FALK LAW FIRM, LLC.
James K. Falk
(843) 606-6007
(843) 972-9005 Fax
Admitted to practice: KY(1984) S.C. (2010)
jfalklaw@gmail.com

May 19, 2019

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

Re: Sandy Lee Locklear 360304 v State, 2017-CP-26-0147

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, in the above Hampton County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk

Thank you for your assistance.

Cc:
Johnny James Jr., Esq
Sandy Lee Locklear 360304
Hampton County Circuit Court Clerk

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

MAY 23 2019

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable Kristi F Curtis, Circuit Judge

Case No.: 2017-CP-26-0147

Sandy Lee Locklear 360304.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner SeanDrea Johnson appeals the Honorable Kristi F Curtis' May 9, 2019 Order of Dismissal. Undersigned counsel received notice of entry of the order on May 16, 2019. A copy of the order on appeal is attached hereto.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

May 17, 2019

Johnny James Jr., Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Clerk of Court- Horry CP
PO Box 677
Conway, SC 29526

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

MAY 23 2019

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Kristi F Curtis, Circuit Judge

Case No.: 2017-CP-26-0147

Sandy Lee Locklear 360304.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Johnny James Jr., Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Hampton County Clerk of Court. I further certify that all parties required by Rule to be served have been served this May 19, 2019.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
Sandy Lee Locklear,	)	Case No.: 2017-CP-26-00147
S.C.D.C. No. 360304,	)	
	)	
Applicant,	)	
	)	**ORDER OF DISMISSAL**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Sandy Lee Locklear ("Applicant") on January 12, 2017. Respondent made its return and partial motion to dismiss on or about December 15, 2017. The Court convened an evidentiary hearing into the matter on Wednesday, November 27, 2018, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's trial counsel, Ralph Wilson, Jr., Esq. ("Counsel") testified, as well as appellate counsel, Edwin Thompson Kinney ("Appellate Counsel"). The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2013 term of the

Horry County Grand Jury for two counts of murder (2013-GS-26-00302, -00304). Ralph Wilson, Jr., Esq. represented Applicant at trial. Brad Richardson and Monica Wooten, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On May 28, 2014, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty of both murders as indicted on June 12, 2014. Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of life.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Edwin Thompson Kinney, Esq. Applicant raised three issues to the South Carolina Court of Appeals:

1. "Whether the court erred in ruling that [Applicant] was not in custody prior to being read her *Miranda* rights and in allowing the [Applicant's] pre-*Miranda* statement to be admitted into evidence?"
2. "Whether the court erred in ruling that the State did not violate the rule set forth in *Missouri v. Seibert*?"
3. "Whether the court erred, thereby violating the Fourth Amendment and the [Applicant's] right to privacy, when it upheld a search warrant on the home at 509 Fair Bluff Road?"

The parties proceeded to oral arguments on May 3, 2016; Mr. Kinney argued on behalf of Applicant and Melody Jane Brown, of the South Carolina Attorney General's Office, represented Respondent. By unpublished opinion, the South Carolina Court of Appeals affirmed Applicant's convictions. *State v. Locklear*, Op. No. 2016-UP-313 (S.C. Ct. App. Filed June 22, 2016). The Remittitur was issued on July 20, 2016.

PRESENT APPLICATION

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. "State failed to prove *mens rea* or malice aforethought necessary to charge jury on murder charges."
    a. "There is nothing in the record to prove beyond a reasonable doubt that I had any knowledge of or part in murders beyond speculation"
2. "Lack of direct or substantial circumstantial evidence proving murder."
    a. "Not one scintilla of evidence direct or circumstantial"
    b. "Evidence is inconsistent with jury's findings, State's case is based on conjecture"
3. "State failed to meet burden of proof for 'hands of one, hands of all."
    a. "At no time did other co-defendants make any statement to implicate me in the murders in any way"
4. "Appellate Counsel, Edwin Thompson Kinney, appointed to me through Indigent Appellate Defense, provided ineffective assistance of counsel for [failing] to raise the issues listed in this brief during appeal. These issues were [preserved in] the record of trial by my defense attorney, Ralph Wilson, Jr. during the criminal proceedings."

APPLICABLE LAW

A criminal defendant is constitutionally entitled to the effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387, 398 (1985). Appellate Counsel must be able to provide effective representation as to render the appellate proceedings fair, and "must play a role of an active advocate, rather than a mere friend of the court assisting in a detached evaluation of appellant's claim." *Id.*, *See also Anders v. California*, 386 U.S. 378 (1967).

