS-38-806). Counsel Lackey represented Applicant. On December 10-17, 2010, Applicant proceeded to trial before a jury. Applicant was found guilty of Armed Robbery, Burglary – First Degree, and Murder. The charges for Possession of a Weapon and Kidnapping were dismissed prior the trial. The Honorable Edgar W. Dickson sentenced Applicant to confinement for a period of thirty (30) years for Armed Robbery, forty-five (45) years for Burglary – First Degree, and forty-five (45) years for Murder, with the sentences to be served concurrently.

A Notice of Appeal was filed on Applicant's behalf on December 27, 2010. The South Carolina Court of Appeals dismissed the appeal. *State v. Coleman*, No. 2012-UP-645 (Ct. App. December 5, 2012). The Remittitur was issued on January 4, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel in:
  - a. Failing to properly advise Applicant of the charges and evidence.
  - b. Failing to personally conduct jury selection.
  - c. Failure to move for a severance.
  - d. Failure to object to references to Ronnie Washington during Lieutenant James Shumpert's testimony.
  - e. Failure to effectively cross-examine Lieutenant James Shumpert.
  - f. Failure to object to references to Ronnie Washington during the State's closing argument.

## II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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, 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 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 transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, 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.

### **Failure to properly advise Applicant of the charges and evidence**

Applicant alleges that Counsel did not properly advise him of the evidence the State planned to introduce at trial. Applicant testified Counsel did not adequately discuss the evidence with him. Counsel testified he was appointed to represent Applicant on the charges and that they met around five to six times. Counsel testified they discussed the charges, reviewed discovery together, and reviewed Applicant's options of going to trial or pleading guilty. He testified that Applicant did not have a solid defense because he was charged under an accomplice liability theory. Counsel explained that Patrick Tyler, a codefendant, gave a statement to authorities that implicated all five codefendants on trial. Applicant testified he was aware that Tyler had given a statement that was incriminating to him.

This Court finds Counsel's testimony credible and persuasive on the issue. Applicant's testimony was not credible. Counsel adequately advised Applicant of the evidence the State planned to introduce in its case in chief. Counsel reviewed Tyler's statement with Applicant and discussed potential defenses to combat the State's accusations. Applicant was well aware of what evidence the State planned to introduce and testified, in detail, at the hearing regarding the State's case. Applicant has failed to present any evidence of prejudice. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed.

### **Failure to personally conduct jury selection**

Applicant further argues that Counsel was ineffective in allowing codefendant's counsel, Jillian D. Ullman, to select the jury. Applicant argues that Counsel was deficient in agreeing to coordinate with the codefendants' attorneys during jury selection. Counsel testified all defense counsel agreed it would be best to have a single attorney selecting the jury, instead of all six attorneys being involved. He testified that Counsel Ullman was the spokesman for all

defendants and that the trial court was fully advised of this decision. Counsel explained that the defense attorneys all met together and reviewed each juror. He testified that there were no disagreements about how to use the strikes. Counsel noted that the defense attorneys wanted to appear organized in front of the jury and feared that if each individual conducted jury selection, then they would seem to be unorganized.

This Court finds Counsel's testimony on this issue credible and persuasive. The record fully supports Counsel's testimony in that Counsel Ullman told the trial judge that the attorneys went through the list together and jointly came up with a list of jurors to strike. (ROA, p. 287, lines 14-16). Counsel made the strategic decision to allow Counsel Ullman to select the jury and to make the appropriate strikes. Counsel and his fellow defense attorneys made a reasonable decision to have one attorney act as a spokesman for the group. It is important to note that the attorneys coordinated their jury strikes and went through each juror to evaluate which jurors should be struck. This Court finds Applicant has failed to prove that Counsel was deficient in any manner.

Further, Applicant has failed to show how he was prejudiced in this regard. Applicant has failed to provide the Court with any credible evidence that he was prejudiced. State v. Stanko, 376 S.C. 571, 576, 658 S.E.2d 94, 96-97 (2008) ("While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury."). He failed to allege that the jury was impartial or that he was not afforded a fair trial. The allegation is denied and dismissed with prejudice.

