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THE HENDERSON LAW FIRM, P.C. S.C. SUPREME COURT
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March 6, 2019

Hon. Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211

Re: Jakeivan A. Pulley (#344247) v. State of South Carolina
Laurens C/A No. 2014-CP-30-0138

Dear Clerk Shearouse:

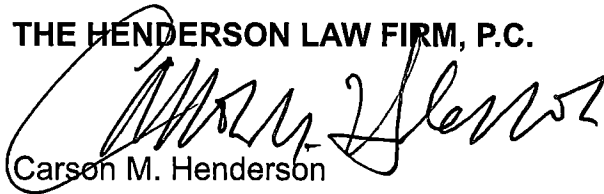
Please file the enclosed Notice of Appeal and Proof of Service and return clocked copies of both documents to me in the enclosed envelope provided for your convenience. Also enclosed is Circuit Judge Brian M. Gibbons' Order of Dismissal dated February 19, 2019.

My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

Cordially yours,

THE HENDERSON LAW FIRM, P.C.



Carson M. Henderson

CMH/lhc

Enclosures as indicated

Cc: Janell Gregory, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

Jakevian A. Pulley (#00344247)
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, S.C. 29936



THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Brian M. Gibbons, Presiding Circuit Judge – Laurens County

RECEIVED
MAR 08 2019
S.C. SUPREME COURT

C/A No. 2014-CP-30-0138

JAKEIVAN A. PULLEY (#344247),

Appellant,

v.

STATE OF SOUTH CAROLINA,

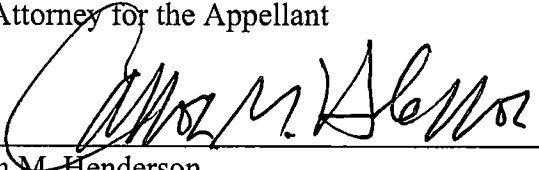
Respondent.

NOTICE OF APPEAL

Jakeivan A. Pulley appeals the Order of Dismissal issued by the Honorable Brian M. Gibbons on February 19, 2019. This matter was heard in Greenwood County on October 16, 2018. The Appellant's trial counsel received the Order of Dismissal from the Laurens County clerk's office on Wednesday, February 27, 2019.

THE HENDERSON LAW FIRM, P.C.
Trial Attorney for the Appellant

By: _____


Carson M. Henderson
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Greenwood, S.C. 29646
Phone: (864) 229-8000
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Greenwood, South Carolina

March 6, 2019

Other Counsel of Record:

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S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
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RECEIVED
MAR 08 2019
S.C. SUPREME COURT

C/A No. 2014-CP-30-0138

JAKEIVAN A. PULLEY (#344247),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on March 6, 2019, addressed to its attorney of record, Janell Gregory, Esquire, S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, with a copy also being mailed to S.C. Commission on Indigent Defense, Appellate Division, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.

THE HENDERSON LAW FIRM, P.C.

Trial Attorney for the Appellant

By: 

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Phone: (864) 229-8000
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Greenwood, South Carolina

March 6, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Jakeivan A. Pulley, #344247,)

2014-CP-30-0138

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

LAURENS COUNTY
CLERK OF COURT
2019 FEB 25 AM 11:01
LYNN W. LANCASTER

This matter comes before the Court by way of an application for post-conviction relief filed on February 19, 2014, by Jakeivan Pulley (“Applicant”). The State (“Respondent”) filed a Return on June 16, 2014, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 16, 2018, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Scarlett Moore, Esquire, (“Counsel”) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Laurens County Clerk of Court’s order of commitment. During the July 2011 term, the Laurens County Grand Jury indicted Applicant for armed robbery (2011-GS-30-1057) and criminal conspiracy (2011-GS-30-1058). Counsel represented Applicant. Assistant Solicitors Warren Mowry and Rosemerry Fielder-Commander of the Eighth Circuit Solicitor’s Office prosecuted the case.



On February 28, 2012, Applicant proceeded to a jury trial before the Honorable Roger L. Couch. After a three day trial, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for twelve years on the armed robbery charge and a concurrent five years for the criminal conspiracy charge.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 783 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction by written order. State v. Pulley, Op. No. 14-UP-008 (S.C. Ct. App. Filed January 8, 2014). The Remittitur was issued January 27, 2014.

