Tristan M. Shaffer
Attorney at Law

August 11, 2019

RECEIVED
AUG 13 2019
S.C. SUPREME COURT

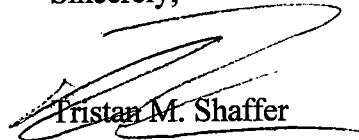
Daniel Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Tarrance Jordan v. State 2013-CP-21-1950

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order of Dismissal in the above referenced case.

Sincerely,



Tristan M. Shaffer

CC: Florence County Clerk of Court
Samuel Key
Tarrance Jordan # 340469

803.941.7514 • P.O. Box 1027, Chapin, SC 29036

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 13 2019

S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Circuit Court Judge

Case No. 2013-CP-21-1950

Tarrance Jordan # 340469,

Petitioner,

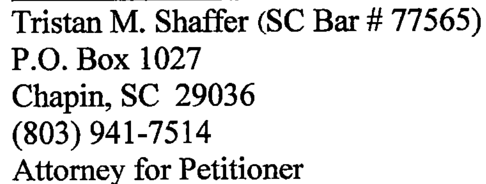
v.

The State of South Carolina, Respondent.

NOTICE OF APPEAL

Petitioner appeals the order dismissing his post-conviction relief action filed July 11, 2019 and received by Petitioner on July 15, 2019.

August 11, 2019



Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
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Attorney for Petitioner

Other Counsel of Record:
Samuel Key
South Carolina Attorney General's Office
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Columbia, South Carolina 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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APPEAL FROM FLORENCE COUNTY
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William H. Seals, Circuit Court Judge

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Tarrance Jordan # 340469,

Petitioner,

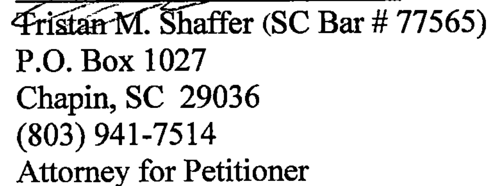
v.

The State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that on the date below I served the Notice of Appeal on The State of South Carolina by mailing a copy to the Respondent at the address below.

August 11, 2019



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Columbia, South Carolina 29211
Attorney for Respondent

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2101950

Tarrence Laron Jordan		South Carolina State Of	

PLAINTIFF(S) DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: ____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: ____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

FILED
2019 JUL 11 PM 12:00
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: ____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date
		7/11/2019

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

For Clerk of Court Office Use Only

This judgment was entered on **July 11, 2019**, and a copy mailed first class or placed in the appropriate attorney's box on **July 11, 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

Tristan Michael Shaffer PO Box 1027 Chapin, SC 29036

ATTORNEY(S) FOR THE PLAINTIFF(S)

Samuel Leonard Key Rembert C. Dennis Building 1000 Assembly Street Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Doris P. O'Hara

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Tarrance L. Jordan, #340469,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-1950

ORDER OF DISMISSAL

FILED
2019 JUL 11 AM 11:53
BOONE POULOS O'HARA
C.C.C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Tarrance Jordan on July 24, 2013. The State of South Carolina (Respondent) filed a Return on May 2, 2014. The Court convened an evidentiary hearing into the matter on August 8, 2016, at the Florence County Courthouse. Applicant was present at the hearing and represented by Tristan Shaffer, Esquire. Jessica Kinard, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Patrick J. McLaughlin, Esquire (Counsel) also testified. 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 Florence County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds Applicant has not met his burden of establishing any constitutional deprivations or other grounds entitling him to relief and denies and dismisses the application with prejudice.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In December 2008, the Florence County Grand Jury issued three indictments against Applicant. The first charged Applicant with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1919). The second charged Applicant with three counts of armed robbery and one count each of kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1920). The third indictment charged Applicant with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1921). On April 19, 2010, Applicant proceeded to trial before the Honorable Ralph K. Anderson, Jr., and a jury. Patrick J. McLaughlin, Esquire, represented Applicant at trial. The jury found Applicant guilty as indicted on April 22, 2010. Judge Anderson sentenced Applicant to concurrent terms of thirty years for each armed robbery conviction, thirty years for each kidnapping conviction, thirty years for each first degree burglary conviction, and five years for each possession of a weapon during the commission of a violent crime conviction. Applicant filed a motion to reconsider his sentence on April 29, 2010, which Judge Anderson denied without argument on April 30, 2010.

