

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Lexington County

Brooks P. Goldsmith, Circuit Court Judge

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S.C. SUPREME COURT  
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MICHAEL RAY ELDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000242

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SUPPLEMENTAL APPENDIX

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LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

KELLY OPPENHEIMER  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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opening or closing statements. Counsel noted that he only objects to an improper argument when it is unduly prejudicial. Counsel offered valid reasons that supported his minimalist approach in opening and closing portions of a trial. ~~Also~~ Applicant's allegation that counsel was ineffective for failing to make an opening statement is without merit where there is no per se duty on a criminal defense attorney to make an opening statement just for the sake of it. The jury was properly noticed on procedures, the State's burden of proof, and the applicable law from the Trial Judge. Furthermore, counsel strategy here was consistent with his reasoning in refraining from making objections in argument unless absolutely warranted. Furthermore, Applicant failed to meet his burden to prove that any of the solicitor's comments at issue were unduly prejudicial and warranted a mistrial. Therefore, these allegations are denied and dismissed.

E.

Except as discussed above, this Court finds that Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

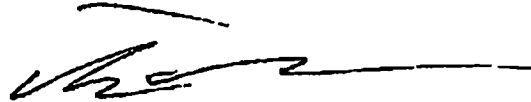
**CONCLUSION**

Based on all the forgoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his



7. Ineffective assistance of counsel for failing to object to hearsay statement given through SANE nurse, Tr. 266, l. 14 – Tr. 267, l. 15.
8. Ineffective assistance of counsel for failure to object and inadequate<sup>1</sup> objecting concerning Applicant wanting to play truth or dare with minor's friend. Tr. 267, l. 16 – Tr. 268, l. 24.
9. Ineffective assistance of counsel for failure to object to Applicant blowing the blowing his horn at teenage girls. Tr. 295; Tr. 389
10. Ineffective assistance of counsel for failure to object to the state pitting witnesses. Tr. 361, ll. 15-22.
11. Ineffective assistance of counsel for failure to object to the State vouching for the credibility of Robin Baker. Tr. 386, ll. 12-14.

RESPECTFULLY SUBMITTED,



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Tristan Michael Shaffer  
Attorney for Applicant

April 19, 2013

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<sup>1</sup> These statements were not objected to under Rules 403, 404(b), or 802, SCRF.