II. SUMMARY OF FACTS

On April 24, 2011, Applicant and two co-defendants planned and executed an armed robbery of the Guatemex store in Laurens County. Anna Sebastian ("Victim") was working as the clerk in her brother-in-law's store on that date and testified at trial that Applicant came into the store about 8:45p.m. on April 24th. (Trial Tr. 88.) Victim testified Applicant asked if he could buy something for one dollar in the store. (Trial Tr. 89.) Victim sent her niece to show Applicant where he could find a soda for less than a dollar. (Trial Tr. 89.) Applicant provided Victim with payment and he left the store. (Trial Tr. 89-90.) A few minutes later, a woman came into the store to send money. (Trial Tr. 90.) While she was sending money, Applicant and one of his co-defendant's entered the store brandishing a gun and demanded all of the money the woman was sending. (Trial Tr. 90.) Victim testified she recognized Applicant during the robbery as the same man that had come in earlier and purchased a soda. (Trial Tr. 90.) Victim testified she recognized Applicant even though he had covered his mouth covered during the robbery. (Trial Tr. 90.) Victim also testified Applicant and his co-defendant made her open the cash register and she complied. (Trial Tr. 92.) Victim testified both Applicant and co-defendant took money from the

cash register after she opened it. (Trial Tr. 92.) Victim testified some of the money fell on the floor and when Applicant went to pick it up, he noticed Victim attempting to set off the alarm. (Trial Tr. 93-94.) Victim testified Applicant grabbed her by the hair and then fled the scene with co-defendant. (Trial Tr. 94.)

Victim testified officers showed up after Applicant and co-defendant fled. (Trial Tr. 94.) The store was equipped with high quality video surveillance and officers were able to see a video of the incident that night. (Trial Tr. 69, 131.) Captain Christy Cofield, who was a patrol lieutenant at the time of the incident, testified she observed the video of Applicant coming into the store to purchase a soda prior to the robbery. (Trial Tr. 141.) Capt. Cofield stated she recognized Applicant because he is part of her extended family and she is familiar with him. (Trial Tr. 142.) Capt. Cofield testified based on the video she had officers looking for a black male with "some type of orangey red looking emblem on the back pockets." (Trial Tr. 143.) Capt. Cofield testified she knew Applicant as "J Rock," but once she learned his name, she told her officers to be on the lookout for Applicant. (Trial Tr. 144.)

Officer Patrick Durkin with the Greenwood City Police Department testified he responded to the armed robbery and was told to be on the lookout for two males. (Trial Tr. 271-272.) Officer Durkin testified he observed two males about two blocks from the incident location getting into a vehicle that had just stopped and then immediately pulled off again. (Trial Tr. 272.) Officer Durkin testified he found the behavior suspicious and radioed to see if he could get additional descriptors of the suspects. (Trial Tr. 272 -273.) Officer Durkin testified he relayed what he observed over the radio and was in the process of stopping the vehicle when Capt. Cofield instructed him to stop the vehicle. (Trial Tr. 273.) Officer Durkin testified Applicant was in the vehicle with another co-defendant and two females. (Trial Tr. 274.) Officer Durkin testified

1. Subject Matter Jurisdiction
 - a. Applicant claims court did not have jurisdiction because his indictments were not true billed and filed with the court;
 - b. Applicant claims the court did not have jurisdiction because he requested a preliminary hearing and never received a preliminary hearing.
2. Ineffective Assistance of Counsel
 - a. Counsel failed to challenge the traffic stop;
 - b. Counsel failed to object to his clothes being introduced at trial;
 - c. Counsel failed to conduct a hearing pursuant to Neil v. Biggers, 409 U.S.188 (1972);
 - d. Counsel failed to obtain discovery regarding Robinson's plea deal;
 - e. Counsel failed to properly argue her directed verdict motion;
 - f. Counsel failed to convey a plea offer prior to expiration.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified the lower court did not have subject matter jurisdiction because he does not believe his indictments were true billed. Applicant testified his indictments were not filed with the clerk of court. Applicant testified he requested a preliminary hearing on his charges, but never received one. Applicant testified at the time he requested the preliminary hearing he was not represented by any attorney. Applicant testified he received a letter from Counsel stating she was going to obtain discovery and it also would include a copy of his summons. Applicant testified he proceeded to a jury trial on his charges. Applicant testified he filed a direct appeal in his case. Applicant testified he met with Counsel four or five times regarding his case. Applicant testified Counsel did not investigate his case and he did not believe she had much experience. Applicant testified he asked her how much experience she had and she never answered his question.