In deciding a claim of ineffective assistance of counsel, courts must focus on "the fundamental fairness of the proceeding whose result is being challenged." *Strickland v. Washington,* 466 U.S. 668, 685

(1984). First, the burden of proof is on Applicant to show that Appellate Counsel's performance was deficient under prevailing professional norms. Second, Applicant must prove they were prejudiced by counsel's deficiency and show with a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (citing *Strickland v. Washington, supra)*. The proper standard for evaluating an effective assistance of appellate counsel claim is that enunciated in *Strickland. Smith v. Robbins*, 528 U.S. 259, 263 (2000).

When an applicant contends Appellate Counsel rendered ineffective assistance for failing to argue a specific issue on appeal, she must show failure to raise that issue was objectively unreasonable and that, but for this failure, Applicant's conviction or sentence would have been reversed or remanded. *Southerland,* 337 S.C. at 616, 524 S.E.2d at 836. *See also Peoples v. Griffin*, 687 N.E.2d 820 (Ill. 1997). First, an applicant must show that a particular nonfrivolous issue was clearly stronger than issues presented by Appellate Counsel in a merits brief on appeal. If successful in such a showing, an applicant then has the burden of demonstrating prejudice. The applicant must show a reasonable probability that, but for counsel's failure to raise that particular claim in the merits brief, Applicant would have prevailed on appeal. *Smith v. Robbins*, 528 U.S. 259, 288 (2000). An applicant must satisfy both prongs of the *Strickland* test to prevail, because prejudice is not presumed by this claim. *Id.* at 288-89 ("Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.").

Appellate Counsel who files a merits brief need not, and should not, raise every nonfrivolous issue presented by the record. *Thrift v. State*, 302 S.C. 535, 397 S.E.2d 523 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). Appellant has no constitutional right to compel appointed counsel to press nonfrivolous points, if counsel, as a matter of professional judgment, decides not to present those points. *Id.* Great

deference is given to Counsel's experience and professional judgment in winnowing out weaker arguments and focusing on one, or at most a few, key issues in order to maximize the likelihood of success on appeal. *Jones v. Barnes*, 463 U.S. 745, 751-52 (1983). A brief that raises every colorable issue runs the risk of burying good arguments, and may have the tendency to project a lack of confidence in any one. *Id.* "For judges to second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . . " *Id.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. This Court has also reviewed the records submitted by the parties and has heard the arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

I.

To the extent Applicant's first three allegations can be interpreted as independent and distinct from her allegation of ineffective assistance of appellate counsel, this Court finds them to be without merit. Each of these issues were raised by trial counsel and ruled on by the trial judge. An application for post-conviction relief cannot serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for post-conviction relief. S.C. Code Ann. § 17-27-20(b); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for post-conviction relief. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001); *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997). Claims by an Applicant that she is innocent, or that the evidence against her was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of

ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."). Errors in an Applicant's trial which could have been reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction relief proceedings. *Simmons v. State*, 264 S.C. 417, 423 215 S.E.2d 883(1975) (barring such claims as inappropriate for consideration under the Act).

Applicant has failed to allege anything in her application for relief to warrant this Court evaluate trial counsel for ineffective representation. Accordingly, Applicant's allegations that the evidence introduced at trial was insufficient to prove her guilt are not cognizable under the Uniform Post-Conviction Procedure Act and any claims of ineffective assistance of trial counsel are **DENIED** and **DISMISSED.**

II.

Applicant contends Appellate Counsel was ineffective for failing to raise the denial of her directed verdict motion on direct appeal, arguing the State failed to produce "one scintilla of evidence direct or circumstantial" that Applicant had any knowledge, or otherwise took any part in the murders of the victims and the evidence presented was "inconsistent with [the] jury's findings, State's case is based on conjecture." This Court disagrees.

In reviewing the denial of a motion for directed verdict, the Court must view the evidence in the light most favorable to the State, and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." *State v. Harry*, 420 S.C. 290, 298, 803 S.E.2d 272, 276 (2017); *See also State v. Bennett,* 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). The Court's review is limited to considering the existence or nonexistence of evidence, not its weight. *Id.* When the evidence submitted raises a mere

suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof. *Id.* at 236, 781 S.E.2d at 353. "Nevertheless," when reviewing the denial of a directed verdict, "a court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *Id.* at 236, 781 S.E.2d at 354.

