

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM THE COUNTY OF LANCASTER

Court of Common Pleas

The Honorable Circuit Court Judge, BROOKS P. GOLDSMITH

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Case No. 2017-CP-29-0006

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BENECO A. GANSON, SCDC # 306785..... Petitioner,

v.

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

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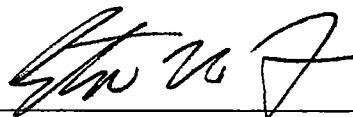
**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable Judge Brooks P. Goldsmith's Order filed on August 28 2018, denying post conviction relief to the Petitioner.

The Order was received by the undersigned counsel on September 20, 2018. A copy of the said Order on appeal is attached to this Notice.

This is the 20th day of September, 2018.



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Steven W. Fowler  
Fowler Law Firm  
730 Main Street, Unit 237  
North Myrtle Beach, SC 29582  
Telephone: 843-663-0006  
Fax: 843-280-0003  
myfowlerlaw@gmail.com  
SC Bar #69683

**RECEIVED**

SEP 24 2018

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE COUNTY OF YORK

Court of Common Pleas

The Honorable Circuit Court Judge, BROOKS P. GOLDSMITH

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BENECO A. GANSON, SCDC #306785..... Petitioner,

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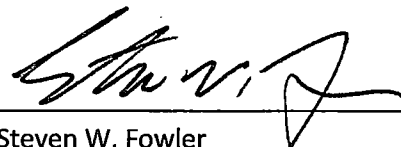
**PROOF OF SERVICE**

I, Steven W. Fowler, court- appointed attorney for Petitioner, certify that I have today served within Notice of Appeal and Copy of the Order signed by the presiding Judge upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the following:

- 1) Assistant Attorney General, PO Box 11549, Columbia, SC 29211 and
- 2) Clerk of the South Carolina Supreme Court , 1231 Gervais St, Columbia, SC 29201
- 3) SCCID Appellate Defense, PO Box 11433, Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served on this below named date.

This is the 20th day of September, 2018.



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 Telephone: 843-663-0006  
 Fax: 843-280-0003  
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SEP 24 2018

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA )  
 COUNTY OF LANCASTER )  
 Beneco A. Ganson, #306785, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 IN THE SIXTH JUDICIAL CIRCUIT

Case No.: 2017-CP-29-0006

**ORDER OF DISMISSAL**

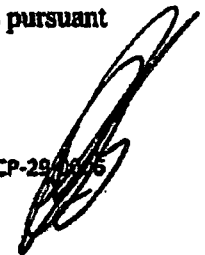
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 CLERK OF COURT  
 LANCASTER, SC  
 2018 AUG 29 PM 2:38

This matter comes before the Court by way of an application for post-conviction relief filed on January 4, 2017, by Beneco A. Ganson (Applicant). Respondent made its Return on or about June 8, 2017. An evidentiary hearing into the matter was convened on July 16, 2018, at the Lancaster County Courthouse in Lancaster, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel T. Brandon Steen, Esquire, Esquire also testified. This Court had before it a copy of the records of the Lancaster County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant



to orders of commitment of the Lancaster County Clerk of Court. In April 2014, the Lancaster County Grand Jury indicted Applicant for burglary, first degree (2014-GS-29-0445). Brandon Steen, Esquire, represented Applicant. Solicitor Randy Newman, Esquire, prosecuted the case. On June 27, 2014, Applicant proceeded to trial before the Honorable Brian M. Gibbons. The jury found Applicant guilty as indicted. Judge Gibbons sentenced Applicant to imprisonment for twenty years for burglary, first degree.

Applicant filed a timely notice of appeal. LaNelle Canty DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 2, 2016. State v. Ganson, Op. No. 2016-UP-107 (S.C. Ct. App. March 2, 2016). The remittitur was returned to the circuit court on April 5, 2016.

#### **FACTUAL HISTORY**

On the morning of December 6, 2013, Rodynka Howze was home with her two young children when two men kicked in her front door and entered her house. She came down the hall and confronted the intruders as they were attempting to grab the victim's TV and a ring. The men fled, leaving the TV and the ring behind.

