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THE BOOZER LAW FIRM, LLC

NOV 13 2018

Lance S. Boozer, Esq.\*  
\*Also admitted in Florida

S.C. SUPREME COURT

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November 8, 2018

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

The Honorable Robert J. Harte  
Clerk of Court  
P.O. Box 583  
Aiken, SC 29802-0583

**RE: Waymon Newton, ##250888, v. State of South Carolina  
2017-CP-02-2138**

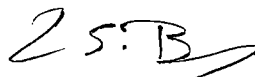
Dear Mr. Shearouse and Mr. Harte:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Newton in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Newton in this appeal.

Yours very truly,



Lance S. Boozer

cc: Megan Jameson, AAG  
Office of Appellate Defense  
Waymon Newton, #250888

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

NOV 13 2018

S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-02-2138

Waymon Newton, #250888, .....Petitioner,

v.

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

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable Larry B. Hyman, Jr.'s Order dated October 12, 2018, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on November 8, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer  
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November 8, 2018

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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NOV 13 2018

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-02-2138

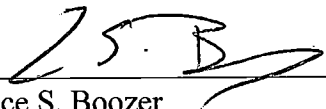
Waymon Newton, #250888, .....Petitioner,

v.

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

**PROOF OF SERVICE**

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Megan Jameson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 8th day of November, 2018.

  
Lance S. Boozer  
The Boozer Law Firm, LLC  
1419 Pendleton Street  
Columbia, SC 29201  
Tele: 803-608-5543

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Waymon Eugene Newton, # 250888,  
Applicant,

2017-CP-02-02138

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court on an application for post-conviction relief (PCR) filed by Waymon Eugene Newton (Applicant) on September 5, 2017. Respondent made its Return and Partial Motion to Dismiss on December 29, 2017. An evidentiary hearing was held on August 27, 2018, at the Aiken County Courthouse. Applicant was present and represented by Lance S. Boozer, 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 Wallis Alves, Esquire (“Trial Counsel”).

Before the Court were the records of the Aiken County Clerk of Court regarding the subject convictions, Applicants’ records from the South Carolina Department of Corrections, the record on appeal, appellate records, and the pleadings. At the conclusion of the hearing, both parties submitted memoranda. After considering the arguments and evidence presented, this Court finds it necessary to deny post-conviction relief. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant was indicted at the April 2015 term of the Aiken County Grand Jury for kidnapping (2015-GS-02-00441) and armed robbery (2015-GS-02-00442). Applicant was

represented by Wallis A. Alves, Esquire (“Trial Counsel”). David W. Miller, Esquire, and Wilder Harte, Esquire, prosecuted the case. Applicant proceeded to a jury trial on June 15, 2015 before the Honorable Doyet A. Early, III, and was found guilty of the lesser included offense of strong armed robbery, and found not guilty of kidnapping. Judge Early sentenced Applicant to imprisonment for fifteen years.

A timely Notice of Appeal was filed and an appeal was perfected. Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense, filed an Anders<sup>1</sup> brief on Applicant’s behalf. By written opinion filed January 25, 2017, the South Carolina Court of Appeals dismissed the appeal. State v. Waymon Eugene Newton, Up. No. 2017-UP-056. The Remittitur was issued February 10, 2017.

## 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. “Counsel grossly erred by not objecting to State’s waiving opening closing argument, State being allowed final argument violated standard due process afforded to defendants at trial.
2. “Misleading reply by judge to jury question led to conviction on strong-arm robbery.”
  - a. “Judge’s emphasizing/repeating ‘if accompanied by violence that’s strong-arm robbery,’ ‘Petit larceny is without any violence’ confused the jury to my detriment.”
3. “During judge’s final charge to jury he shifted the burden of proof to me.”

Applicant filed an amended application on April 2, 2018, adding the following allegation:

- (a) Applicant believes counsel was ineffective for failing to consult with him and/or explain to him a request for a jury charge on lesser-included offenses. Applicant did not wish to have the jury consider the lesser-included offenses. Applicant further alleges counsel was ineffective for requesting that the jury be allowed to consider the lesser-included charges.