Applicant testified on the night of the incident he got into a car with some other people. Applicant testified when he got into the car he saw headlights from a police car and noticed that a police car was following them. Applicant testified police pulled over the car and the officer did



not explain why he pulled the car over. Applicant testified he talked to Counsel about the stop, but she never filed a motion to suppress the bad stop. Applicant testified his clothes were very similar to the clothes worn by the robber during the robbery. Applicant testified the search warrant in the case was only for his cell phone and did not mention his clothes. Applicant testified Counsel did not object to the clothes being introduced into evidence. Applicant testified if Counsel had kept his clothing from coming in at trial, the trial would have been different. Applicant testified Counsel did not object to a lot of things during the trial. Applicant testified there were no photo line-ups prior to trial and Counsel did not object to any of the identifications made during trial. Applicant testified Counsel should have had a Biggers hearing and he was prejudiced as a result of her failure to request such a hearing.

Applicant testified there was a Brady violation because one of the co-defendant's had a deal that was not turned over to Counsel. Applicant testified when his co-defendant testified about pleading guilty, Counsel and Applicant had a discussion about his co-defendant's plea deal. Applicant testified he only found out about his co-defendant's plea deal during his co-defendant's testimony at trial. Applicant testified Counsel did not properly argue her directed verdict motion. Applicant testified he wants a new trial on his charges.

During cross-examination, Applicant testified he went over discovery with Counsel. Applicant testified he had an alibi. Applicant testified he did receive a plea offer from the State, but it had expired by the time he learned about it.¹ Applicant testified he rejected the plea offer. Applicant testified he was on probation at the time of the robbery. Applicant testified he recalled apologizing to the court for the incident.

¹ Applicant entered a written plea agreement into evidence that showed a plea offer from the State with an expiration date of August 19, 2011. (See Plaintiff's Exhibit 6.)

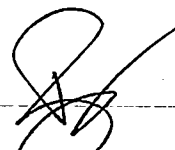


Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been practicing law for seventeen years and most of that time has been spent in criminal law. Counsel testified she was a public defender for two years as well. Counsel testified she was appointed to represent Applicant. Counsel testified she filed Rule 5 and Brady motions and went over all of the discovery with Applicant. Counsel testified she does not recall Applicant requesting a preliminary hearing. Counsel testified a preliminary hearing would not have made a difference in this case. Counsel testified she received two true billed indictments for Applicant. Counsel testified there were no issues with the indictments.

Counsel testified Applicant was on probation through the Department of Juvenile Justice at the time of the incident. Counsel testified Applicant was released only a few days before the robbery occurred. Counsel testified the facts of the case were that Applicant went into the store without a mask on prior to the robbery to buy a soda. Counsel testified the video surveillance showed Applicant and his two co-defendants walking around the store and then shows Applicant and one of the co-defendants re-entering the store and masks on. Counsel testified the first officer on the scene was a family member of Applicant's and recognized him from the video. Counsel testified the store clerk also identified Applicant during the trial. Counsel testified the vehicle Applicant was riding in was stopped and Applicant was wearing the distinctive pants that were observed on the video surveillance. Counsel testified she had no basis to challenge the identification of Applicant as one of the suspects in the robbery.

Counsel testified she discussed the elements of the crimes with Applicant and reviewed the surveillance video with him. Counsel testified the co-defendant that was tried with Applicant was not arrested at the same time as Applicant. Counsel testified Applicant's phone was picked up by



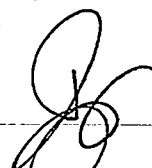
police. Counsel testified Applicant's clothes were taken incident to his arrest as he was wearing them at the time he was arrested. Counsel testified she did not file a motion to suppress because the traffic stop was good based on the identification information provided to officers. Counsel testified she did make several objections to the pants being introduced, but did not see any real basis to prevent the clothes from coming in at trial.