After jury selection, the jury was excused while the trial court addressed pretrial matters. The judge referenced a previous meeting in chambers wherein the State indicated it intended to call "two additional witnesses" which apparently had not been previously disclosed to the defense. The solicitor explained one of those witnesses was Appellant's mother, Linda Thompson. Appellant's counsel stated: "Your Honor, I just received notice that she is going to be testifying, and I have not had a chance to speak with her or anything." The solicitor responded that Thompson lives out of town and that he had no idea she was coming to the trial until he saw her in the courtroom. The trial judge stated: "Okay, what I will do is I will withhold

ruling on your objection until you've had an opportunity to talk to her." (Tr.p.14, line 2-p.16, line 8). The trial court then ruled on the admissibility of several pieces of evidence before swearing the jury and proceeding to trial. (Tr.p.16, line 10-p.29, line 16).

At trial, the solicitor made an opening statement briefly describing the State's theory of the case. He said Appellant kicked in Howze's door and was attempting to take a TV from the shelf when Howze caught him in the act, and that Appellant then took off running when Howze said she was going to call the police. Appellant's counsel responded by saying Appellant did not commit or attempt to commit the crime. He argued Howze had severe credibility issues, noting she had falsely accused someone in the case already. (Tr.p.29, line 17-p.32, line 9).

The State then called Howze to the stand. She testified that in December of 2013 she lived at 400 North White Street with her sister and their children. Howze identified Appellant in the courtroom and explained they had been friends for a while. She said Appellant had visited her home before and was actually at the house the night before the incident. The morning of the burglary, while the children were still sleeping, Appellant sent a text message asking Howze if she was home. Howze heard Appellant and another person on her front porch and texted back that she was not home even though she was inside. At that point, Howze heard Appellant tell his friend to "kick the door in." They kicked in the door as Howze was putting her kids in the crib. She came down the hallway, confronted the intruders, and asked what they were doing. Howze said that when she walked in the room she saw them moving the TV and they had their hands on her citizenship class ring. She told the men she was going to call the police and when they ran, she called to report the burglary. Howze described the damage to the door and testified that neither man had permission to be in her house. (Tr.p.32, line 12-p.38, line 1; p.40, line 1-p.41, line 1).

After the incident, Howze told the police about the two intruders and she gave two names: Shawn Quavos and Appellant. She acknowledged she was wrong about Quavos because she only saw the side of the second man's face, but that she knows Appellant. Howze testified she had been with Appellant more than three times before. She said that when she mistakenly picked Quavos out of a photo lineup she thought it had been him, but that when it came to identifying Appellant, she had no doubt he was in her home during the burglary. Howze testified that after the incident she got an apology text message from Appellant. He said he was sorry, he should not have done it, and that there was no excuse for what he had done. (Tr.p.38, line 2-p.39, line 25; p.41, line 2-p.42, line 3).

Next the State called Howze's sister, Cheyennae Howze. She testified she lived with the victim at the time of the incident and confirmed the damage caused to the front door. (Tr.p.46, line 23-p.48, line 19). Sergeant Dustin Burlingame of the Lancaster City Police Department then described responding to the scene to take photographs and look for fingerprints. He discovered two fingerprints on the TV but neither was a match to Appellant. (Tr.p.49, line 2-p.52, line 20). The State then called latent print examiner Ken Taylor of the Lexington County Sheriff's Office to the stand. He was admitted as an expert in latent fingerprint examination and confirmed the only fingerprint found at the scene with sufficient detail for comparison did not match Appellant. (Tr.p.52, line 24-p.59, line 7).