Applicant filed a timely notice of appeal and LaNelle C. Durant, Esquire, of the Office of Appellate Defense perfected the appeal. The court of appeals affirmed Applicant's convictions on October 3, 2012. State v. Jordan, Op. No. 2012-UP-537 (S.C. Ct. App. filed October 3, 2012). The circuit court received the remittitur on October 19, 2012.

II. CURRENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
    a. "Attorney did not attack prosecutor's case fully"
2. "Violations of my 6th Amendment rights"

At the hearing, Applicant raised a new allegation for ineffective assistance of counsel based upon the failure to object during sentence imposition.

III. SUMMARY OF FACTS ADDUCED AT TRIAL

Applicant organized a crime spree of armed robberies at three separate hotels that occurred from July 2, 2008 through July 4, 2008. Applicant's accomplices consisted of Johnny Johnson, Shakeem Williams, and Louis Williams.

Holiday Inn Robbery

Johnny Johnson testified at trial. Johnson testified he knew Applicant for seven years. Johnson stated that Applicant called him to "go hit a lick." A "lick" is a robbery or larceny. Johnson drove his distinctive red Toyota Camry that had a dent in the hood and missing driver-side window to pick up Applicant, and brothers Shakeem and Louis Williams. (Tr. 270-4)

Johnson explained he drove the group from their native Darlington to Florence and to Road 52, then stopped at the Holiday Inn. Louis and Johnson stayed in the car. Shakeem and Applicant exited. Johnson knew the plan was for Shakeem and Applicant to either rob someone or break into a hotel room. (Tr. 324-26).

Dr. Meyer testified at trial. Dr. Meyer stated he and his son arrived at the Holiday Inn around 12:35 a.m. on July 2, 2018. He went into the hotel office for about ten minutes to book a room and then he and his son carried their bags to the room. Dr. Meyer recalled noticing two men in the parking lot while he walked to the room. He stated that once they got into the room, they had trouble finding the light switch. Once they turned the light on, the two men from the parking lot rushed into the room, knocking Dr. Meyer down. Dr. Meyer was ordered to stand up, but his son was ordered to kneel on the ground. The larger of the two men had a gun. He took the Doctor's cell phone. Dr. Meyer complied with their demand for his wallet and offered his car. This led to a discussion of what was in the car (gifts, but mostly University of Florida gear and baby-gifts; and no lap-top computer to the robbers' apparent disappointment). The smaller man paced back and forth. The smaller man's nervousness made Dr. Meyer nervous, especially since he did not know whether that man was also armed. They ordered the doctor and his son into the bathroom. His son asked the two men if they were going to kill them. The record fails to reflect their answer. The men already left by the time Dr. Meyer came out of the bathroom and called the front desk to report the robbery. (Tr. 73–75, 79–83).

Johnson stated that Shakeem and Applicant returned after about five to ten minutes and told Johnson to pull off and so he drove away. They stopped at the Hudson gas station in Darlington and used one of the stolen credit cards for gas. Johnson's payment was the tank of gas. They called it a night and Johnson dropped everyone off. (Tr. 274–77).

Dr. Meyer made an in court identification of Applicant as the man pacing back and forth. He saw Applicant in the parking lot and he saw Applicant during the whole extended confrontation. Dr.

Meyer described the lighting as adequate. Shakeem and Applicant took about $400 in cash, credit cards, and even a Best Buy card. (Tr. 84–87).

Johnson testified that on the next day, July 3, at Applicant's behest, the four co-defendants met up again. Johnson picked up Applicant first and they went to Syracuse until about nine, then left to get Shakeem and Louis. They went to Florence, on 52 again, and Johnson was told to go to America's Best Value on TV Road. Again, Applicant and Shakeem left while Louis and Johnson sat in the car. Five minutes later, Applicant and Shakeem returned, but told Johnson to wait. Applicant and Shakeem left again for about five to ten minutes, then came running back. (Tr. 278–80).

America's Best Value Robbery

Johnson testified about Applicant's description of what occurred at America's Best Value as follows: "They robbed a man, put him in the bathroom, and took his clothes, searched the room for what they wanted, and left." (Tr. 281).

