# Timothy L. Griffith Attorney at Law

**360 West Wesmark Blvd, 2nd Floor, Sumter, SC 29150**

**Phone: (803) 607-9087 Fax: (803) 728-3375**


RECEIVED December 11, 2018

DEC 17 2018

S.C. SUPREME COURT

Clerk of Court, South Carolina Supreme Court
Case # 2018-CP-43-934

Mathew C. Dwyer v State of South Carolina

Please see the included Notice of Appeal. I have also forwarded by separate mail copies to:

The Sumter County Clerk of Court
The Office of the Attorney General of South Carolina
SC Office of Indigent Defense / Commission of Indigent Defense

Please file the included NOTICE OF APPEAL for the case captioned.

**Attorney Timothy L. Griffith was appointed as PCR Council and not retained and will not be handling the Appeal.**

Thank You,

Timothy L. Griffith, Esquire

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF COMMON PLEAS**

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DEC 17 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George M. McFaddin Jr, Circuit Court Judge

Case # 2018-CP-43-934

The State, Respondent,

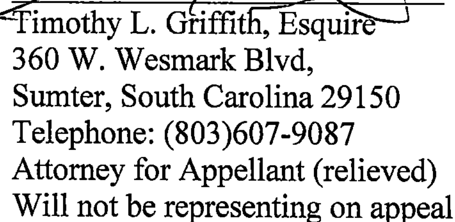
v.

Mathew C. Dwyer Appellant.

NOTICE OF APPEAL

Mathew C. Dwyer appeals the decision of the Court, on November 29, 2018, where Mr. Dwyer was denied his request for Post Conviction Relief. Mr. Dwyer was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 12/11/18



Timothy L. Griffith, Esquire
360 W. Wesmark Blvd,
Sumter, South Carolina 29150
Telephone: (803)607-9087
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Julie A. Coleman, Esquire
Assistant Attorney General
South Carolina Attorney General's Office P.O. Box 11549
Columbia, S.C. 29211

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

RECEIVED

DEC 17 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

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

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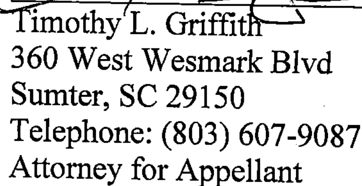
The State, Respondent,

v.

Mathew C. Dwyer Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Office of the Attorney General of South Carolina, PCR Division, by U.S. Postal Service, postage prepaid, to P.O. Box 11549, Columbia, S.C. 29211, on December 10, 2018



I received a copy of the Notice of Appeal
on this ____ day of ___________, 2018

______________________
Office of the Attorney General
PCR Division

Timothy L. Griffith
360 West Wesmark Blvd
Sumter, SC 29150
Telephone: (803) 607-9087
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

RECORDED
2018 NOV 30 AM 9:02
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Mathew C. Dwyer,

Applicant,

v.

State of South Carolina,

Respondent.

C/A No. 2018-CP-43-934

**ORDER OF DISMISSAL**

This matter comes before this Court pursuant to an application for post-conviction relief (PCR) filed May 21, 2018. The State made its return on July 26, 2018. An evidentiary hearing was convened on November 16, 2018, before this Court at the Sumter County Courthouse. Applicant was present and represented by Timothy Griffith, Esquire. Assistant Attorney General Susannah Cole represented Respondent. Testimony was taken from trial counsel, John Keffer, Solicitor John Meadors, and Applicant.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the hearing, this Court finds applicant has failed to establish any constitutional violations and denies the PCR application with prejudice.

## PROCEDURAL HISTORY

A Sumter County Grand Jury indicted Applicant, Mathew C. Dwyer, in July of 2015 for the possession of a weapon during a violent crime and the murder of Johnny Singleton. On October 19, 2015, Applicant's case was called to trial before the Honorable Maite Murphy. Applicant was represented by John S. Keffer, Esquire ("Counsel"). Assistant Solicitor John P. Meadors represented the State. At the conclusion of the five-day trial, the jury returned a verdict of guilty on both charges. Judge Murphy sentenced Applicant to forty-five years' imprisonment

for murder and a concurrent term of five years' imprisonment for the weapons charge. Thereafter, Applicant filed a timely notice of appeal.

Appellate Defender David Alexander, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed the Final Brief of Appellant on March 27, 2017. In his brief, Applicant presented the following issue on appeal:

> Whether the trial court erred in refusing to charge self-defense when evidence showed that appellant and the decedent, who was ex-military and knew martial arts, got into a fight after a sexual advance in the decedent's moving car and that the appellant was scared?