### **Failure to move for a severance**

Counsel noted that he and the five other attorneys representing the codefendants did not extensively collaborate before the trial began. He testified he believed Applicant would be better off in the group than at a separate trial. He testified that Applicant was less culpable than the codefendants and categorized Applicant as a follower and not a leader of the group. Applicant was not alleged to be the ringleader of the group. Applicant testified he believed Counsel did move to sever his case from the codefendants' but was late to join the motion. The record reflects that Counsel did *not* join in the codefendants' motion to sever. Counsel testified he believed it was better to be tried with the group than in a separate trial. Counsel explained that he was the last codefendant indicted and the initial report did not mention him.

“Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right.” State v. Dennis 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). “Charges can be joined in the same indictment and tried together where they 1) arise out of a single chain of circumstances; 2) are proved by the same evidence; 3) are of the same general nature; and 4) no real right of the defendant has been prejudiced.” State v. Beekman 405 S.C. 225, 229, 746 S.E.2d 483, 486 (2013). A court should only grant a severance “when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt.” Id. at 282, 523 S.E.2d at 176.

The record reflects counsel for Ralph Coleman moved to have his case severed. (ROA, p. 150, line 11 – p. 152, line 12). The solicitor noted that Walter Harris was the only defendant on trial to give a statement to authorities. He told the trial court that he would not seek to have that

statement admitted. (ROA, p. 148, 6-15). Counsel noted that he was not joining the motion to sever because he did not believe Applicant's rights would be violated since codefendant Harris's statement was not going to be offered. (ROA, p. 149, lines 12-15; p. 179, lines 11-15). The trial court denied the motion to sever. (ROA, p. 158, lines 5-8; p. 197, line 20 – p. 198, line 2).

This Court finds Applicant failed to meet his burden of proof in showing that Counsel was ineffective or that he was prejudiced in any way. Counsel testified that he chose not to join Ralph Coleman's motion to sever the trial because he believed Applicant was less culpable than the other codefendants. Counsel hoped to bring this out through opening, cross-examination, and in closing arguments. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992) (Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance.). This Court finds Counsel made a reasonable decision not to join the severance motion.

In any event, Applicant has failed to prove prejudice. The trial court was presented a motion for severance that was joined by multiple defendants and denied the motion. Applicant cannot now show that if he had joined the motion that it would have been granted. It is almost certain that if Applicant made a motion to sever then it would have similarly been denied. It is apparent from the record that the trial judge noted all arguments in support of severing the trial but decided that no defendant's rights would be violated by proceeding with a joint trial. The trial court properly analyzed the issue and ruled correctly. It is important to note that the Court's determination turned on whether any of the defendants' rights were violated by going forward with a joint trial. The solicitor did not introduce the statements made by codefendant Harris which alleviated any issue that may have arisen. Applicant cannot point to any specific right that was violated by being jointly tried. This allegation is denied and dismissed.

**Failure to object to references to Ronnie Washington during Lieutenant James Shumpert's testimony**

Applicant alleges Counsel was ineffective in failing to object to references to Ronnie Washington during Lieutenant James Shumpert's testimony. Applicant argues Counsel should have objected to Shumpert's references to Ronnie Washington, the alleged getaway driver. Applicant argued that allowing the testimony that Washington admitted he was <sup>the</sup> driver constituted deficient performance. Counsel testified he expected the State to call Washington as a witness.

This Court finds this allegation without merit. Counsel's testimony as to his preparation and strategy concerning Applicant's defense is credible and persuasive. This Court finds Applicant failed to meet his burden of proving Counsel was deficient. Counsel articulated a strategic reason for not objecting to the statement because he wanted to draw out the fact that Washington was not charged and that Applicant was equally as culpable as Washington. Counsel argued to the jury that Applicant should be found not guilty as he was not as intimately involved as other codefendants. Counsel argued for mere presence and hoped to draw a parallel between Applicant and Ronnie Washington, who was *not* charged with murder. Counsel cross-examined Shumpert on this effectively. Shumpert's testimony was that, through his investigation, he learned that Ronnie Washington was the man who drove the defendants to the victim's residence. This Court need not rule whether this testimony was inadmissible hearsay because allowing the testimony to come in was a valid strategic decision.

Even assuming the testimony was inadmissible, it does not preclude the possibility trial counsel had a strategic reason to elicit the testimony. See Janosky v. St. Amand, 594 F.3d 39, 48 (1st Cir. 2010) (no ineffective assistance of counsel where a decision to elicit otherwise inadmissible hearsay testimony "was part of a calculated trial strategy aimed at poking holes in" the state's case); Figuroa v. Heath, No. 10-CV-0121 JFB, 2011 WL 1838781, at \*16 (E.D.N.Y.