Richard Ward testified at trial. (Tr. 111–14). Ward stated he was staying at America's Best Value on TV Road. He testified he stayed there for about two weeks while his house was being fixed. He was with Uncle Gilbert and Louis Oberfrank. Oberfrank and Ward walked to the hotel bar and saw two guys suspiciously walking up and down the aisles. They returned to their room and then there was a knock on the door. Two guys pushed their way in as Oberfrank opened the door. The big guy pulled out a gun and they were ordered to get undressed and go in the bathroom. The smaller skinny guy went back and forth asking where their money was, and, if they did not give him the money, he was going to kill them or shoot them. They found $500 in Uncle Gilbert's wallet and the skinny guy went crazy and thought they had more money. The skinny guy kept running back and forth, searching the room, looking at them, plundering through the suitcases and moving the beds.

Then after about five to ten minutes, the robbers said do not come out the door or the robbers would kill them. Ward thought he heard them go out the door.

Ward waited a few minutes, put on his pants, and ran out the room in time to see an older red car with front-end damage, "kind of a foreign car," drive away. They called the police; they were missing a bunch of items: "money, credit cards, cell phones." (Tr. 114-5)

Ward restated that the first time he saw the two men was on the walkway. He then identified Applicant as one of the defendants. (Tr. 117). He stated the lighting in the room was great. The defendants were there for about ten minutes with ample time for Ward to observe both of them. (Tr. 123, 144). Ward gave a description to law enforcement. The big guy was wearing regular jeans and a white T-shirt with some writing on it, while the skinny guy was wearing baggy pants and a white T-shirt. Ward identified the clothes the big guy was wearing and the T-shirt and jeans the skinny guy, Applicant, was wearing. (Tr. 119-21). Ward identified his cell phone that was stolen. (Tr. 121–22). Ward also identified a picture of the red car. (Tr. 123).

Deputy Jay McLaurin responded to America's Best Value and interviewed the three victims. He stated the victims were able to describe the robbers to him: one was about 6'3" and 250 pounds, wearing a white T-shirt with black writing on the front and blue jeans; and the other was about 5'8" and 180 pounds, wearing a white T-shirt and jeans. The victims told Dep. McLaurin the robbers were in a red vehicle with front-end damage. A city officer called and said there was a car fitting this description at IHOP. (Tr. 158–159, 161).

Super 8 Motel Robbery

Johnson also testified about the third robbery. Johnson stated that after the America's Best Value robbery, the group went to two different gas stations. Johnson stated that after leaving the

second gas station, he was instructed to drive to the Super 8 Motel. Once they arrived at the motel, just as before, Applicant and Shakeem left the car and came back five or ten minutes later. Johnson saw the two return with a cell phone and camera, and he saw Shakeem put the gun in the trunk of the car. After they left the motel, they stopped at a gas station in Darlington and Shakeem used a credit card to fill the gas tank. After filling the tank, they went to IHOP. (Tr. 281–85).

As mentioned above, a city police officer spotted Johnson's car in the IHOP parking lot. The four were arrested after a failed attempt to escape. At trial, Johnson identified the cell phone and camera stolen from the Super 8 Motel. Officer Brandon Hale was the police officer who discovered the defendants at IHOP. His testimony corroborated the events described by Johnson. (Tr. 235–38).

IV. SUMMARY OF EVIDENTIARY HEARING TESTIMONY

Counsel

Counsel testified he had been practicing law for over 10 years. Counsel further testified about half of his work came through criminal until it steadily decline to a quarter.

Counsel testified he was originally appointed on July 16, 2009. Counsel testified Applicant had been accused of waiting for people to check into hotel rooms, pushing them inside, holding them at gunpoint, asking them to disrobe, forcing them in the bathtub, and then stealing their stuff.

Counsel was aware the Solicitor's Office wanted to take Applicant to trial. According to Counsel, Applicant was scheduled for trial in August 2009. However, Counsel notified the Solicitor's Office he had not yet met with Applicant. Therefore, Counsel was not ready for trial so it was delayed. Furthermore, Counsel testified there would have been no plea negotiations in these communications with the Solicitor's Office before meeting with Applicant.

Counsel testified he tried to get in touch with Applicant initially but got no response. Counsel further explained Applicant was arrested on a warrant and held in Darlington County. Counsel testified he met with Applicant in Darlington County on August 12, 2009.

Counsel testified the Solicitor's Office told him Applicant would receive the same plea offer as his co-defendants. At some point, Counsel filed a motion to reveal the plea deals that Applicant's co-defendants received.