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Mathew C. Dwyer*, Unpublished Opinion No. 2017-UP-449 (Ct. App. December 6, 2017). The Remittitur was issued on December 27, 2017, by the South Carolina Court of Appeals.

## SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

On the morning of January 27, 2015, emergency medical personnel responded to the scene of a crashed vehicle located off S.C. Highway 521 in Sumter County. (T. p. 79, lines 7-20.) EMS workers found the vehicle in a ditch, with the rear of the car resting against an embankment. (T. p. 80, lines 1-3.) In the back seat of the vehicle, a dead man was in a seated position. (T. p. 80, lines 8-12.) The victim's legs were draped across the center console. (T. p. 81, lines 19-22.) The rear window was broken out, the front passenger window was down, and the driver's window was broken. (T. p. 82, lines 19-23.) The man had dried blood by his left ear, on his pants near his left ankle, on his pants near the right back pocket, and by the right front pants' pocket. Blood was also on the victim's jacket, passenger side front seat, passenger side front door frame, and on the rear seat. (T. p. 82, line 23 – p. 83, line 3.) EMS noted brain matter on the rear seat below the window on the right side of the car and a wound to the back of the man's head. (T. p. 83, lines 4-7.) The vehicle was in reverse gear. (T. p. 81, lines 3-11.)

Investigator Michael McCauley, a crime scene investigator with the Sumter County Sheriff's Department, responded to the scene that morning. (T. p. 90, line 13 – p. 92, line 17.) The investigating officers were suspicious of the victim's placement inside the car and the blood and bodily fluids surrounding the body. (T. p. 93, lines 1-11.) The victim's head was resting over the back seat, just before the rear window. (T. p. 95, lines 21-24.) Blood found on the victim's pants leg and on the passenger side headrest was more consistent with a transfer pattern than with high velocity spatter from an injury to the back of the head during a car crash. (T. p. 97, lines 7-23, p. 99, lines 18-24.) McCauley also found blood on the outside of the passenger door. (T. p. 100, lines 1-5.) The victim's phone was found in the woods behind the ditch and embankment in which the car was located. (T. p. 118, line 18 – p. 119, line 7.)

Dr. Janice Ross, the State's pathologist, performed the autopsy on the man identified as Johnny Singleton on January 28, 2015. (T. p. 180, line 13 – p. 181, line 16.) Ross found the victim had a gunshot wound to the back of the head and a bruise inside his upper lip but appeared to have no other external injuries. (T. p. 183, lines 2-8.) Dr. Ross believed the injury to the upper lip occurred near the time of death. (T. p.183, line 22 - p. 184, line 2.) The gunshot wound to the back of the victim's head indicated the bullet traveled from the back, right side of the head through the brain and toward the front left of the head into the left sinus cavity. (T. p. 184, line 15 - p. 185, line 9.) Dr. Ross opined the gun was at least two feet away from the victim when it was fired. (T. p. 187, lines 18-24.) The victim's dentures were intact and in place at the time of his death, and his toxicology report was negative. (T. p. 186, lines 20-24; p. 189, line 2.)

Janie Mae Shaw testified she played cards with the victim on a daily basis. (T. p. 150, lines 4-8.) On the night of January 26, 2015, Johnny Singleton ate some food and took a nap at Ms. Shaw's house before playing cards with four other people. (T. p. 150, line 19 – p. 151, line

8.) Singleton left between 9:30 and 10:00 pm that night. (T. p. 151, lines 9-16.) As was his custom, Singleton hid his cash of approximately $500 from the evening's card game inside his sock. (T. p. 151, line 17 – p. 152, lines 1-5.) Singleton was angry as he prepared to leave because someone was calling him repeatedly. (T. p. 153, lines 20-23.) Ms. Shaw also recognized Applicant as a visitor to her house, but not the night Singleton died. (T. p. 154, line 17 – p. 156, line 8.)

Phone logs from the victim's phone revealed multiple calls made to and received from the victim's phone by Applicant. When investigators called Applicant's phone and identified themselves, Applicant claimed to be Novian Sinclair, a prior roommate of his. (T. p. 360, line 17 - p. 364, line 4.) Applicant maintained he had no information about the death of Johnny Singleton, and he claimed he was not with the victim on the night of his death. Applicant did not attempt to explain why his cell phone records showed calls from his phone to the victim's. (T. p. 338, lines 1-9.) The officers executed a search warrant for Applicant's residence, obtained a DNA sample from Applicant, and questioned him about the death of the victim. (T. p. 212, line 10 - p. 216, line 14.) Applicant continued to deny having any knowledge or involvement in the victim's death. (T. p. 242, line 16 - p. 243, line 20.)