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<sup>1</sup> Anders v. California, 386 U.S. 738 (1967).

### III. RELEVANT TESTIMONY PRESENTED AT EVIDENTIARY HEARING

#### *Applicant's testimony*

At the evidentiary hearing, Applicant testified that Trial Counsel represented him for seven or eight months before the trial. He stated he rejected prior plea offers from the State. He asserted that Trial Counsel should have objected to the State having the last closing argument at trial because it prejudiced him to have to argue first. He stated counsel should have objected to the judge's response to the jury question, and the judge should have had a direct answer to the question.

Applicant testified that Trial Counsel chose to request the lesser-included offense of strong-armed robbery at trial rather than only going to trial for armed robbery. He testified that he did not want to request the lesser-included offense. Applicant stated he thought the jury believed his testimony at trial and the jury was going to find him not guilty of armed robbery. He testified that he told Trial Counsel during the trial that he did not want to request the lesser-included offense and that he wanted to go forward on an "all or nothing" strategy. Applicant testified that Trial Counsel told him that she controls the trial strategy, and she chose to request the lesser-included offense of strong-armed robbery.

#### *Trial Counsel's testimony*

In contrast, Trial Counsel testified that she discussed requesting the lesser-included offense with Applicant before the trial and that Applicant chose to request the lesser-included offense of strong-armed robbery. Trial Counsel testified that she no longer has access to her defense file for this case and had no specific recollection of any conversations with Applicant before or during the trial. However, she stated that she was able to access digital notes from her online case-management system, and the digital notes she created indicate that she met with

Applicant before the trial to discuss their trial strategy. Trial Counsel testified that her notes specifically stated that she discussed the lesser-included offense with Applicant during their trial preparation. She stated that she also has an outline of how they were going to present Applicant's case, witnesses, and case law. She testified that her note from June 12, 2015 stated that they "discussed lesser-included evidence," which she explained was probably supposed to mean "discussed lesser-included offense." Trial Counsel testified that there was evidence presented at trial to warrant an instruction on the lesser-included offense, because some testimony showed the victim was not cut until after Applicant took her purse.

Trial Counsel testified that she always discusses the decision to request a lesser-included offense with her clients as a matter of general practice, because she believes that is their decision to make, not hers. Although Trial Counsel did not have a specific recollection of her conversation with Applicant, she opined that, based on her general practice, if she discussed this decision with Applicant and she later requested the lesser-included offense, it would have been because Applicant made or agreed with this decision, because she always leaves the choice to her client. She testified that she would have objected to a jury charge on the lesser-included offense if their strategy had been "all or nothing." Trial Counsel testified that she still today thinks she should have requested strong-armed robbery.

#### 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), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

This Court has had the opportunity to review the record in its entirety and has heard 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).

### DIRECT APPEAL ALLEGATIONS

Applicant's second and third allegations raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal, and the third allegation of the judge's jury instructing shifting the burden of proof was indeed raised and ruled upon during Applicant's direct appeal. His failure to raise the issues on appeal has waived this allegation as a ground for relief. Therefore, these allegations are denied and dismissed with prejudice.

### INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant has failed to meet his burden of proving any of his allegations of ineffective assistance of counsel.

#### *Failure to object to State having last closing argument*

Applicant's allegation of ineffective assistance of counsel for failing to object to the State having the last closing argument at trial is denied. At trial, Applicant introduced into evidence six photographs and a CD of an audio interview. ROA 101; 106; 107; 111; 112. Applicant also chose to testify on his own behalf at trial. ROA 206-250. Because Applicant chose to present a defense, he lost the opportunity to have the last closing argument. The State waived its opportunity to give an opening statement on the law before its closing argument. ROA 257. Applicant further alleges Trial Counsel should have objected to the State waiving its opening statement on the law.