Counsel testified there was a plea offer on the table up until the date of the trial. Counsel testified she met with Applicant on September 16, 2011, where he rejected the plea offer. Counsel testified Applicant gave incriminating statements to law enforcement. Counsel testified Applicant told her he did commit the armed robbery and wanted to see if he could get a plea deal if he became an informant for law enforcement. Counsel testified the State rejected this idea because they felt they had a strong case against Applicant. Counsel testified Applicant never denied committing the crime.

Counsel testified she did object to the testimony of Robinson. Counsel testified she was not aware of Robinson's plea deal until Applicant's father told her. Counsel testified Applicant's father overheard a conversation between Robinson and the State and that is how he found out. Counsel testified she proffered Robinson's testimony and the trial court allowed the testimony. Counsel testified she did not request a curative instruction regarding Robinson's testimony.

Counsel testified she did not move to sever the trial because of incriminating statements Applicant made and having Applicant and one of his co-defendants tried together kept the statements from being used against Applicant at trial. Counsel testified she did argue for a directed verdict. Counsel testified there were no issues with the search warrant.

On cross-examination, Counsel testified Applicant and his co-defendants had distinctive clothing on the day of the incident. Counsel testified she did not challenge the traffic stop because



the stop was investigatory and Applicant had been identified as one of the suspects by a family member in law enforcement who viewed the high quality surveillance video when she responded to the scene. Counsel testified based on the incident report she did not find a legal basis to challenge the traffic stop. Counsel testified she believed there was probable cause to arrest Applicant.

Counsel testified because of Applicant's confession, she had ethical questions about certain trial strategies. Counsel testified she did not object to Victim's in court identification of Applicant. Counsel testified Applicant rejected the ten year plea offer. During the hearing, Counsel was presented with the cover letter Applicant introduced during his testimony that showed a plea offer from the State expired on August 19, 2011. Counsel testified the plea offer was still on the table as of September and all the way up until the date of trial.

APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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." Id. at 117-18, 300 S.C. 115.

V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Subject Matter Jurisdiction

Applicant does not believe indictments are valid

Applicant alleges his indictments were not true billed or filed with the clerk's office. This Court finds this allegation meritless as this Court was able to review the record in this case, which included a copy of Applicant's true billed indictments. This Court finds Applicant's indictments were also filed with the clerk's office. Consequently, this allegation is denied and dismissed with prejudice.

Applicant alleges the trial court did not jurisdiction since he did not have a preliminary hearing

Applicant claims the trial court did not have subject matter jurisdiction over his case because he was not provided a preliminary hearing. The defendant's right to request a preliminary hearing is provided solely by state statute. It is not required by either the State or Federal Constitution and is not necessary before a grand jury can indict a person for a crime. State v. Irby, 166 S.C. 430, 164 S.E. 912 (1932). The indictment itself constitutes a finding of probable cause and thus avoids the need for a preliminary hearing. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982) (citations omitted).

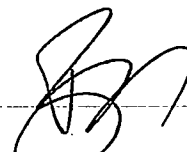
This Court finds Applicant was properly indicted by the Laurens County Grand Jury and therefore a preliminary hearing was not required. This Court finds credible Counsel's testimony that a preliminary hearing would not have made a difference in the outcome of Applicant's case. This Court finds Applicant has failed to establish how Counsel was deficient for not requesting a preliminary hearing or how he was prejudiced as a result. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel failed to challenge the traffic stop

Applicant alleges Counsel was ineffective for failing to file a motion to suppress the traffic stop. Applicant's implication that the traffic stop in this case was unlawful is entirely without



merit. “A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for the arrest, that the person is involved in criminal activity.” State v. Woodruff, 344 S.C. 537, 544 S.E.2d 290 (2001) (internal citations omitted). “[A]n officer may stop a car and briefly detain the occupants if he has a reasonable suspicion that the occupants are involved in a criminal activity.” Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994).

At trial, Officer Durkin testified he responded to the robbery call and was told to be on the lookout for two males. He also testified he observed two males getting into a car that barley stopped and then immediately took off again. This suspicious activity was observed shortly after the robbery and within close proximity of the robbery location. As Officer Durkin relayed what he observed over the radio as he initiated a stop on the vehicle. Capt. Cofield, who had observed the video surveillance of the robbery and is a relative of Applicant, came to the traffic stop location and was able to identify Applicant as one of the suspects involved in the robbery.