In November 2009, Counsel sent Applicant a letter memorializing their meeting conversations. In December 2009, Counsel received notification Applicant had two weeks to decide whether he wanted to accept an offer of fifteen years. Counsel further testified this was the same deal co-defendants received. Counsel testified he went over the plea offer with Applicant who understood everything. Counsel testified he customarily notified clients that a plea offer is their decision, and he is not going to force someone to go to trial. Furthermore, Counsel testified he customarily notified clients if they want to go to trial he will do the best job. Counsel testified he customarily told clients they must decide between a plea and trial because of the maximum exposure risk. Counsel testified he customarily explains maximum exposure risk for charges upfront so client know what is potentially hanging over their head. Counsel testified to his certainty he would have had this customary conversation with Applicant. Ultimately, Counsel testified Applicant rejected the plea offer. Thereafter, Counsel recalled rejecting the plea offer.

Counsel testified he remembered Applicant having a minor criminal record, good grades in school, and wanting to join the military. Counsel testified Applicant's record looked a lot better than his co-defendants.

In preparation for trial, Counsel testified to focusing on a major issue he had with the original identification. Counsel testified his belief in preparation was the identification appeared to be very suggestive based upon doing it through a rollup. Counsel further testified he focused a lot of energy on this issue, wrote a brief on it, and did an oral argument for suppression. Counsel testified he was ultimately unsuccessful in attempting to suppress identification.

In witness preparation, Counsel testified to interviewing Susan Abraham who was a teacher. Counsel further testified to talking with Representative Williams from Darlington because Applicant's mother had a previous relationship with him. Counsel testified he did not speak with the victims prior to trial. However, Counsel testified the victim was bringing a civil suit so he spoke to his lawyer, Ed Love. Furthermore, Counsel testified to using the civil suit in Applicant's defense to raise credibility concerns about the victim in front of the jury.

Counsel recalled spotting a major issue with Applicant's case. Specifically, Counsel testified Applicant was picked up with the other co-defendants the same night of the crime, in the same car described as leaving the scene, and identified by one of the victims. Counsel testified he believed this would be tough to deal with in front of a jury. According to Counsel, the co-defendants testified at Applicant's trial with their representation present.

Counsel testified nothing stood out at sentencing to object in regards to legal errors. He further testified to having no knowledge of case law at the time regarding disproportionate sentences between co-defendants. Counsel testified he had no knowledge of the victim's feelings before Applicant was sentenced. Counsel testified he did not believe the sentence was disproportionate when it was announced. Furthermore, Counsel testified he did not believe the sentence punished

Applicant for going to trial. Additionally, Counsel testified he had no knowledge of the victim's feelings before Applicant was sentenced.

Thereafter, Counsel testified the victim wrote him a letter after sentencing to express Applicant received a raw deal. Counsel further testified the victim felt bad that co-defendant got less time because Applicant was too hard headed to accept a plea offer. Subsequently, Counsel testified he asked the victim to fill out an affidavit on this matter. Thereafter, Counsel testified he presented the victim's statement to the court. Counsel testified he understood the difficulty in getting this statement reconsidered. However, Counsel testified he wanted to do everything he could for preservation on appeal.

Ultimately, Counsel testified he met with Applicant several times throughout the duration of this case. Counsel testified they met personally at least four times. Furthermore, Counsel met with Applicant's mother and brother personally at least once. Counsel testified he felt prepared for trial, and Applicant understood everything as the case progressed.

Counsel recalled filing a Brady motion, and received everything he expected to receive. Counsel further testified to making an issue out of the victim's impact statement not being included because he felt it was exculpatory. However, the court eventually denied his motion to retrieve this statement at trial. Counsel testified he went over collateral consequences with Applicant such as parole and classification. Counsel testified he went over the elements with Applicant to prepare their defense for trial. Counsel testified he went over where the other side's case would be weak and their burden of proof for each element with Applicant. Counsel testified Applicant understood his constitutional rights after they had a discussion about it.

Applicant

Applicant testified Counsel's main trial strategy was to attack the co-defendant's statements and the identification issue. Applicant further testified the identification issue was raised on appeal.

Additionally, Applicant testified he was employed at Zaxby's and in the National Guard prior to being arrested. Applicant testified he had already been through basic training prior to arrest. Applicant testified to completing basic training before graduating high school.