Phone records revealed Applicant also called his brother, Stephen, multiple times on the night of the shooting. In his statement to law enforcement officers with the Sumter County Sheriff's Department, Stephen Dwyer said Applicant called him to come pick him up around 10:30 pm off on Hwy 521. (T. p. 285, lines 2-10.) Stephen asked his brother what happened, and Applicant said, "I F'd up." (T. p. 285, lines 7-8.) Stephen, who needed to give a friend a ride to her place of work, agreed to pick his brother up along the way. (T. p. 285, lines 12-22.) Applicant told Stephen he had been shot and asked him to hurry. (T. p. 286, lines 2-4.)

When Stephen found Applicant, he was near a club off of Hwy. 521, walking toward Sumter. (T. p. 285, line 23 - p. 286, line 1.) Applicant's hand was bleeding and was wrapped with something like a shirt. (T. p. 286, lines 5-6.) Applicant told his brother he did not want to go to the hospital. (T. p. 286, lines 6-8.) After Stephen dropped his friend off at her workplace, he drove Applicant to his house. Stephen asked Applicant what happened to his hand, and Applicant told him he cut it. (T. p. 286, lines 9-14.) Applicant would not give his brothers any details about the victim that night. (T. p. 286, lines 14-21.)

The day after the shooting, Stephen, who had seen the news that morning, deduced his brother was involved in Singleton's death. (T. p. 287, lines 6-12.) Stephen stopped by his brother's house again on his way home from the gym. (T. p. 287, lines 6-8.) Applicant told Stephen he and the victim were fighting in the car, and the man was ex-military and knew karate. Applicant told his brother he was scared and shot the victim in the head, but he did not mean to shoot him in the head. (T. p. 287, lines 12-17; State's Ex. 75.) Applicant told Stephen "that the dude saw the gun. They were in the car when they were tussling. And after he shot him, the car was wrecked and hit a tree. (T. p. 287, lines 17-20; State's Ex. 75.) Applicant took the victim's wallet and money and threw the victim's phone into the woods. (T. p. 287, lines 21-22.) Applicant also told his brother he hid the gun in the back of a truck at the club off of Hwy. 521. (T. p. 289, lines 7-21.) The following day, when Stephen asked his brother again if he killed Johnny Singleton, Applicant told his brother he did not and claimed he was "just playing" and made up the story he told him earlier. (T. p. 288, lines 1-7.)

The case later took an unusual turn. One day during March of 2015, a security guard at Sumter Mall was approached by a woman he did not know and asked if he was a real cop. (T. p. 142, lines 1-221.) The woman wanted to remain anonymous, but told the guard she had

information that might help a case. (T. p. 142, line 24 – p. 143, line 2.) The woman handed him a letter and asked him to give it to the police. (T. p. 139, line 12 – p. 140, line 3; p. 143, lines 2-4.) The letter said "Mathew Dwyer" on the top of the envelope (T. p. 145, lines 17-19), and it was addressed to Demetrius Cooper. The guard handed the letter over to Detective Mathew Yates with the Sumter Police Department. (T. p. 140, lines 3-20.)

The Sumter Police Department, determined the subject of the letter was unrelated to a city case, but discovered the county had a pending case to which the letter was relevant. (T. p. 172, line 17 – p. 174, line 21.) Demetrius Cooper, who was Matthew Dwyer's friend, testified for the State. (T. p. 194, lines 7-16.) Cooper said he received an encoded letter from Dwyer. However, the letter also contained a key code so that Cooper could decipher its contents. (T. p. 196, lines 1-17.) In the letter, Dwyer thanked Cooper for "everything you are doing for me." (T. p. 199, lines 12-18.) Dwyer also told Cooper he needed an alibi for January 26th. (T. p. 200, line 15 - p. 201, line 5.) Dwyer told Cooper the story he wanted Cooper to fabricate about his activities that night if anyone asked him. (T. p.200, line 1 - p. 207, line 14.) Cooper forgot about the letter, but he was later surprised that the letter fell into the hands of law enforcement. (T. p. 208, lines 10-21.)

