WALLER
LAW GROUP

May 2, 2019

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Kemonie Jones vs. State of South Carolina
C/A No:

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Jones in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Samuel Key, South Carolina Office of Attorney General

Enclosures

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM MARION COUNTY
George M. McFaddin, Jr., Circuit Court Judge

Civil Action No.: 2017-CP-33-0604

Kemonie Jones, # 363162,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Kemonie Jones, # 363162, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed March 27, 2019 and served on counsel by letter dated April 30, 2019, issued by the Honorable George M. McFaddin, Jr., Presiding Judge, Twelfth Judicial Circuit.

Jonathan D. Waller

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ATTORNEY FOR PETITIONER

May 2, 2019

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STATE OF SOUTH CAROLINA
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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Samuel Key, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.

Lyndsay Murray

May 2, 2019

STATE OF SOUTH CAROLINA COUNTY OF MARION	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT
Kemonie Lashawn Jones, #363162, Applicant, v. State of South Carolina, Respondent.	)	C.A. No. 2017-CP-33-0604 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Kemonie Lashawn Jones (Applicant) on August 21, 2017. Respondent made its Return and Partial Motion to Dismiss on December 4, 2017. An evidentiary hearing into the matter was convened on April 2, 2018, at the Florence County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's original counsel at trial, Henry M. Anderson, Jr. (Anderson), and Scott P. Floyd (Floyd), Esquires, also testified. This Court had before it a copy of the records of the Marion County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, the trial transcript, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. In August 2013, the Marion County

Grand Jury indicted Applicant for one count of murder and one count of possession of marijuana with intent to distribute (2013-GS-33-0406). The charges resulted from a February 2013 incident in which Applicant shot the victim at the victim's Marion County home before being apprehended in possession of marijuana shortly thereafter. Tr. p. 104. Henry M. Anderson, Jr., Esquire, and Scott P. Floyd, Esquire, represented Applicant. Fitzlee McEachin, Esquire, prosecuted the case for the State. On February 23, 2015, Applicant proceeded to trial before the Honorable Donald B. Hocker and a jury. The jury found Applicant guilty as indicted. On February 27, 2015, Judge Hocker sentenced Applicant to imprisonment for forty-five years for murder and five years for possession with intent to distribute marijuana, to be served concurrently.

Applicant filed a timely notice of appeal. On November 13, 2015, Appellate Defender David Alexander, Esquire, filed a brief on Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved in an unpublished opinion filed January 11, 2017. State v. Jones, Op. No. 2017-UP-010 (Ct. App. 2017). The remittitur was returned to the Circuit Court on January 27, 2017.

ALLEGATIONS

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

1. Ineffective Assistance of Trial Counsel

    a. "[T]rial and appellate counsel should have been more than aware and therefore competent in the law in which they were clearly practicing."

b. "In light of Belcher, the court went on to charge the impermissible theory on the element of malice, that such can be inferred by the use of a deadly weapon" and trial counsel failed to object.

2. Ineffective Assistance of Appellate Counsel

   a. "[T]rial and appellate counsel should have been more than aware and therefore competent in the law in which they were clearly practicing."
   b. "The error [regarding the jury charge] should have been brought to the attention of the court of appeals by Appellate Counsel."

3. "Denial of due process (indictment is lacking in subject matter jurisdiction) under statutory language."
   a. "Grand Jury did not meet at time of indictment."

At the call of the case, counsel for Respondent renewed the partial motion to dismiss the claim regarding the lack of subject matter jurisdiction. Counsel for Applicant clarified Applicant was not going forward on any claims against appellate counsel, and his allegations against trial counsel were lack of investigation and preparation for trial, missed objections during trial, and failure to object to an improper jury charge. Therefore, this Court finds Applicant has abandoned all other allegations – namely all allegations against appellate counsel and his claim regarding a lack of subject matter jurisdiction. Those allegations are waived and are hereby denied and dismissed with prejudice.