Next, the solicitor advised the trial court he was indeed planning to call Thompson to the stand to say she called Howze after the incident and offered to pay for the damages. The trial judge stated: "All right. Your objection is already in the record. So you are good to go with that." (Tr.p.60, lines 17-25). Thompson then testified for the State. She lives in Atlanta and learned of the incident when her sister, who lives in Lancaster, called to say she heard

Appellant's name on a police scanner in regard to a break-in. She tried to call Appellant to ask about it but was unable to reach him. She then called Howze, who was an acquaintance, to ask what was going on. Thompson offered to pay Howze for the damage to the door. Appellant elected not to cross-examine Thompson. (Tr.p.62, line 7-p.64, line 10).

Finally the State called investigator Phillip Hall of the Lancaster City Police. He received a phone call from Howze the day after the burglary identifying the burglars by name. Hall said Howze named Appellant and described him as a "friend with benefits" and then identified Allen Shaquavous by his street name, Quavos. She proceeded to pick both men from photo lineups prepared by the police. Although they were both charged with the crime, the charges against Shaquavous were later dropped when the police confirmed he was not present at the scene. (Tr.p.64, line 13-p.72, line 15). At the close of Hall's testimony, the State rested and the jury exited the courtroom. Appellant moved for a directed verdict and the trial court denied the motion. Appellant chose not to testify and after the defense rested the parties made closing arguments. (Tr.p.72, line 22-p.77, line 14).

During closing arguments, the solicitor went through the evidence that had been presented. In regard to Thompson, he said: "The Defendant's mother told you she called Ms. Howze to try to cover the cost of any damages. Why would she do that? That is something for you all to decide." (Tr.p.78, line 2-p.80, line 25). Appellant's closing argument focused on the alleged unreliability of Howze's testimony. (Tr.p.81, line 1-p.83, line 3).

The trial judge charged the jury on the respective roles of the judge and jury, including the jury being the sole judge of the credibility of witnesses. He also charged the State's burden of proof, the presumption of innocence, the defendant's right not to testify, direct evidence and circumstantial evidence, expert witnesses, credibility of witnesses, criminal intent, and the

elements of first-degree burglary. (R.p.83, line 4-p.95, line 14). After deliberating for a little under an hour, the jury found Appellant guilty of first-degree burglary. (Tr.p.95, line 22-p.96, line 19). After hearing from the solicitor and Howze, Appellant stated: "I have made a lot of mistakes and I can't do at this time change anything I did, so I've got to accept responsibility and take my medicine." (Tr.p.99, lines 14-18). The trial court sentenced Appellant to twenty (20) years' imprisonment. (Tr.p.100, lines 16-22).

### **ALLEGATIONS**

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

1. Ineffective Assistance of Counsel," in that:
  - a. "Counsel [committed] acts or omissions including but not limited to fail[ing] to properly research and investigate the true facts and laws surrounding my whole case;"
  - b. Counsel "did not properly cross-examine the State's Star witness Rodynka Porchlee Howze;"
  - c. "Counsel Steen did not have a clear line of defense before going to trial, Which there is a reasonable probability that, but for counsel's unprofessional errors, the result of my trial and appeal would have been different."

Applicant amended his PCR application for ineffective assistance of counsel, further alleging:

1. Counsel was ineffective, in that:
  - a. Counsel failed to cross-examine Ms. Howze regarding a text Applicant sent her.
  - b. Counsel failed to cross-examine "Ms. Howze and the fact that she had made up that [I had] kicked in her door and entered her home. . . ."
  - c. Counsel failed to cross-examine Ms. Howze "on why would my clothes be at her home and who took my clothes to my mother after this alleged burglary."
  - d. "Counsel caused me to reject the 7 year plea offer, which I would have accepted. But counsel said he can show that I was not at her house. . . . Although counsel failed to tell me that the State's plea offer was more desirable than his no line defense. . . counsel never put the State's case through a test at all"

- e. Counsel failed to object to a prejudicial statement made during the solicitor's closing argument indicating "the hands of one -- the hands of all," even though the Applicant was not charged with nor was the jury instructed on "the hands of one."