## ALLEGATIONS

In his initial Application, Applicant alleged he is being held in custody unlawfully for the following reasons:

a. Ineffective assistance of counsel;
   1. Failure to advise right to testify and closing argument;
   2. Failure to inform of plea offer;
   3. Failure to keep attorney/client privilege;
   4. Failure to prevent Applicant from addressing court;
   5. Failure to call Sheriff as a witness;
   6. Failure to request a mistrial;
   7. Failure to present evidence in defense;

8. Failure to request continuance;
9. Failure to object to hearsay;

b. State misconduct and presentation of false evidence;
   1. Stephen Dwyer was threatened with prosecution if he did not testify;
   2. State failed to disclose exculpatory information;
   3. State used improper procedure to obtain DNA;
   4. State failed to inform jury victim was a sex offender;
   5. State tampered with evidence;
   6. State presented witness who was victim of prior assault;
   7. State treated the testimony of the witnesses as fact;

c. The trial court erred in refusing to charge self-defense;
   1. Evidence clearly showed that Applicant and decedent got into a fight;

d. Violation of my 14th amendment/due process;

e. Biased jury/ biased testimony; and

f. Hearsay.

At the beginning of the hearing, Applicant indicated he was withdrawing his claims related to prosecutorial misconduct and due process violations. This Court questioned Applicant on his intention to withdraw these claims and explained the consequences of doing so. Applicant indicated he still wished to withdraw the claims. Accordingly, this Court dismisses with prejudice the prosecutorial misconduct and due process claims. Applicant then proceeded on only a few of his remaining allegations, specifically, ineffective assistance for failure to explain the details of a plea offer, ineffective assistance of counsel for advising his client not to testify, and trial court error for failing to instruct the jury on self-defense. Therefore, to the extent any allegations in the initial application are not explicitly denied in this order, they are dismissed with prejudice as Applicant was unable to present sufficient testimony to meet his burden of proof with respect to those claims. *See* Rule 71.1(e), SCRCP (providing the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence).

## 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 further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony. As a matter of general impression, this Court finds Counsel's testimony and the solicitor's testimony were credible and persuasive on all matters, while also finding Applicant's testimony and assertions lack credibility. These credibility findings have been applied to the Court's findings set forth below. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of facts and conclusions of law based on the probative evidence presented.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 [it] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, an applicant must prove counsel's performance was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S..at

690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. 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 hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by applicant:

***Failure to advise Applicant of plea offers***

Applicant claims Counsel did not explain to him about any available plea offers from the State. Counsel, the solicitor, and Applicant all testified about this issue at the evidentiary hearing. Applicant testified he did not discuss any plea offers with counsel until the night before the verdict, when he was offered a term of thirty years' imprisonment if he pled to murder. When asked if he would have taken the plea, Applicant said he would not. The testimony of both counsel and Solicitor Meadors was consistent on this issue, however. There were no plea offers other than a straight up plea to murder for thirty years to life. That offer was made before trial and just before the verdict. Counsel testified Applicant rejected the deal because he had nothing

to lose by going to trial. There was some disagreement whether Applicant was offered thirty years or thirty years to life. Counsel and Solicitor testified it was a "straight up" plea to a sentencing range of thirty years to life. Applicant believed it was thirty years. This Court finds Counsel and the solicitor's testimony credible on this point.

This Court finds Counsel adequately and reasonably advised Applicant as to the plea offers. Plea agreements rest upon contract principles. *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994). The plea agreement exists only as an "offer" until the defendant accepts by entering into a court-approved guilty plea; until which point neither the State, the defendant, nor the court are bound by the plea agreement. *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). This Court finds there was no deficiency of counsel for failure to advise of the plea offers because Applicant was aware of the only offers made by the solicitor. Furthermore, given Applicant's acknowledgement he would not have taken a term of thirty years, he has not shown prejudice. Accordingly, Petitioner has not met his burden to show either prong of *Strickland*. This allegation is denied and dismissed with prejudice.

***Ineffective assistance of counsel for advising Applicant not to testify***

Applicant argues trial counsel was ineffective for advising him not to testify because he needed to provide some evidence of self-defense to warrant a self-defense charge to the jury. This Court does not find this argument compelling.

Applicant testified he met with counsel five or six times after his family retained Counsel to represent him. Applicant said he did not review the discovery material with counsel, but he did give counsel the names of some witnesses who could assist in his defense. Applicant said his defense was solely based on self-defense and the he wanted to testify at trial. However, Applicant recalled the judge asking him if he wanted to testify and he acknowledged he told the

judge he did not. Applicant said counsel advised him not to testify so he did not do so. Applicant claimed the outcome of the trial would have been different had he elected to testify. On cross-examination, Applicant also admitted he wrote a letter to a witness asking the witness to lie for him and create an alibi for the night of the murder.