SUMMARY OF FACTS ADDUCED AT TRIAL

On February 16, 2013, Stanley Witek (Witek) was shot and killed in his driveway as he was doing yard work on his home. Witek's neighbor, Cyrus Sloan (Sloan), heard gunshots around 9:00 a.m. as he was reading the newspaper. Tr. pp. 127-29. Sloan looked out the window and saw a person running across his neighbor's yard with a red ski mask and a dark-colored jacket. Tr. pp. 130-31, 138-39. Sloan then called 911 and reported what he had seen and heard. Tr. p. 131. Sloan

testified he then went outside to look around and find out if any of the neighbors had seen or heard anything. Tr. pp. 132-33. Sloan spoke briefly to a responding officer, who drove off in the direction Sloan had seen the person flee. Tr. p. 132. Sloan went to Witek's front door and knocked, but received no response. Tr. pp. 134-35. As he returned down the front steps, Sloan noticed some tools in the front yard, and, thinking Witek must have been in the back, he walked through the carport and spotted a shell casing, then Witek's body on the ground. Tr. pp. 134-35. Sloan immediately ran back to his house and called 911 a second time to report Witek had been shot and needed an ambulance. Tr. p. 136. Sloan was also present at the Witek home later that night when family members discovered another bullet fragment and shell casing, which they called law enforcement to recover. Tr. pp. 148-50.

Officer Trey McCaskill testified he was on duty the day of the shooting and responded to a radio call to be on the lookout for a suspect wearing a black jacket and red ski mask. Tr. pp. 418-19. McCaskill testified he spotted a man in the area wearing a black and gray jacket and carrying what appeared to be a red toboggan in his hand. Tr. p. 419. When McCaskill approached, the man fled. Tr. p. 420. McCaskill and other officers gave chase, and McCaskill eventually apprehended the man and identified him as Applicant. Tr. pp. 420, 423-26. McCaskill then searched Applicant and recovered several bags of marijuana and a .40 caliber round in his pants. Tr. pp. 426-27, 372, 441.

Investigators collected Applicant's jacket and pants and performed a GSR test on his hands, as well as the victim's. Tr. pp. 201-04. Megan Fletcher, a trace evidence analyst at SLED, testified she analyzed the GSR kits collected from both Applicant and the victim, as well as samples she

collected from Applicant's clothes. Tr. pp. 328, 333-37. Fletcher testified gunshot residue was present on Applicant's jacket and pants, as well as the front and back of both hands, indicating he was in the vicinity of a gun when it was fired. Tr. pp. 338-39. Fletcher also testified, in her opinion, the amount of residue found on Applicant's clothes was too high to have been caused by incidental contact, such as finding a shell casing on the ground and putting it in a pocket. Tr. p. 345. Dan DeFreese, a firearms expert from SLED, testified he compared the bullet recovered from the victim and the bullet found at the crime scene because he could not say they were fired by the same gun, although both were .380 caliber rounds. Tr. pp. 311, 318-19. DeFreese also testified he compared the five shell casings recovered at the scene, and all five cartridges came from the same gun. Tr. pp. 320-21. However, no gun was ever recovered for comparison. Tr. p. 325.

Don Oliver, a jailhouse informant, also testified against Applicant for the State. According to Oliver, he was in the Marion County jail on the same day Applicant was booked for these offenses, and Applicant approached him and confessed to the murder.[1] Tr. pp. 444-45, 448-49. Oliver testified Applicant told him he used a .380 handgun, and Applicant wanted Oliver to get the gun and take it to Applicant's uncle. Tr. pp. 449-50. Oliver testified Applicant claimed to have given the gun to a friend, Ryan Brigman, who gave it to two other men; Oliver was to pick it up from those men and take it to Applicant's uncle. Tr. p. 450. Oliver further testified Applicant said he tried to rob the victim, the victim swung an axe at Applicant, and Applicant "shot the whole

[1] Oliver testified he and Applicant knew each other prior to this conversation. Tr. p. 446.

clip."[2] Tr. p. 451. Applicant then claimed to have given the gun and clip to "JJ" (Ryan Brigman), and they ran in separate directions. Tr. p. 459. According to Oliver, Applicant and "JJ" found out the victim had money, either from a tax return or lottery winnings, they decided to rob him. Tr. p. 460.

Finally, Officer Tyrone Reed testified he was called to the police department on the day of murder to do a transport from the department to the jail. Tr. pp. 495-96. Officer Reed testified he transported Applicant, and while they were driving to the jail, Applicant suddenly asked Reed how he was going to be charged with murder if the police had not found the gun. Tr. pp. 496-497. Reed also testified Applicant kept repeating "no gun, no case" as he was being booked and fingerprinted at the jail. Tr. p. 498.

Applicant testified in his own defense and admitted being in the area in order to sell marijuana. Tr. p. 520. According to Applicant, he ran from the officers because he thought they had seen him conducting a sale, and he was on probation for burglary at the time. Tr. pp. 520-22. Applicant further testified the .40 shell casing was in his pocket because he found it on the ground the night before and picked it up. Tr. p. 516. Applicant testified he spoke to Oliver at the detention center but it was just normal conversation, and he denied admitted to the murder. Tr. pp. 528-30. Applicant also denied seeing the victim buying lottery tickets at a nearby gas station earlier that morning. Tr. p. 532.