## **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING**

### **Applicant's Testimony**

Applicant testified he was represented by Trial Counsel on his charges. He testified Trial Counsel should have investigated his case more prior to trial. Applicant also testified Trial Counsel also failed to properly cross-exam the star witness in his case, the victim, Rodynka Howze. He testified on the day of the burglary he sent a text message to Ms. Howze because he wanted to get his things he had left at her place. Applicant testified Trial Counsel had those texts messages excluded from coming into trial. He testified Trial Counsel did not properly show to the jury that the star witness had made inconsistent statements to the police and that her creditability was in question Applicant testified Trial Counsel did not bring up the fact that he did not know his alleged co-defendant. He testified after the crime it was also not brought up that his clothes that were at the victim's house were taken from there to his grandmother's house by the victim herself. Applicant testified he was staying at the victim's house intermittently. He testified he told Trial Counsel about his relationship with the victim. Applicant testified Trial Counsel caused him to reject a seven year plea offer and that he would have taken it had he known Trial Counsel did not a good strategy for trial. He testified during trial, Trial Counsel failed to show he was not at the house during the crime.

Applicant testified Trial Counsel had his case for one month prior to trial and there was no way Trial Counsel was prepared to go forward to trial. He testified Trial Counsel was not his original attorney and that he had a disagreement with his original attorney, Mark Grier, Esquire, and had him relieved. Applicant testified Trial Counsel failed to object during the State's closing

argument as it was prejudicial. He testified Trial Counsel did not investigate anything in his case including the victim as he had told the victim prior to the crime he was leaving her. Applicant testified Trial Counsel did not object to a voir dire question about whether any members of the jury were victims of crimes.

On cross-examination, Applicant testified he fired his previous attorney. He testified his mother testified for the State at trial that she texted the victim and offered to pay for her damaged door as a result of the crime. Applicant testified he did not give the name of his co-defendant to his attorney. He testified during trial, Trial Counsel brought out issues with the victim's misidentification of his alleged co-defendant. Applicant testified he rejected plea offers from the State. He testified he felt like he should have been charged with breaking and entering.

#### Trial Counsel's Testimony

Trial Counsel testified he had been practicing law since 2011, and the majority of his career had been devoted to criminal law. He testified he was appointed to represent Applicant and that he was Applicant's second attorney. Trial Counsel testified he started with the Public Defender Office on May 24, 2014 and then met with Applicant on May 28, 2014 for their first meeting. He testified during his representation of Applicant he reviewed the discovery in Applicant's case with him. Trial Counsel also testified during his meetings with Applicant he discussed the indictments, elements of the offenses, possible punishments, his constitutional rights, and the State's burden of proof with Applicant. He testified Applicant never indicated to him he did not understand the discussions they had about Applicant's rights or charges.

Trial Counsel testified there were text messages communications between Applicant and the victim on the day of the crime. He testified Applicant wanted the text messages excluded from his trial. He testified the victim and Applicant appeared to have had some type of

relationship. Trial Counsel testified he attempted to contact the victim but Applicant did not want him to contact her. He testified Applicant was adamant the victim would not show up to trial to testify against him. Trial Counsel testified his trial strategy going into trial was to show that Applicant was not present during crime. He testified since the text messages had been excluded, if the victim did not show up to testify Applicant would have had a very good chance at proving he was not there. Trial Counsel testified however, once trial started, the victim did show up to testify. He testified his trial strategy then was to attack the victim's credibility showing how she had misidentified one of the defendants and questioning her about her criminal record. Trial Counsel testified Applicant's mother also testified at trial that she sent a text message to the victim offering to pay for her broken door to her home because of the burglary.

On cross-examination, Trial Counsel testified he had notes in his record that he talked to Applicant's former attorney prior to trial. He testified Applicant wrote several letters to his previous attorney indicating he did not want to plead guilty.

#### **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 had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

**Ineffective Assistance of Counsel**

*Failure to Investigate*

Applicant alleges Trial Counsel was ineffective for failing to investigate his case. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Trial Counsel done more investigation. Even so, Trial Counsel testified credibly that he reviewed all of the discovery with Applicant and attempted to contact the victim in the case. This Court finds Trial Counsel's investigation was beyond reasonable. Therefore, Applicant has failed to meet his burden to prove Trial Counsel was ineffective. This allegation is denied and dismissed with prejudice.