It is well-established jurisprudence that "the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." *Bennett*, at 236 (citing *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955)). "Within the jury's inquiry, 'it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt....'" *State v. Harry*, at 298, 803 S.E.2d at 276 (quoting *Littlejohn*, 228 S.C. at 328, 89 S.E.2d at 926). The court must apply an objective test to this analysis: "although the *jury* must consider alternate hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." *Bennett*, at 237, 781 S.E.2d at 354. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable jury to find the defendant guilty beyond a reasonable doubt. *Id.*

The evidence introduced by the State at Applicant's trial was sufficient to withstand her motion for directed verdict. Circumstantial evidence introduced by the state raised fact issues for the jury as to Applicant's guilt. On August 19, 2012, at 4:00am, officers were called to the victims' home after Applicant, on a 911 call originating from the home, reported the murders and that she had been raped. Responding officers noticed the back door was open and discovered a body face down in the living room and another body face down on the kitchen floor. The deceased victims were Applicant's husband and her husband's adult son.

Applicant told the officers two males entered the home, one with a long gun, struck her in the head with the gun, and raped her in the kitchen. Applicant was transported to the hospital, where she again maintained that she had been vaginally penetrated twice. After being cleared by the hospital, Applicant was transported to the detention center and interviewed. Applicant initially maintained that she had been raped by the two males who forced their way in to the home.

During the interview, Applicant gave permission for her cell phone records to be obtained. Her cell phone records revealed she had sent and received texts shortly before 3:00am on the day of the murders from Nehemiah James Evans[1]. In the text message, the recipient tells her to "unlock door," to which she replies, "the back is open." Cell tower records showed that both Applicant's cell phone and the cell phone she was communicating with regarding the back door, were "side by side" at 2:41 A.M., and then again at 5:27am. The 2:41am location records placed the phones within the generally vicinity of the Victims' home, and at 5:27am the phones were placed in the location where Applicant's burned rental vehicle was later found. A later search of Evan's home revealed a piece of paper on which Applicant's name and cell phone number were written.

After being confronted with the cell phone records, along with the fact that her physical exam revealed no bruising or evidence of vaginal penetration, Applicant repudiated her first statement and admitted complicity in the crime, but claimed "it was supposed to be a robbery." She admitted she unlocked the back door for the two men to enter, then allowed them to tie her up. Applicant later claimed that her stepson had a serious drug problem and that she and her husband concocted a plan to stage a robbery in order to "scare him straight." She then implicated "James" and Odom Bryant in the murders.

Applicant's first cousin, Faye Hunt, provided a written statement to police as soon as she learned of the double homicide to "clear her name." Hunt testified she was close with Applicant growing up, and

[1] Evans pled guilty to murder on February 25, 2015, for his involvement in the double homicide, and received a 30 year sentence.

had recently reconnected with her in 2011. Hunt visited Applicant at the North Carolina home that Applicant's husband had purchased for her, where she met Applicant's husband on numerous occasions. Hunt testified that Applicant would never allow her husband to stay for long periods of time – only long enough to drop off groceries or cigarettes. Hunt described one particular day when Victim came by the house and gave Applicant his life insurance policy for her to keep. After Victim left, Applicant allegedly stated "it was a million dollar policy" and "if that son of a bitch died today I'd be a rich bitch tomorrow." Hunt described in detail a small caliber, pearl handle pistol that Applicant owned, which was consistent with the type of firearm used to kill both victims. A later search of Applicant's home yielded an accidental death insurance policy, issued in August 2011, with a million dollar payout under limited circumstances. The limiting language, however, was only explained in "small print, buried in the middle of all that paperwork." The only two beneficiaries listed on the policy were Applicant and Victim's daughter.

In order for Applicant to prevail on this issue, she has the burden of showing the denied directed verdict issue was clearly stronger than the issues Appellate Counsel did present, and that the Court of Appeals would have reversed her conviction, but for Appellate Counsel's failure to raise this issue. It is undisputed that this case was tried primarily on circumstantial evidence implicating Applicant in the double homicide. However, the trial court correctly denied Applicant's motion for a directed verdict based, not on the *weight* of the evidence presented by the State, but on the existences of evidence from which a reasonable juror could find Applicant guilty beyond a reasonable doubt. Appellate Counsel was not unreasonable for failing to raise this issue in light of the other nonfrivolous issues presented on direct appeal, and Applicant was not prejudiced by Appellate Counsel's decision not to raise this issue as a matter of sound professional judgment. Therefore, Applicant's claim of ineffective assistance of Appellate Counsel by way of allegation 2.a and 2.b is **DENIED** and **DISMISSED**.

III.