May 13, 2011) (no ineffective assistance of counsel where “[t]he trial record demonstrates that counsel’s decision [...] was part of a strategy designed not only to show that the prosecution engaged in improper Rosario violations, but also to undermine the police’s credibility by highlighting their failure to turn over relevant evidence to the defense.”); Krist v. Foltz, 804 F.2d 944, 947 (6th Cir. 1986) (no ineffective assistance of counsel for eliciting otherwise inadmissible evidence). This Court also finds persuasive Counsel’s testimony that he did not want Washington to testify because it would further incriminate Applicant. Counsel met with and interviewed Washington and determined that his testimony would be mostly consistent with Tyler’s testimony. Counsel also served Washington with a subpoena to ensure he was available to testify in Applicant’s defense if Counsel believed his testimony would be helpful.

This Court further finds Applicant has not proven any resulting prejudice from this alleged deficiency. It is important to note that Tyler testified and gave a statement that there was a driver, but that he could not identify that man. The fact that investigators determined that man was Washington is of no relevance to Applicant’s guilt. Identifying Washington was actually beneficial to Applicant because Counsel was then able to question Shumpert on why he was not charged and on the specifics of that part of the investigation that would otherwise not have come out. This allegation is denied and dismissed.

**Failure to effectively cross-examine Lieutenant James Shumpert**

Next, Applicant alleges Counsel was ineffective in failing to effectively cross-examine Lieutenant James Shumpert. Specifically, Applicant alleges that Counsel elicited inadmissible hearsay statements from Shumpert.

The manner and extent of cross-examination should not be second-guessed. See Sallie v. North Carolina, 587 F.2d 636, 640 (4<sup>th</sup> Cir. 1978) (Marzullo not intended to promote judicial

second-guessing on questions of strategy as basic as handling of a witness); United States v. Nersesian, 824 F.2d 1294, 3121 (2d Cir. 1987) (“decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature” and will not support an ineffective assistance claim).

Consistent with the analysis, *infra*, this Court finds Counsel’s strategy in the handling of Shumpert to be reasonable and effective. Applicant takes issue with the fact that Washington was identified as the getaway driver presumably from the statement he gave to investigators. Counsel was able to question Shumpert extensively on why, since they had information that Washington was involved, he was not charged with the others. Again, Counsel argued Applicant’s conduct closely conformed to what the State alleged Washington had done and hoped the jury would agree and find him not guilty.

No prejudice can be shown from Counsel’s cross-examination of Shumpert. Applicant has not shown that the result of the trial would likely have been different had he pursued a different strategy. Even if it was not revealed that Washington was the driver, Tyler’s statements were that there was a driver involved. The identity of the driver is of no consequence to Applicant’s case.

**Failure to object to references to Ronnie Washington during the State’s closing argument**

Finally, Applicant alleges Counsel was ineffective for failing to object to the solicitor’s references to Washington during closing argument.

“The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.” Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) (citing State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624

(1996).). “The appellate court will view the alleged impropriety of the solicitor’s argument in the context of the entire record.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

This Court finds Applicant failed to meet his burden of proof in showing Counsel was ineffective in failing to object during the solicitor’s closing argument. The solicitor mentions Washington and that he was the getaway driver of a SUV. This was testified to by Shumpert, so the evidence was properly before the jury. Viewing the argument in the context of the entire record, this Court finds the statements were not prejudicial because the identity of the driver does not make Applicant any less culpable. This Court finds Counsel cannot be ineffective for failing to object to references to Washington. Applicant failed to present any evidence to show how he was allegedly prejudiced by Counsel’s failure to object.

#### **All Other Allegations**

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### **IV. CONCLUSION**

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate <sup>counsel's</sup> ~~counsel's~~ performance was 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), SCRCR, 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.

**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 29 day of Oct., 2015.

St. Mary, South Carolina

Maité Murphy  
MAITÉ MURPHY  
Presiding Judge



1116 Blanding Street, Suite 2B  
Columbia, SC 29201



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29211

U.S. POSTAGE PAID  
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COLUMBIA, SC  
29201  
AUG 21, 18  
AMOUNT

**\$1.84**

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