*Failure to Cross-Exam*

Applicant alleges Trial counsel was ineffective for failing to properly cross-exam the victim at trial. This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to properly cross-examine the State's witnesses meritless. This Court finds Trial Counsel's representation was well within reasonable professional norms.

Here, Trial Counsel's cross-examination and argument that he advanced at trial fully set forth enough information so that the jury could properly assess the witness' credibility and counsel could demonstrate the supposed lack of it. See, e.g., Fugate v. Head, 261 F.3d 1206, 1219 (11th Cir. 2001) ("The decision as to whether to cross-examine a witness is a tactical one

well within the discretion of a defense attorney.... Absent a showing of a single specific instance where cross-examination arguably could have affected the outcome of either the guilt or sentencing phase of the trial, a[n] [applicant] is unable to show prejudice necessary to satisfy the second prong of *Strickland*") (citations and internal quotation marks omitted); Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (per curiam ) ("the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish") (emphasis in original); Mills v. Singletary, 161 F.3d 1273, 1288 (11th Cir. 1998) (defendant's Sixth Amendment right to confront witnesses is satisfied where the cross-examination permitted exposes the jury to facts sufficient to evaluate the witness' credibility and "enables defense counsel to establish a record from which he can properly argue why the witness is less than reliable").

Trial Counsel thoroughly cross-examined the victim to elicit the proper testimony. Trial Counsel thoroughly questioned the victim regarding her credibility by showing she had misidentified one of the defendants, leaving out information to police during her original statement, and questioning her about her criminal record. (Tr.p.42-46) This Court finds that Trial Counsel's strategic decisions of how to cross-examine the witnesses was proper and reasonable.

Furthermore, Applicant has failed to show exactly what information should have been elicited if the witnesses were properly cross-examined. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). This Court cannot speculate as to what testimony could have been elicited upon a different strategy of cross-examination, and thus Applicant cannot meet his burden of proving prejudice. Because

Applicant has failed to meet either prong of the Strickland test, this allegation must be denied and dismissed with prejudice.

*Failure to Object to Closing Argument and Jury Voir Dire*

Applicant alleges Trial Counsel was ineffective for failing to object during the State's closing argument. Applicant testified during closing arguments the State made references to the legal theory of "hands of one is the hands of all" and those comments were prejudicial. Applicant further alleged that he was not charged with nor was the jury instructed on "the hands of one." This court finds this allegation to be without merit. After a review of the record, this court finds the solicitor's comments were an appropriate comment on the facts of the case. The prosecution "may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony." State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999). The solicitor's closing argument is permissible where it stays within the record and reasonable inferences to it. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002). Accordingly, Applicant has failed to show trial counsel was deficient for not objecting and he was prejudiced by the solicitor's comments as he was charged with committing burglary first degree. Because Applicant has failed to meet either prong of the Strickland test, this allegation must be denied and dismissed with prejudice.

Applicant also alleges Trial Counsel was ineffective for failing to object during voir dire to a question asked by the trial judge to the jury panel about whether any member had been victims of a crime. After a review of the record, this court finds this question was not asked by the trial judge of the jury pool during jury selection. This court would also note had this question been asked by the trial judge Applicant has failed to demonstrate sufficient prejudice from it

being potentially asked to the jury pool. Accordingly, this allegation is denied and dismissed with prejudice.