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[2] Joshua Brown, an EMT with the City of Marion Fire Department, testified the victim was "lying face-down clenching an axe" when Brown arrived on the scene. Tr. pp. 387, 393.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified in remained in the county jail between his arrest and trial, which was a period of approximately thirty months. Applicant testified he was represented at trial by Floyd and Anderson, each of whom he met two or three times. According to Applicant, he met with Floyd to discuss trial preparation, but he could not recall any specific issues they discussed. Applicant stated he received a copy of his discovery after about ten months, but he was not sure if he ever discussed the contents with this attorneys. Applicant testified he never spoke to them about the DNA testing results or ballistics testing. According to Applicant, he was not involved in preparing a defense.

Applicant testified he felt there were avenues of investigation that should have been done – namely speaking to the girl whose house he stayed at the night before and looking for surveillance video from the Swamp Fox convenience store, which he passed by on the morning of the murder. According to Applicant, law enforcement spoke with the girl, but she declined to give a statement. Applicant testified he did not know whether Floyd or Anderson ever attempted to contact her. Applicant further testified he never discussed his codefendant with either of this attorneys.

Applicant testified he asked the Clerk of Court for a calendar of court terms, and he felt his indictment was not properly true billed because there was no Grand Jury term listed at that time. Applicant also testified his attorneys should have objected to the jury charge on implied malice, and they should have done a more thorough investigation. Specifically, Applicant testified he his attorneys could have looked at shoe prints, obtained further DNA testing, questioned witnesses,

and performed background checks. However, on cross-examination, Applicant admitted he never spoke to his attorneys about doing any of these things, and he did not know for sure what he wanted done or what could have been done.

Anderson testified was working as a part-time public defender in Marion County and offered to help Floyd with the trial since this was a serious case. Anderson testified he met Applicant once or twice before trial, but his main involvement was reviewing discovery and preparing for trial. Anderson testified he and Floyd also visited the scene together and walked the route Applicant would have taken. Anderson testified the defense theory was simply Applicant was not there and was not involved. Anderson further testified Applicant never gave them any information to investigate or names of witnesses to interview.

Anderson was asked about two potential objections he did not make during trial – one when Sloan identified the person running through his yard as male and one to hearsay testimony from Sloan that he heard the paramedics say the victim had a weak pulse when they arrived. Tr. pp. 138, 141. Although Anderson testified he could not recall if he had a particular strategic reason for not objecting, he generally does not always object when doing so does not advance his client's defense. Anderson also pointed out neither of these statements were material to any fact in issue at the trial, and he cross-examined Sloan regarding his assertion the person he saw running was male.

Floyd testified he met with Applicant to get his version of the facts and reviewed discovery. Floyd testified he always gives clients a copy of discovery if they ask for it, except he cannot give them pictures if they are on discs. Floyd testified there was no DNA or ballistics matches in this

case; although such testing was done, it did not result in any evidence against Applicant. Floyd also testified he did not recall Applicant asserting an alibi, and he was certain Applicant never gave any names of alibi witnesses. Floyd also testified he went to the crime scene and walked the route Applicant claimed he took that morning in order to get a feel for the timeline. According to Floyd, the defense used the marijuana found on Applicant at his arrest as a way to explain why he ran from police.

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 PCR hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this

presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). 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." Id. at 117-18, 386 S.E.2d at 625.

1. Deficient investigation and trial preparation

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). To establish counsel failed to adequately prepare for trial, Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of

the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Here, Applicant has not presented any evidence or defense theory he was unable to present at trial due to Anderson and Floyd's alleged ineffective assistance. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. . . .). Applicant's own testimony was that he did not know exactly what he wanted his attorneys to do. Anderson and Floyd both testified they review the discovery, visited the scene, and walked the route described by Applicant in order to test the timeline of events. Both attorneys also testified Applicant never gave them any witnesses to interview or an alibi to investigate. Because Applicant has failed to meet his burden of proof as to either deficiency or prejudice, this allegation shall be denied and dismissed.

2. Missed objections at trial

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. 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).