This Court finds credible Counsel’s testimony that she did not see a legal basis to file a motion to suppress as she believed the traffic stop was investigatory and valid. After a review of the record and testimony provided during the post-conviction relief hearing, this Court finds Applicant has failed to establish how Counsel was deficient for failing to file a motion to suppress the traffic stop or how he was prejudiced by her decision since, based on the information before this Court, it is unlikely that motion would have been successful. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

A handwritten signature in black ink, appearing to be the initials 'JD' followed by a stylized flourish.

Counsel failed to object to Applicant's clothes being introduced at trial

Applicant alleges Counsel was constitutionally ineffective for failing to object to his clothes being introduced as evidence at trial. Applicant testified at the post-conviction relief hearing that his clothes were similar to the clothes worn by the robbery suspect. Specifically, Applicant was wearing a pair of jeans that had an orange design on the pockets and was readily indefinable in the surveillance video.

This Court finds this allegation is without merit. This Court finds credible Counsel's testimony that she did not see a legal basis to keep the clothes from being introduced as evidence. Although multiple clothing items attributed to Applicant were introduced at trial, Counsel did make several objections to the jeans being offered into evidence. (Trial Tr. 98.) Counsel's objection led to a discussion outside the presence of the jury regarding the admissibility of Applicant's jeans. The lower court allowed the State to proceed to mark the jeans for identification purposes, but required additional foundation be laid before being admitted into evidence. The State again attempts to enter the jeans into evidence through Officer Durkin's testimony, and again Counsel objected. (Trial Tr. 276.) A discussion regarding Counsel's objection was held and the lower court again instructed the State to lay a better foundation prior to admitting the jeans into evidence. The State was finally able to admit the jeans into evidence after the proper foundation had been laid. (Trial Tr. 371.)

Based on the foregoing, this Court finds Applicant has failed to establish how Counsel was constitutionally ineffective as Counsel made appropriate objections to clothing items during the trial. This Court finds the clothing admitted against Applicant during trial was proper and Counsel made objections where appropriate. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

Counsel failed to conduct a Biggers hearing

Applicant alleges Counsel should have challenged the identification of Applicant as one of the suspects in the robbery. In Neil v. Biggers, 409 U.S. 188, 198-200 (1972), the United States Supreme Court set forth a two-pronged test to determine whether due process requires the suppression of an eyewitness identification. “To ensure due process, Neil v. Biggers requires courts to assess, on a case-by-case basis, the following: (1) whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, (2) whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed.” State v. Heyward, 422 S.C. 488, 494, 812 S.E.2d 432, 435 (Ct. App. 2018), reh’g denied (Apr. 26, 2018), cert. granted (Sept. 21, 2018) (citing State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012)).

This Court finds a Biggers hearing was unnecessary as Applicant was identified by his relative, Capt. Cofield, and Victim on the night of the robbery. At trial, Victim testified she observed Applicant come into the store prior to the robbery to buy a soda. Shortly thereafter, two masked suspects entered the store and Victim recognized one of the masked suspects as Applicant during the robbery. Victim testified at trial she was also recognized Applicant by his jeans. Victim was also able to identify Applicant in court during the trial.

Capt. Cofield was able to recognize Applicant as she reviewed the surveillance video of the robbery during her investigation. Capt. Cofield was familiar with Applicant based on her familial connection to him and her identification of Applicant was not premised on any unnecessary or unduly suggestive police procedure. This Court also finds credible, Counsel’s testimony that she did not see a legal basis to challenge the identification of Applicant.

Therefore, this Court finds Applicant cannot meet his requisite burden of establishing Counsel was constitutionally ineffective for failing to request a Biggers hearing. Additionally, there is no reasonable likelihood the identification would have been suppressed had the trial court conducted a Biggers hearing, as Capt. Cofield was familiar with Applicant because of their familial connection. Therefore, this allegation is denied and dismissed with prejudice.

Counsel failed to obtain discovery regarding Robinson's plea deal

Applicant alleges Counsel was constitutionally ineffective for failing to obtain information regarding Robinson's plea deal prior to trial. However, this Court finds this allegation is without merit as this Court finds credible Counsel's testimony that she did file Rule 5 and Brady motions in this case and Robinson's plea deal was not provided to her despite her efforts.

