VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

CHAD P. STALNAKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000184

APPENDIX

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render a verdict based on the evidence presented at trial." Id. at 7, 495 S.E.2d at 194 (citing State v. Patterson, 324 S.C. 5, 482 S.E.2d 760, *cert denied*, 513 U.S. 831 (1997); State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990)). Moreover, mere exposure to pretrial publicity does not automatically disqualify a prospective juror. Id. Here, Mr. Runyon testified although Applicant's case drew media attention, he would have needed to show to the court a change of venue was necessary due to more than mere attention of the case by the media. Such a showing was not possible. Therefore, this Court finds Applicant has failed to establish any deficiency on the part of counsel.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. When a motion for a change in venue is predicated upon pretrial publicity, the moving party must show actual juror prejudice as a result of the publicity. Id. at 8, 495 S.E.2d at 194. During *voir dire*, the trial court questioned the jury panel about any pretrial knowledge of Applicant's case. Specifically, the trial court asked: "Is there any member of the jury panel who knows any information about the events that occurred on the day of May 18, 2014 at all? If so, please stand." (Transcript of Trial/Plea at 10:6-8, State v. Chad Stalnaker, September 12, 2016). There was no response. (Id. at 10:9). The Court further questioned the jury panel: "Is there any member of the jury panel who is aware of any bias or prejudice towards either the State or the Defendant in this case? If so, please stand." (Id. at 10:15-18). No members of the jury panel responded. (Id. at 10:19). The Court also asked: "Has any member of the jury panel formed or expressed an opinion about any issue or matter in this case? If so, please stand." (Id. at 9:11-14). One juror stood up and indicated to the Court that he knew of evidence outside of what would be presented at trial, and that it was unlikely that he could remain fair and

impartial. (Id. at 9:15-24). Thereafter, the trial court removed the juror from the panel with no objection from the State or Defense counsel. (Id. at 9:25 – 10:3). Accordingly, there was no actual prejudice from any member of the jury pool upon which counsel could have based a motion for a change in venue. This Court finds this allegation must be denied and dismissed with prejudice.

B. Counsels' alleged failure to strike a juror

Applicant alleges counsels were ineffective for failing to strike juror number thirty six. Specifically, Applicant contends because juror number thirty-six had a relationship with the Solicitor's Office, she should have been stricken from the jury. A criminal defendant has the right to a trial by an impartial jury. U.S. CONST. Amend. VI; S.C. CONST. art. I, § 14. However, "there is no rule of law that a juror must be disqualified on account of his relationship to an attorney in the case." State v. Neeley, 271 S.C. 33, 37, 244 S.E.2d 522, 525 (1978) (citing State v. Nicholson, 221 S.C. 399, 70 S.E.2d 632 (1952)). Furthermore, when the failure by a juror to disclose this relationship is the result of an honest mistake, it cannot be inferred that the juror is not impartial. Compare State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991) (holding the trial court did not abuse its discretion in denying Appellant's motion for a mistrial when there was no evidence Appellant would have exercised a preemptory challenge of a juror even if he had known that juror and a witness were third cousins), with State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982) (holding the trial court abused its discretion in denying Appellant's motion for a mistrial when a juror was related to the deputy sheriff who viewed the crime scene and had custody of the prisoner in the courtroom during trial).

Here, Mr. Runyon informed the trial court that juror number thirty-six was the great niece, by marriage, of a paralegal, who worked in the Solicitor's Office. (Tr. at 123:18 – 125:18). In advising the court of the relationship, the State emphasized their paralegal "wasn't even sure whether or not [juror thirty-six] knew that she worked for the Solicitor's office." (Id. at 124:20-22). The State further emphasized: "One of our paralegals her husband -- she thinks it is her husband's great niece and she just brought that to our attention our of an abundance of caution -- . . . She was able to give us her last name after a few seconds so I don't think the connection is that close." (Id. at 123:24 – 124:4). Clearly, the relationship in question was not a close, personal relationship. The trial court then brought juror number thirty-six out, and a bench conference was held. (Id. at 125:17-18). Furthermore, Mr. Runyon testified at the evidentiary hearing he was satisfied with the juror's responses to the court's questions and did not feel the need to strike the juror. Based on the foregoing, this Court finds Applicant has failed to establish any deficiency on the part of either counsel. Clearly, the trial court inquired of this juror whether or not she could remain impartial, and neither counsel had any reason to believe this juror could not give Applicant a fair trial. Moreover, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency, particularly in light of the fact Applicant decided to plead guilty during trial. Further, the record is void of any evidence suggesting that the seating of this juror precipitated the Applicant's guilty plea. Accordingly, this allegation must be denied and dismissed with prejudice.