*Rejection of plea offer*

Applicant testified in a cursory fashion that Trial Counsel caused him to reject a seven year plea offer, which he would have accepted had he known Trial Counsel did not have a strategy for trial. This court finds this allegation to be without merit. On cross-examination, Applicant testified he rejected the plea deal that was offered to him by the State. Further, Applicant testified Trial Counsel brought out issues with the victim's misidentification of his alleged co-defendant and her inconsistent statement to police. Notwithstanding, Trial Counsel testified Applicant rejected plea offers and Applicant wrote several letters to his previous attorney indicating he did not want to plead guilty. Furthermore, this court finds Trial Counsel's trial strategy valid. Trial Counsel testified going into trial, he wanted to show that Applicant was not present during crime. He testified since the text messages between Applicant and the victim had been excluded, if the victim did not show up to testify Applicant would have had a very good chance at proving he was not there. Trial Counsel testified however, once trial started, the victim did show up to testify. He testified his trial strategy then shifted to attacking the victim's credibility showing how she had misidentified one of the defendants and questioning her about her criminal record. This court further finds Applicant's allegation that he rejected a plea offer because of Trial Counsel's lack of a trial strategy to be without merit. Applicant clearly rejected plea offers from the State prior to Trial Counsel taking over representation of his case and rejected plea offers once Trial Counsel took over his case. Accordingly, Applicant has failed to demonstrate Trial Counsel was ineffective. This allegation is denied and dismissed with prejudice.

**CONCLUSION**

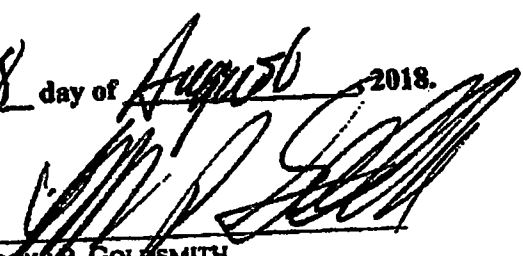
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

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

  
\_\_\_\_\_  
BROOKS P. GOLDSMITH  
Presiding Judge  
Sixth Judicial Circuit

\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Beneco A. Ganson, 306785

Plaintiff

v.

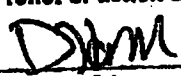
State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2017-CP-29-0006

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Steven W. Fowler, Bar No. 69683 Address: 730 Main St; Unit #237 N Myrtle Beach, SC 29582 phone: (843) 663-0006 fax: e-mail: myfowlerlaw@gmail.com other:		Defendant's Attorney: Deshawn H. Mitchell, Aag, Bar No. 101813 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: DMitchell@scag.gov other:	
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input 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:		Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
Estimated Time Needed:		<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.			
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant		August 16, 2018 Date submitted	
<b>SECTION III: Motion Fee</b>			
<input type="checkbox"/> PAID - AMOUNT: <input checked="" 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 instruction			
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: _____			

FILED  
 IN COURT  
 2018 AUG 29 PM 2:35  
 CLERK OF COURT  
 LANCASTER COUNTY

# Lancaster County

*Jeff Hammond*  
Clerk of Court

Clerk of Court of Lancaster County  
Post Office Box 1809  
Lancaster, S.C. 29721

Phone (803) 285-1581  
Fax (803) 416-9388

STATE OF SOUTH CAROLINA  
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS  
6<sup>TH</sup> JUDICIAL CIRCUIT

**Beneco A Ganson #306785**

\_\_\_\_\_  
Applicant

VS

**State of South Carolina**

\_\_\_\_\_  
Respondent

## CERTIFICATE OF SERVICE

CASE# 2017-CP-29-00006

I certify that, on August 30, 2018, I served a copy of the Order of Dismissal by mailing to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Beneco A Ganson #306785  
F3A / 171  
386 Redemption Way  
McCormick, SC 29899

DeShawn Mitchell  
Post-Conviction Relief  
Post Office Box 11549  
Columbia, SC 29211-1549

FILED  
OF CLERK  
OF COURT  
2018 AUG 30 PM 4:01  
CLERK OF COURT  
LANCASTER, SC

8.30.2018

Date

*Jeff Hammond*  
Signature

Fowler Law Firm  
730 Main Street  
Unit 237  
NMB, SC 29582

FOWLER  
Law Firm  
Fowler Fights For You



South Carolina Supreme Court  
Clerk of Court  
1231 Governor's Street  
Columbia, SC  
29201