Where the defense puts in evidence at trial, the State gets the final closing argument. State v. Gellis, 158 S.C. 471, 485-86, 155 S.E. 849, 855 (1930) (“if a defendant offers *any evidence* on trial of the case, the state is not deprived of its general right to the opening and concluding arguments”). “A solicitor is no longer required to make an opening argument to the jury on issues of fact” even where requested by defense counsel.” State v. Lee, 255 S.C. 309, 318, 178 S.E.2d 652, 656 (1971); Rule 37, SCRCrimP (“where no provision is made by statute or these rules, the procedure shall be according to the practice as it has heretofore existed in the courts of the State”).

Although a recent South Carolina Supreme Court opinion called the constitutionality of this rule into question, the order of closing argument has not been changed by either judicial opinion or a change in the rules of procedure. State v. Beaty, 423 S.C. 26, 41, 813 S.E.2d 502, 510 (2018). The recent opinion in Beaty did not alter the practice or procedure of closing arguments in a criminal trial.<sup>2</sup> Id. (“Absent authority to formally adopt procedural rules, our authority—and the authority of the trial court—is but to address due process considerations as they arise.”). Instead, the Beaty court stressed “trial judges must, on a case-by-case basis, ensure that a defendant’s due process rights are not violated during the closing argument stage.” Id.

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<sup>2</sup> Our current closing argument rules consist of the following patchwork: Pursuant to the common law rule pronounced in *Brisbane* and as clarified in *Garlington*, in cases in which no defendant introduces evidence, the defendant(s) have the right to open and close, but may waive the right to both or may waive opening and present full argument after the State’s closing argument. Pursuant to the common law rule set forth in *Huckie*, if two or more defendants are jointly tried, if any one defendant introduces evidence, the State has the final closing argument. Pursuant to the common law rule as clarified in *Gellis*, in cases in which a defendant introduces evidence of any kind, even through a prosecution witness, the State has the final closing argument. However, in cases in which the State is entitled to the reply argument, there is no common law or codified rule as to whether the State must open in full on the law, or the facts, or both, or neither, and there is no rule governing the content of the State’s reply argument.

813 S.E.2d at 510 (internal citations omitted).

While making a plea for the adoption of a procedural rule to address the issue before it,

Beaty ultimately held:

. . . In cases in which a defendant introduces evidence, trial judges clearly have the authority to require the State to open in full on the facts and the law and have the authority to restrict the State's reply argument to matters raised by the defense in closing. This authority remains in keeping with the trial judge's authority to ensure that a defendant's due process rights are not violated during a criminal trial.

Id. (also holding the appellant in that case, who had introduced evidence and lost the right to the last argument, was not prejudiced by the State's closing).

In the context of a PCR action, our courts have "never required an attorney to be clairvoyant or anticipate changes in the law." Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016). Even if the edict in Beaty could be construed as a change in the law, trial counsel in this case is not ineffective for failing to request the last argument before the jury. Beaty does not authorize the right to final closing in this case even if trial counsel had requested it. Trial Counsel put in evidence and waived Applicant's right to last closing. Not even today's precedent allows Applicant the last closing argument after he introduces evidence at trial. Id. at 510 (citing Gellis, *supra*). Accordingly, there is no deficiency or prejudice, and this allegation is denied.

**Failure to consult with Applicant on requesting lesser-included offense**

Applicant has failed to meet his burden of proving Trial Counsel was ineffective for failing to consult with him about the strategic decision to request the lesser-included offense at trial. Applicant was initially indicted for armed robbery. At trial, Trial Counsel requested a jury instruction on the lesser-included offenses of strong armed robbery and petit larceny.

The South Carolina Code defines armed robbery as the commission of a robbery "while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while

alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.” S.C.Code Ann. § 16–11–330 (2003). Strong armed robbery is defined under common law “as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” State v. Rosemond, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003). Strong armed robbery, also referred to in common law simply as robbery, is a lesser-included offense of armed robbery. State v. Mitchell, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009).