In this case, Applicant alleges his trial counsels missed objections and could not articulate a particular strategy for failing to object. However, Anderson testified he does not always object when doing so does not advance his client's defense. He also pointed out he cross-examined the witness regarding one statement (identity of person running as male) and, in any event, the testimony at issue concerned facts which were not in contention. "Trial counsel is repeatedly required during any trial . . . to make split-second decisions on many subjects, including whether to object to testimony. There are a variety of reasons counsel may soundly choose not to make

such an objection, including the reality that not all evidence offered by the State is harmful to the defendant." Stone v. State, 419 S.C. 370, 383, 798 S.E.2d 561, 568 (2017). Therefore, this Court finds Anderson's failure to object was not deficient. See Harrington v. Richter, 562 U.S. 86, 109 (2011) (instructing courts should not "insist counsel confirm every aspect of the strategic basis for his or her actions"). The Court also finds Applicant was not prejudiced because neither of the instances he now alleges were deficient caused harmful testimony to be admitted, as those facts were not in issue. This allegation is therefore denied and dismissed.

3. Invalid indictment

Applicant further alleges the Grand Jury did not meet during the time his indictment was true-billed. Applicant may challenge the subject-matter jurisdiction of the trial court at any time. Gentry, 363 S.C. at 100, 610 S.E.2d at 498 (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). However, "circuit courts obviously have subject-matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. Further, an indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952).

A challenge to the legality and sufficiency of the process of the grand jury does not implicate the subject-matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). The chief administrative judge for each circuit schedules terms of the grand jury in each county. Applicant has failed to provide any evidence the grand jury did not convene on August 3, 2013, as indicated on his true-billed indictment. The regularity of grand

jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520. The Court finds the indictments in this case contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the names of both the victim and the accused. The indictments are stamped as true-billed and appear to the Court to be valid on their face. Thus, the Court finds this allegation is wholly without merit, and the allegation is denied and dismissed.

4. Improper *Belcher* instruction

Applicant alleges trial counsel was ineffective for failing to object to a jury instruction in violation of State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), when the trial judge instructed the jury that inferred malice may arise when the act is committed with a deadly weapon. In Belcher, the Supreme Court of South Carolina held that a jury charge instructing malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse, or justify the homicide. Id. at 600. However, such an error would still be subject to harmless error analysis. Id. at 611 (citing Lowry v. State, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008)). Moreover, "[i]n many murder prosecutions, as Belcher concedes, there will be overwhelming evidence of malice apart from the use of the deadly weapon." Id. at 611. The Court has reviewed the jury instructions in their entirety, along with the trial record, and finds in Applicant's case there was no evidence presented that would reduce, mitigate, excuse, or justify the homicide of the elderly victim on his own property. Further, Applicant's defense was not self-defense, but that Applicant was not the shooter at all. Here, there was overwhelming evidence of malice other than the use of a deadly weapon such that Applicant cannot show he was prejudiced by the jury instruction or the conduct of his counsel regarding the

jury instruction – namely Applicant's flight from the scene without alerting authorities to the plight of the victim.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Barr was not deficient in any manner, nor was Applicant prejudiced by his representation. 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 PCR 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, PCR 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:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

GEORGE M. MCFADDIN, JR
Presiding Circuit Court Judge
Twelfth Judicial Circuit

_____, 2019

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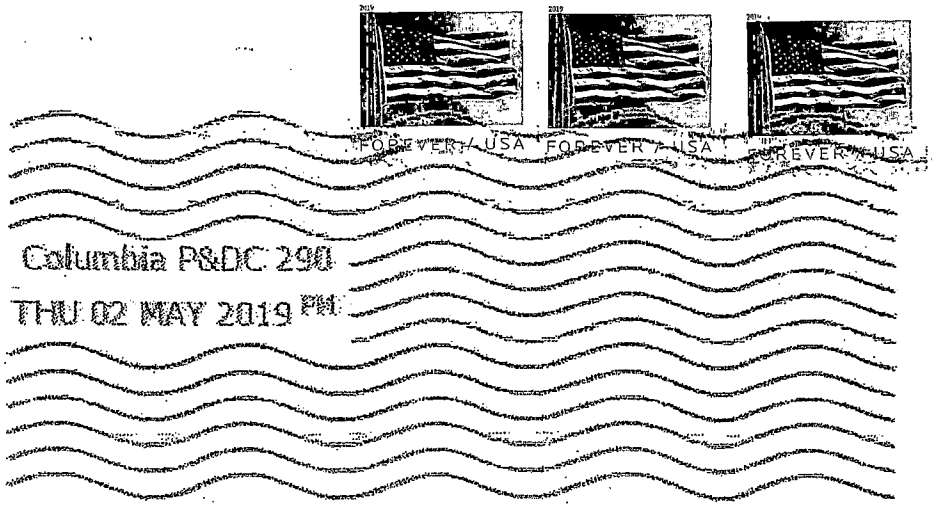

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