Applicant contends the "State failed to prove *mens rea* or malice aforethought necessary to charge jury on murder charges," failed "to meet burden of proof for 'hands of one, hands of all," and Appellate Counsel was ineffective for failing to raise the trial judge's charge on direct appeal. This Court disagrees.

During his jury instructions, the trial judge charged in part:

> Now, if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose. ... If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or, as it is sometimes said, the hand of one is the hand of all. [Tr. at 1450]
>
> . . . . . .
>
> Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must also prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. [Tr. at 1450-51]
>
> . . . . . .
>
> Mere presence at the scene is not sufficient to prove someone guilty of a crime. A Defendant's presence where a crime is being committed or mere association with a person who commits a crime does not make a Defendant an accomplice or an aider and abettor of the person committing the crime. The burden is on the State to prove every element of the crime charged. If you find, after reviewing all of the evidence, that the State has proved that the Defendant was only present at the scene of the crime, and that they have not proved, beyond a reasonable doubt, any other participation in the crime, then you must find the Defendant not guilty. The law is that proof of at the scene of the crime is not sufficient to find someone guilty. [Tr. at 1452-53]

. . . . . .

The Defendant is charges with two counts of murder. To convict the Defendant of murder, the State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought ... Malice aforethought may be shown either by direct evidence or by inference from the facts and circumstances which are proved. [Tr. at 1454-55]

. . . . . .

Now, if you find that the State has failed to prove beyond a reasonable doubt that the Defendant committed murder, you may consider whether the State has proved beyond a reasonable doubt that the Defendant committed involuntary manslaughter. Included within the offense of murder is the lesser offense of involuntary manslaughter. To convict the Defendant of involuntary manslaughter, the State must prove beyond a reasonable doubt that the Defendant unintentionally killed the victim without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm ... [Tr. at 1456]

. . . . . .

To convict the Defendant of involuntary manslaughter, the State must also prove beyond a reasonable doubt that the Defendant's acts was [sic] the proximate cause of death ... [Tr. at 1457]

During deliberations the jury requested the trial judge provide them "the definition of involuntary manslaughter officially by code of law." The trial judge recharged the jury on involuntary manslaughter without objection from either State or Defense Counsel.

In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. *Id.* at 318, 577 S.E.2d at 464. A jury charge that is substantially correct and covers the law does not require reversal. *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010).

It is well settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. *State v. Dickman*, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000). "Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002). Under accomplice liability theory, "a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." *State v. Langley*, 334 S.C. 643, 648–49, 515 S.E.2d 98, 101 (1999). In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct. *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987).

Mere presence at the scene is not sufficient to establish guilt as an aider or abettor. *Leonard*, 292 S.C. at 137, 355 S.E.2d at 272; *State v. Barroso*, 328 S.C. 268, 272, 493 S.E.2d 854, 856 (1997) (mere association with admitted members of a conspiracy is insufficient to tie other persons to the conspiracy). However, "presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principle." *State v. Hill*, 268 S.C. 390, 395–96, 234 S.E.2d 219, 221 (1977). "Any person who is present at a homicide, aiding and abetting, is guilty of the homicide as a principal, even though another does the killing." *State v. Zeigler*, 364 S.C. 94, 103, 610 S.E.2d 859, 864 (Ct. App. 2005).

Applicant has failed to show that this issue was clearly stronger those briefed by Appellate Counsel on direct appeal, based largely on the same law and facts as set forth in Section II above. The totality of the direct and circumstantial evidence presented by the State was enough for the trial judge to correctly charge the jury on murder and "hand of one, hand of all." The charge clearly explained to the jury that

the State had the burden of proving every element of the crime charged and that mere presence and mere knowledge was not enough to sustain a conviction. The trial judge gave a correct and thorough charge on the requisite criminal intent for murder, and additionally, for the lesser included offense of involuntary manslaughter.

The circumstantial evidence presented in this case, as detailed in Section II above, was sufficient to send the case to the jury under a theory of "hand of one, hand of all," and the trial judge gave a correct charge on the law. Appellate Counsel was not unreasonable for failing to raise this issue in light of the other nonfrivolous issues presented on direct appeal, and Applicant was not prejudiced by Appellate Counsel's decision not to raise this issue as a matter of sound professional judgment. Therefore, Applicant's claim of ineffective assistance of Appellate Counsel by way of allegation 1.a, 2.b, and 3.a is **DENIED** and **DISMISSED**.

[*Conclusion and signature on following page*]

CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 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 that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9th **day of** May **, 2019.**

Kristi Curtis

KRISTI F. CURTIS
Presiding Judge
Fifteenth Judicial Circuit

Sumter, South Carolina