The trial court is required to charge a jury on a lesser-included offense “if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court is only required to include this jury charge when the parties request it. A trial court does not have a duty to *sua sponte* provide a charge of a less-included offense where it is warranted by the evidence. State v. Parker, 315 S.C. 230, 236-37, 433 S.E.2d 831, 834 (1993) (finding the trial court did not err by failing to charge the jury on a lesser included offense because such charge was not requested; “there was no duty on the court to *sua sponte* provide the charge,” and the evidence did not warrant the charge).

In the present case, the evidence warranted an instruction on the lesser-included offense because, as Trial Counsel testified at the evidentiary hearing, there was testimony presented at trial that Applicant did not cut the victim until after he had taken her purse, so if the jury believed Applicant took her purse by force without a weapon, it could find him guilty of strong armed robbery—which it ultimately did. Trial Counsel requested the jury charge on the lesser-included

offense, and the State agreed that the evidence supported the charge and it must be charged to the jury. ROA 255, line 12-23. The trial court, appropriately, charged strong armed robbery.

Trial Counsel cannot be ineffective for requesting the lesser-included offense because she made a calculated, strategic decision to do so. While there is no published South Carolina case law directly on point, persuasive authority supports the notion that the decision to request or reject a charge on a lesser-included offense is a tactical decision to be made by trial counsel, not the defendant.

This specific issue was discussed at length in Judge Pieper's concurring opinion in Abney v. State, 408 S.C. 41, 757 S.E.2d 544 (Ct. App. 2014). After reviewing the history of various courts' and the ABA's opinions on the issue, Judge Pieper reached the conclusion that, "[w]hile trial counsel should consult with his client, the final decision on strategy belongs to counsel" because "the decision to request a lesser included offense is a matter of strategy requiring the legal expertise of trial counsel." Id. at 51, 757 S.E.2d at 549. Pieper explained that other state courts had formerly held that the decision to request a lesser included offense was "analogous to the decision of what plea to enter, and that the two decisions should be treated the same" because "in both instances the decisions directly relate to the potential loss of liberty on an initially uncharged offense." Id. at 49, 757 S.E.2d at 548 (citing People v. Brocksmith, 162 Ill.2d 224, 205 Ill.Dec.113, 642 N.E.2d 1230, 1232 (1994)). However, Pieper rejected this argument and agreed with the Colorado Supreme Court's reasoning in Arko v. People, 183 P3d 555, 558 (Colo.2008), which explained:

When a defendant pleads guilty, he waives all rights attendant to a jury trial. On the other hand, a defendant retains all of his trial rights when he requests that a jury consider a lesser offense instruction. He also retains the opportunity to advocate for outright acquittal. Thus, this decision is not analogous to the decision whether to plead guilty. Because the defendant retains these fundamental trial rights, we conclude that the decision to request a lesser offense instruction is

strategic and tactical in nature, and is therefore reserved for defense counsel. This tactical decision requires sophisticated training and skill which attorneys possess and defendants do not....

Id. at 558–59 (internal citation omitted).

This Court agrees with Pieper’s conclusions based on the above reasoning, as the decision is a tactical one which should be made based on the expertise and experience of trained counsel and the particular facts of each of each case. While counsel should consult with their client during this decision making process, the decision to request lesser-included offenses should ultimately be made by counsel. This particular decision does not waive any of the defendant’s constitutional rights, nor does it necessarily admit any guilt. It simply allows counsel to develop a strategical tactic to help his client either be convicted of all or nothing, or risk a conviction on a lesser offense with a lesser punishment rather than serving a longer sentence for the indicted crime. Because this is a tactical decision, and not a decision to waive constitutional rights or admit guilt, it should be made by counsel, not the defendant.