V. FINDINGS OF FACTS 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. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before

examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to sufficiently attack the case presented against Applicant

Applicant alleges Counsel failed to thoroughly attack the case presented against him at trial. "[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include 'which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*'" Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (citing Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998)) (emphasis added). When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect. Yarborough v. Gentry, 540 U.S. 1, 8, 124 S. Ct. 1, 5, 157 L. Ed. 2d 1 (2003).

a) Identification

Here, Applicant credibly testified Counsel planned to attack the identification issue at trial. Counsel also credibly recalled attacking the identification issue at trial. Furthermore, Counsel credibly assessed the identification issue was his major focus in trial preparation. Specifically, Counsel credibly recalled writing a brief, filing a motion to suppress identification, and being denied after oral arguments. At trial, during closing statements, Counsel identified an issue with the Assistant Solicitor offering three "immediate' eyewitness for identification. (Tr. 424, L. 4).

The first witness was Ward. Counsel argued neither of the two original descriptions Ward gave to police matched Applicant's height or weight. (Tr. 424, L. 15-25). Counsel then argued Ward could not have chased them down for a good view because testified to being naked in the bathtub when they left and required a cane for his disability. (Tr. 452, L. 13-25). Furthermore, Counsel argued his eyesight disability potentially prevented him from identifying the vehicle accurately. (Tr. 426, L. 16-25).

The second witness was Meyer. Thereafter, Counsel argued Meyer's description of a black male, white shirt, and thin build at a height of six foot one inch was too generic. (Tr. 428, L. 12-25). Counsel further pointed out Meyer is still having problems with his head from getting hit. (Tr. 430, L. 1-3).

The third witness was Chappell. Finally, Counsel argued Meyers never identified Applicant until he was on the witness stand a year and a half later. (Tr. 430, L. 7-8). Thereafter, Counsel argued Shappell's admission about a lighting problem in his room indicated identification problems. (Tr. 431, L. 7-8). Furthermore, Counsel argued Shappell's testimony about Shakeem having total control over him for the five to ten minute incident prevented identifying others accurately. (Tr. 431, L. 14-22). Additionally, Counsel argued Deputy Worsley improperly suggestive to Chappell his belief they caught the individuals before identification. (Tr. 433, L. 15-6). Finally, Counsel further argued identification was further improperly suggestive when Chappell identified Applicant who was wearing handcuffs surrounded by police officers. (Tr. 435, L. 1-7).

Accordingly, Applicant has not overcome the burden to prove Counsel's tactics in addressing the identification issue were deficient.

b) Co-Defendant Statements

Additionally, Applicant testified Counsel strategized attacking the statements of his co-defendants. Counsel also credibly recalled wanting to show the jury Applicant had a good record compared to his co-defendants. In fact, Counsel pointed out Applicant was the only co-defendant with a job. (Tr. 440, L. 11-2). Specifically, Counsel added Applicant was working at Zaxby's and doing National Guard duty. (Tr. 440, L. 13). Applicant did not specify the specific co-defendant or statement Counsel failed to rebut from the prosecution. However, the Assistant Solicitor argued the following during her closing statement:

> And [Johnson] who had known this defendant for years, high school, work, neighbor, who is involved in the whole thing the whole time and says Mr. Jordan not only was there the whole time but called him about doing it and was one of the ones who went in each of the hotel rooms. (Tr. 419, L. 20-5).

Previously, Counsel elicited testimony Johnson had been fired from the Zaxby's Applicant continued to work at. (Tr. 343). Furthermore, Counsel elicited testimony from Johnson about his intention to plead guilty in exchange for fifteen years where the original charges were seven counts of kidnapping, seven counts of armed robbery, five counts of possession of a weapon in the commission of a violent crime, one count of conspiracy, and one count of grand larceny less than five thousand. (Tr. 361, 364). Johnson also testified he would take the offer "if it's still going to be on the table." (Tr. 364, L. 5). Johnson further admitted to previously giving false statements to the police about picking Applicant up on a night in question. (Tr. 356, L. 23). Therefore, during closing statements, Counsel encouraged the jury to question Johnson because he had not been allowed to plead guilty before testifying even though he accepted the offer. (Tr. 422, L. 4-16). Thereafter,

Counsel fully argued the jury to question Applicant's credibility because he wanted the favorable plea deal and admitted to lying to police. (Tr. 441, L. 9-16). In review, it appears Counsel did attack Johnson's false statements. Accordingly, Applicant has not overcome the burden to prove Counsel's tactic in addressing the co-defendant statements was deficient.

c) Prejudice

Applicant contends Counsel's tactical decisions resulted in a guilty verdict. To establish counsel failed to adequately prepare for trial, Petitioner 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).