C. Counsels' alleged failure in eliciting racial slurs made by Applicant

Applicant alleges counsels were ineffective for eliciting testimony from an eyewitness that Applicant uttered racial slurs before attacking Victim. (Id. at 186:4-14). Mr. Runyon testified and

this Court finds credible, his assertion from a strategic posture, that once on direct the witness Brad Hutchinson made mention of "yelling" between the Victim and Applicant it was necessary that it be clarified on cross examination. However, he testified that once a racial epithet was mentioned he had to address it somehow with the witness. This Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. As an initial matter, this Court finds this line of testimony had no bearing on Applicant's decision to plead guilty. Furthermore, Applicant indicated to the trial court during his plea, he agreed with the facts as presented during the State's case-in-chief and declined to add any facts. (Id. at 282:8-17). Accordingly, this allegation must be denied and dismissed with prejudice.

D. Counsels' alleged failure in misinforming Applicant as to the consequences of his plea

Applicant contends counsel were ineffective for failing to accurately advise him of the consequences of his plea. Specifically, Applicant contends counsels promised him he would plead to a non-violent offense, would be parole eligible every year, and he would only be required to serve fifty-five percent of his sentence. As an initial matter, this Court finds Mr. Runyon's and Mr. Jaskiewicz's testimony credible, whereas Applicant's and Mr. Stalnaker's testimony is not credible. Both Mr. Runyon and Mr. Jaskiewicz testified they did not make any promises to Applicant about his sentence. Furthermore, Mr. Runyon explicitly reviewed the consequences of the plea with Applicant and made Applicant aware of the potential sentences, as well as the possibility of consecutive sentences. Mr. Runyon also made it very clear to Applicant he could not determine what his sentence would be.

Additionally, ABHAN is classified as a violent crime. S.C. CODE ANN. § 16-1-600. ABHAN is also a class C felony and, therefore, is defined as a "'no parole offense.'" See S.C.

CODE ANN. § 16-1-90(C) (defining aggravated assault and battery as a class C felony); S.C. CODE ANN. § 24-13-100 (defining no parole offenses). Moreover, "an inmate convicted of a 'no parole offense' . . . and sentenced to the custody of the Department of Corrections . . . is not eligible for early release, discharge, or community supervision . . . until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed." S.C. CODE ANN. § 21-13-150(A). Based on the foregoing, this Court finds Applicant has failed to establish either Mr. Runyon or Mr. Jaskiewicz deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. The trial/plea record shows that Applicant communicated his understanding of his decision to enter a plea. (Id. at 280:18 – 281:2). In fact, prior to making his plea, Applicant stated that he had an adequate amount of time to meet with his attorneys. (Id. at 280:12-17). The trial court informed Applicant ABHAN carried up to twenty years imprisonment and the weapons charge carried up to five years, and Applicant indicated he understood each of these potential sentences. (Tr. at 283:8-23). Applicant also understood he was entering a plea without recommendation or negotiation. (Id. at 283:12-23). Applicant also indicated he understood he could be sentenced to consecutive sentences. (Id. at 283:24 – 284:3). Moreover, Applicant informed the trial court no one had promised him anything or threatened him in order to induce his plea. (Id. at 281:3-8). Clearly, Applicant was aware of the potential sentences he faced and indicated no one had made any promises to him at the time of the plea and, therefore, entered into the guilty plea knowingly and intelligently. Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

E. Counsels' alleged failure to present evidence of self-defense and defense of others

Applicant further alleges counsels were ineffective for failing to present evidence of self-defense or defense of others. Specifically, Applicant contends he was on his property when Victim attacked him, without any provocation by Applicant. Applicant further contends Victim was acting aggressively towards Ms. Jimenez, and Applicant acted in an effort to defend her.

With respect to self-defense, "a self-defense charge is not required unless it is supported by the evidence." State v. Slater, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007) (citing State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994)). In order to establish a defense of self-defense, the defendant must: (1) be without fault in bringing on the difficulty; (2) have been in actual imminent danger of losing his life or sustaining serious bodily injury; (3) show that a reasonably prudent person of ordinary firmness and courage would have entertain the belief he was actually in imminent danger and the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or death, if the defense is based upon a defendant's belief of imminent danger; and (4) have had no other probable means of avoiding the danger. Id. at 69-70, 644 S.E.2d at 52. A defendant "who provokes or initiates an assault cannot claim self-defense unless he both withdraws from the conflict and communicates his withdrawal by word or act to his adversary." State v. Jackson, 384 S.C. 29, 36, 681 S.E.2d 17, 20-21 (Ct. App. 2009). Here, Applicant and Victim engaged in a fist fight. (Tr. at 132:10-25). A neighbor broke up that fight, and both parties withdrew. (Id. at 133:17-24); (Id. at 145:13-15); (Id. at 199:16-22). Then, out of nowhere, Applicant jumped down from his balcony, knife in hand, and attacked Victim. (Id. at 136:4-7); (Id.

at 147:3-5). Applicant had no indication Victim was armed. (Id. at 72:4-5). As Applicant both reinitiated the fight and brought a weapon to what had previously been a fist fight, this Court finds no evidence of self-defense was presented at trial to warrant a charge on self-defense. Therefore, this Court finds Applicant has failed to establish any deficiency on the part of Mr. Runyon or Mr. Jaskiewicz.