Although Pieper’s conclusions were made in a concurring opinion, which is not binding authority upon this Court, the Court notes the majority opinion in Abney requires some sort of adoption of Pieper’s reasoning for the denial of post-conviction relief, so this conclusion ultimately is binding upon lower courts. In Abney, the applicant alleged ineffective assistance of counsel, claiming his attorney was deficient in failing to request a lesser-included offense after he was convicted of armed robbery. However, the Court of Appeals found trial counsel was not ineffective because counsel was able to articulate a valid trial strategy in choosing not to request the lesser-included offense, as “trial counsel did not feel it was in his client’s best interests to ask for a jury instruction on strong arm robbery.” Abney at 47, 757 S.E.2d at 547. Because Abney held that counsel could not be ineffective for failing to request a lesser included offense where he

offered a valid trial strategy in choosing not to do so, it *must* follow that this specific decision is a strategic decision for trial counsel, not his client, to make. If the decision were one the defendant on his own must make, then any strategy articulated by defense counsel would have no bearing on a finding of ineffective assistance of counsel.

In applying this argument to the case at hand, the decision to request the lesser-included offense of strong armed robbery was Trial Counsel's call to make, not Newton's. Trial Counsel clearly articulated a valid strategic reasoning for requesting the lesser-included offense, so she cannot, therefore, be ineffective for choosing to do so. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Regardless of whose decision it was to make, Trial Counsel credibly testified at the evidentiary hearing that she discussed this decision with Applicant and Applicant agreed with the decision to request the lesser-included offense. She testified that she, as a matter of routine practice, always consults with her clients on this specific issue and allows *them* to make the final decision, as she personally believes it is the client's decision to make, not hers. Although Trial Counsel could not specifically recall any conversation with Applicant about the decision, she credibly testified that she spoke with him, as indicated by her notes, and because they chose to request the lesser-included offense, Applicant *must* have made the decision to do so, or else she would not have done so.

Accordingly, because Trial Counsel did discuss this decision with Applicant, and because she made a valid strategic decision to request the lesser-included offenses, this Court finds Trial Counsel was not ineffective for doing so. Trial Counsel's choice was not deficient under the circumstances of this case. Further, there likely is no resulting prejudice, as it is very likely that the instruction on the lesser-included offense prevented Applicant from being convicted of the principal charge of armed robbery. Therefore, neither prong of the Strickland test is met, at this allegation is denied and dismissed with prejudice.

## VI. 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.

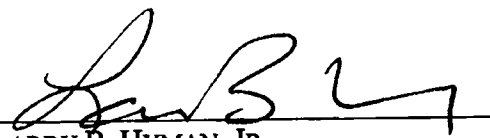
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

*[signature page to follow]*

**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 12 day of Oct, 2018.

  
 LARRY B. HYMAN, JR.  
 Presiding Judge  
 Second Judicial Circuit

*oml*  
~~10-12~~  
 Conroy, South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 Waymon Eugene Newton, )  
 Plaintiff(s), )  
 -vs- )  
 South Carolina State Of, )  
 Defendant(s). )

IN THE COURT OF COMMON PLEAS  
 2nd JUDICIAL CIRCUIT  
 CASE NO.: 2017CP0202138  
 APPOINTMENT OF COUNSEL OR GAL  
 (Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case       Adoption       Juvenile  
 SVP case       Custody and/or Visitation       Abuse and Neglect  
 Minor Name Change       Other: Post Convict Rel 500

It appears Waymon Eugene Newton, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.  
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:  
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.  
 court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.  
 Other:

Therefore, it is ordered that hereby is appointed as (Select one.)

counsel       lead counsel (if capital PCR case)       guardian ad litem  
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED  
 October 30, 2017

Circuit Judge       Clerk of Court

Plaintiff Attorney:	
Lance S. Boozer	Waymon Eugene Newton
1400 Laurel Street Suite 4A	Kershaw Correctional Inst
Columbia, SC 29201	4848 Goldmine Hwy
	Kershaw, SC 29067

Defendant Attorney:	
Julie Amanda Coleman	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov), and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

**THE BOOZER LAW FIRM, LLC**

1419 Pendleton Street  
Columbia, SC 29201

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