Trial counsel's credible testimony at the evidentiary hearing before this Court was that the strategy all along was to claim self-defense. Counsel also testified the letter changed everything about their trial strategy. Counsel said he received discovery from the State, which he discussed with Applicant and his family extensively. Counsel said the cell phone records placed Applicant and the victim in contact with each other on the night of the murder. The records also implicated Applicant's brother, who picked up Applicant near the scene of the crime shortly after the victim was killed. Because it was clear Applicant was present with the victim, the strategy was to argue self-defense. Counsel said Applicant understood the State's case against him and initially gave him the names of two witnesses he claimed were in the car with him on the night of the murder. Despite his efforts, Counsel was never able to locate those witnesses. Counsel said another hurdle to the defense was that Applicant's brother gave inconsistent statements to police about what Applicant told him happened with the victim. Nevertheless, Counsel and Applicant agreed the only viable defense was to claim self-defense.

Counsel said he received notice of the letter just before the trial began, and the letter compromised their entire defense. Counsel said Applicant never told him about the letter, although he admitted writing it when Counsel asked him about it. Counsel said he nevertheless continued to search for witnesses who could testify about the shooting, but he could not find those witnesses. Counsel said he advised Applicant it was too risky for Applicant to take the stand and attempt to explain why he wrote the letter asking a witness to lie for him and give him

an alibi. Counsel said Applicant understood the risks of testifying and they both agreed he should not testify. Counsel said he hoped the testimony of the brother would be sufficient for a charge on self-defense, which he requested from the trial court. Although he properly made the request to charge self-defense from the trial court, that request was denied.

Solicitor Meadors said he turned over everything that was discoverable as he came into possession of the information. Meadors said he turned over the letter to counsel when he received it, which was just before trial began. Meadors summarized the state's case with the following: they had cell phone records placing Applicant with the victim the night of the murder, there were blood transfers on the victim's pants and socks, indicating he was robbed by Applicant, the statements from Applicant's brother were inconsistent but also inculpatory of Applicant, and the letter from Applicant to a witness to create an alibi was more evidence of Applicant's guilt.

This Court finds Applicant cannot meet his burden on this claim. Counsel articulated a strategic reason for advising Applicant he should not testify because he thought the jury would not accept Applicant's explanation for why he wrote the letter soliciting a false alibi. Therefore, because counsel had a valid, strategic reason for advising Applicant not to testify to preserve his credibility as best he could, his performance was reasonable. "When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court will not second guess counsel's trial tactics and finds his strategy reasonable. *See Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir. 1977)) (holding 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). Moreover, this Court must make "every effort" to "eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689. Counsel said he believed the brother's statements were enough to request a self-defense charge. This Court does not find Counsel deficient for his advice to Applicant in this matter.

Counsel also credibly testified Applicant understood that risk of testifying and agreed with the new strategy. The record of the trial reveals the trial judge court engaged in a lengthy colloquy with Applicant wherein his rights were explained to him, he had a short conference with trial counsel, and he chose not to testify. (T. p. 406-408.) Given Applicant would have admitted to the jury he attempted to commit a fraud upon the court, he cannot show how the outcome of the trial would have been different had he elected to testify. Because of this, Applicant has failed to prove Counsel was deficient or that he was prejudiced by any alleged deficiency. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

***Trial court error for declining to give a self-defense charge***

Lastly, Applicant argues the trial court erred in refusing to instruct the jury on self-defense because he presented sufficient evidence of self-defense through the testimony of his brother. This issue was properly preserved by Counsel at trial and presented to the South Carolina Court of Appeals in Applicant's direct appeal of his convictions.

Post-conviction relief is not a substitute for, nor does it affect, any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. *See* S.C. Code Ann. § 17-27-20(b); *see also Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an

appeal."). This allegation was raised in applicant's direct appeal. Therefore, this claim of trial court error for refusing to instruct the jury on self-defense is dismissed with prejudice.

## CONCLUSION

Based on the foregoing, this Court finds applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.

The Court notes the 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 appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek review, PCR counsel must file a notice of appeal on the applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for further procedures for appeal.

**IT IS THEREFORE ORDERED:**

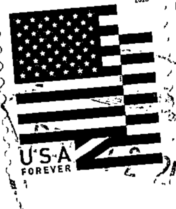
1. The PCR application is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

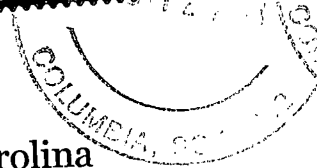
**AND IT IS SO ORDERED** this 29th day of November, 2018.

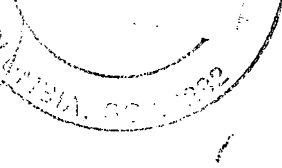
THE HONORABLE GEORGE M. MCFADDIN, JR.,
Presiding Judge

________________, South Carolina

Timothy L. Griffith, Attorney at Law
360 West Wesmark Blvd, 2nd Floor
Sumter, SC 29150








Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211