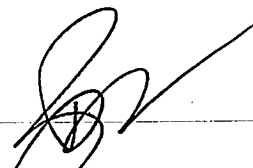
This Court finds credible Counsel's testimony that she did obtain discovery from the State and reviewed that discovery with Applicant. During the trial, Counsel objected to Robinson's testimony and argued the State's failure to provide information regarding Robinson's plea deal was a violation of the discovery motions she filed. (Trial Tr. 186 -187.) Counsel also argued Robinson's testimony should be excluded under Rule 601(b)(1), SCRE. (Trial Tr. 186 -187.) The State provided the lower court with a copy of Robinson's plea agreement, which showed there was no condition in Robinson's plea deal that required him to provide testimony against Applicant and the other co-defendant. Further, Robinson's plea agreement was entered in July of 2011, nearly seven months before the start of Applicant's trial. Robinson's attorney, Kate Anderson-Kendall, also testified. She testified that during the plea hearing she told the plea court Robinson would cooperate and may be called as a witness during Applicant's trial. (Trial Tr. 192.) However, Anderson-Kendall also testified Robinson would not suffer any consequences for not testifying against Applicant or his co-defendant since his case was closed. (Trial Tr. 193.)

Counsel argued the State violated Brady by not providing Robinson's plea deal in the original discovery. The State responded Robinson's confession that he gave law enforcement the night of their arrest was provided to Counsel and corroborated what was seen on the surveillance video. After a brief recess, the lower court found the State did not violate the discovery motions since Counsel was provided Robinson's confession, which corroborated what was captured on the surveillance video, which was also provided to Counsel. Additionally, the lower court cited Anderson v. Leeke, 271 S.C. 435, 248 S.E.2d 120 (1978), to show the State only has an obligation to provide favorable evidence to the defendant that the State has and the defendant is not able to obtain. The lower court found Counsel could have obtained the plea hearing transcript just as easily as the State since it was a public plea. Ultimately, the lower court allowed Robinson to testify at trial.

Based on the foregoing, this Court finds Applicant has failed to establish how Counsel was constitutionally ineffective as she did obtain discovery in this case and she did attempt to exclude Robinson's testimony at trial. Further, this Court finds Applicant has failed to show any resulting prejudice from Counsel's alleged deficiency. Therefore, this allegation is denied and dismissed with prejudice.

Counsel failed to properly argue her directed verdict motion

Applicant alleges Counsel was constitutionally ineffective because she did not properly argue her directed verdict motion. Applicant believes Counsel should have argued the traffic stop was invalid and the resulting evidence against Applicant should be suppressed. This Court finds this allegation meritless. Based on a review of the record and Counsel's credible testimony, this Court finds Counsel did properly argue for a directed verdict at the close of the State's case. (Trial Tr. 471.) The lower court properly found there was sufficient evidence to justify the case going



forward and denied Counsel's motion. Applicant has failed to meet his requisite burden for this allegation and this allegation must be denied and dismissed with prejudice.

Counsel failed to convey a plea offer prior to expiration

Applicant alleges Counsel was constitutionally ineffective for failing to convey a plea offer prior to its expiration². To be successful on an allegation of an un conveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Petitioner was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted he original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422. To show prejudice from a failure to convey a plea offer, Applicant must:

Demonstrate a reasonable probability [he] would have accepted the earlier plea offer had they been afforded effective assistance of counsel. [He] must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, 566 U.S. 134 (2012).

This Court finds credible Counsel's testimony that Applicant had a plea offer open up until the date of his trial. This Court also finds credible Counsel's testimony that the plea offer was conveyed to Applicant and Applicant rejected the offer. Although Applicant claims he was told about the plea offer after it expired, he also testified that he rejected the plea offer. Applicant has

² See Plaintiff's Exhibit 6

failed to meet his requisite burden for this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

VI. CONCLUSION

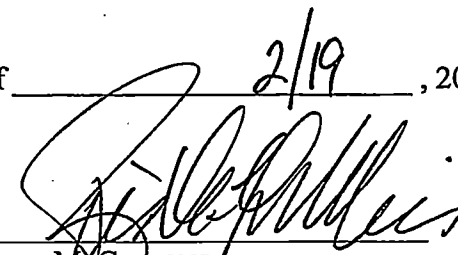
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

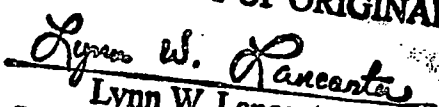
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant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


IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this _____ day of 2/19, 2019.