Applicant did not testify about any specific prejudice suffered based upon Counsel's tactical decisions. Furthermore, Applicant did not present any evidence to establish Counsel could have used to improve tactical decisions. Accordingly, this Court finds Applicant is merely speculating without offering specific contents that would have assisted Counsel's tactical strategy. Therefore, this Court

finds Applicant has failed to overcome the burden to prove prejudice based upon any alleged deficiencies in implementing his trial strategy.

2. *Unconstitutional Identification*

Applicant contends his identification was unconstitutional based upon a violation of his right to counsel. Appellate issues are not appropriate for PCR unless they are considered as ineffective assistance of counsel claims. Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993) (holding issues that could have been raised at trial or in direct appeal cannot be asserted in PCR application absent a claim of ineffective assistance of counsel).

Here, Counsel credibly testified towards filing a motion to suppress identification before trial. Furthermore, Counsel credibly recalled losing the motion after an oral argument. Additionally, Applicant credibly testified this issue was taken up on direct appeal. Finally, the record reflects this issue was considered on direct appeal. Accordingly, this Court finds the identification issue was appropriate for direct appeal. Therefore, this Court finds Applicant has not proven Counsel was deficient for failing to challenge his identification issue.

3. *Failure to Object to Sentencing*

Counsel proffered his belief there was no reason to object to the sentence Applicant received. Judges have discretion in sentencing within the statutory limits. State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974). Counsel can be ineffective where they fail to object when a judge considers the fact that a defendant exercised the right to a jury trial. Davis v. State, 336 S.C. 329, 332, 520 S.E.2d 801, 802 (1999) (Finding counsel ineffective where the judge considered the co-defendant's pled guilty on the record during a motion for sentence reduction hearing).

Here, Applicant was given concurrent sentences on fourteen counts totaling at thirty years. Pursuant to South Carolina law, a kidnapping conviction alone carries thirty years. S.C. Code Ann. § 16-3-910. Therefore, this Court finds Applicant was sentenced within statutory limits.

Additionally, Judge Anderson never took Applicant's decision to go to trial in consideration when imposing the sentence. (Tr. 498-502). Counsel credibly testified he filed a motion for reconsideration with the affidavit from the victim attached. However, the court denied this motion without holding oral arguments. Counsel credibly testified knowing the difficulty in getting sentence reconsideration based upon the affidavit. Furthermore, Counsel credibly testified a reconsideration motion was mainly a source to put the affidavit on the record for preservation. Finally, Counsel credibly testified feeling there was never indication Applicant was punished for going to trial. Therefore, this Court finds Counsel was not ineffective for any alleged failure to object to the sentence imposed upon Applicant.

VI. 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 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

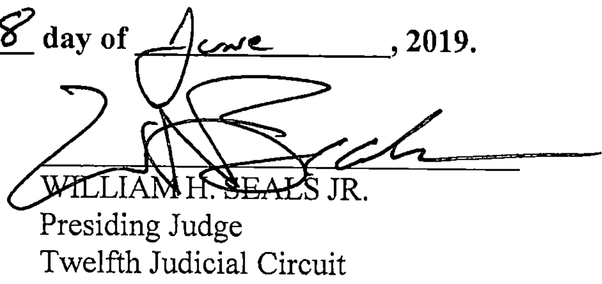
counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures on appeal.

IT IS THEREFORE ORDERED:

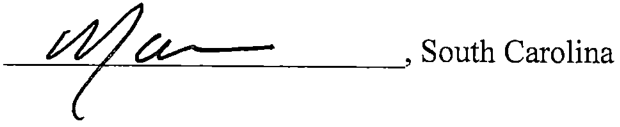
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

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

AND IT IS SO ORDERED this 18 day of June, 2019.



WILLIAM H. SEALS JR.
Presiding Judge
Twelfth Judicial Circuit



______________, South Carolina

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C.C.C.P. & GS
FLORENCE COUNTY, SC