BRIAN M. GIBBONS
Presiding Judge
Eighth Judicial Circuit

TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCCP & GS

, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
)
)
JAKEIVAN A. PULLEY, #344247,)
)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2014-CP-30-0138

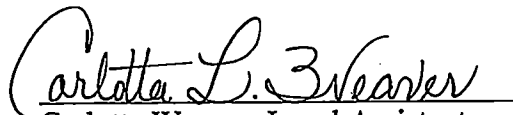
AFFIDAVIT OF SERVICE BY MAIL

LAURENS COUNTY
CLERK OF COURT
2019 FEB 25 AM 11:01
LYNN W. LANCASTER

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the original proposed **Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carson M. Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646

DATED this the 14th day of February, 2019.


Carlotta Weaver, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

February 22, 2019

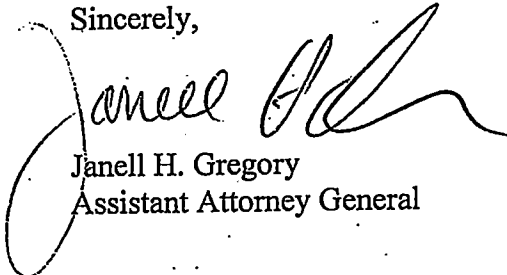
The Honorable Lynn W. Lancaster
Clerk of Court - Laurens County
Post Office Box 287
Laurens, South Carolina 29360

Re: Jakeivan A. Pulley, #344247 v. State of South Carolina
2014-CP-30-0138

Dear Ms. Lancaster:

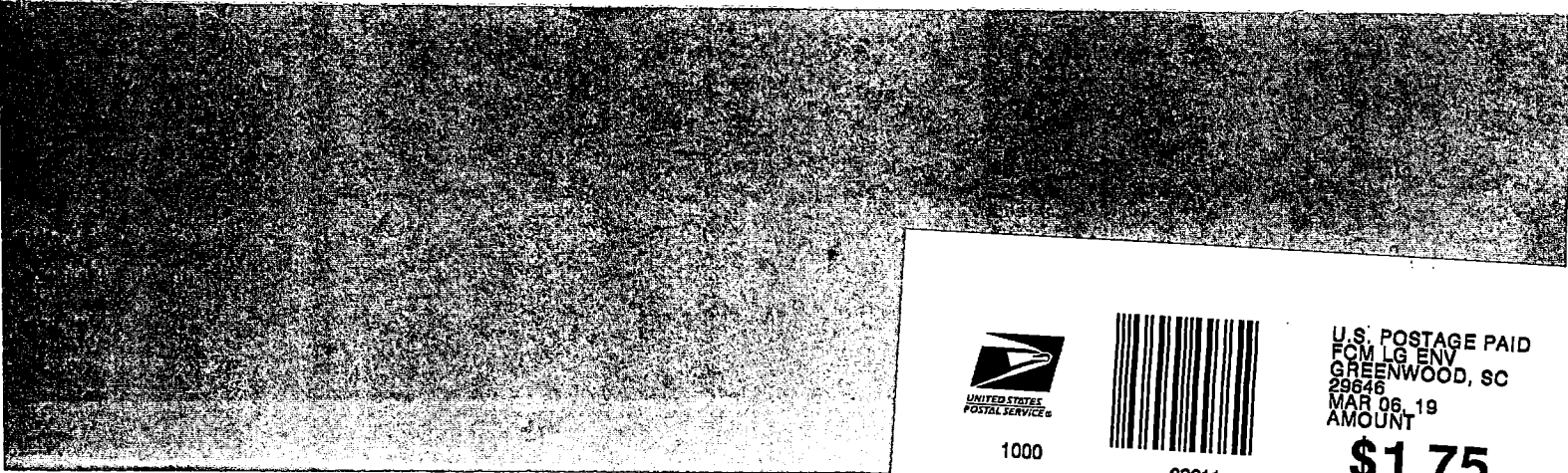
Enclosed please find the **Order of Dismissal**, signed by the Honorable Brian M. Gibbons, in the above-captioned case for filing in your office. Please forward a **time stamped** copy back to our office for our file.

Sincerely,



Janell H. Gregory
Assistant Attorney General

JHG/clw
Enclosure(s)



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Firm, P.C.

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Hon. Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211