With respect to defense of others, "one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative or bystander would likewise have the right to take the life of the assailant in self-defense." State v. Starnes, 340 S.C. 312, 322-23, 531 S.E.2d 907, 913 (2000). Although Applicant contends he was defending Ms. Jimenez from Victim, no evidence was presented at trial to indicate Victim was attacking Ms. Jimenez. In fact, Ms. Jimenez testified at trial she neither recalled Victim acting aggressively toward her nor getting in her face. (Tr. at 167:1-9) Similarly, Victim testified although he had no specific recollection, he would not have acted aggressively towards Ms. Jimenez. (Id. at 208:11-16). Therefore, this Court finds Applicant was not entitled to a charge on defense of others. Consequently, Applicant has failed to establish any deficiency on the part of counsels.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from these alleged deficiencies. Applicant voluntarily made the decision to plead guilty; and during that plea, indicated the facts as presented were true. (Id. at 282:8-17). Applicant also waived his right to present his side of the story by pleading guilty. (Id. at 284:4-21). Based on all of the foregoing, this allegation must be denied and dismissed with prejudice.

F. Counsels' alleged failure to evidence of the toxicology report

Applicant contends counsels were ineffective for failing to introduce Victim's toxicology report at trial. Applicant specifically contends this toxicology report would have shown Victim was under the influence on the night of these crimes. Victim never denied imbibing in liquor on the evening of these crimes. Furthermore, on cross-examination of Victim, Mr. Runyon was able to elicit testimony that Victim was drinking at the Recovery Room until it closed and had taken approximately four or five shots of liquor that night. (Id. at 210:15 – 211:14). As Mr. Runyon was able to elicit testimony Victim was, in fact, intoxicated, this Court finds Applicant has wholly failed to establish counsels were deficient.

Similarly, Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. At the evidentiary hearing, Applicant did not produce Victim's toxicology report but merely testified as to what he believed it would entail. Applicant's bare assertions, without more, do not give rise to the level of proof required for Applicant to meet his burden. Based on the foregoing, this Court finds that this allegation must be denied and dismissed with prejudice.

G. Counsels' alleged failure to present mitigation evidence

Applicant alleges counsels were ineffective for failing to present mitigation evidence at the plea. "Strickland does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing." Wiggins v. Smith, 539 U.S. 510, 533 (2003). Here, Applicant, his mother and father, and his new girlfriend were all given ample opportunity to speak at the plea prior to sentencing. (See Tr. 291:23 – 294:3). Each of these individuals highlighted Applicant's good moral character and reputation. Furthermore, both Mr. Runyon and Mr. Jaskiewicz were able to highlight these attributes in

Applicant as well. (See Tr. 289:10 – 291:4); (Id. at 294:5-18). Given the mitigation presented prior to sentencing was extensive, this Court finds Applicant has wholly failed to establish any deficiency on the part of counsels or any resulting prejudice therefrom. This allegation must be denied and dismissed with prejudice.

H. Counsels' alleged failure to advise Applicant of his right to testify

Applicant alleges counsels failed to advise him of his right to testify. A criminal defendant has a constitutional right to testify on his own behalf. Rock v. Arkansas, 483 U.S. 44, 49 (1987). The decision on whether or not the defendant will testify ultimately rests with the defendant alone. Jones v. Barnes, 463 U.S. 745, 751 (1983). When a defendant chooses not to testify, "an on-the-record waiver of a constitutional or statutory right is but one method of determining whether the defendant knowingly and intelligently waived that right." Brown v. State, 317 S.C. 270, 272, 453 S.E.2d 251, 252 (1994) (citing Myers v. State, 248 S.C. 359, 151 S.E.2d 665 (1966)). Here, the trial court fully advised Applicant of his right to testify at trial. (See Tr. 277:1 – 279:3). The record also indicates two extensive recesses[5] were taken in order to provide Applicant with the opportunity to discuss his ability to testify with counsels. (Id. at 279:1-15). Following these recesses and after discussing his options with counsels, Applicant indicated he wanted to plead guilty. (Id. at 280:1-6). Moreover, Mr. Runyon testified he discussed Applicant's right to testify with him and explained to Applicant he would need to testify in order to present his side of the story. He also testified Applicant chose not to testify, but rather chose to plead guilty. Accordingly, this Court finds Applicant has failed to show any deficiency or resulting prejudice

[5] One recess was taken from 10:45 am – 11:30 am. A total of 45 minutes. The other recess was taken from 11:38 am – 12:01 pm. A total of 23 minutes.

with respect to counsels' alleged failure to adequately advise of Applicant regarding his right to testify. Accordingly, this allegation must be denied and dismissed with prejudice.

I. Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily made. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 244 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566, 568 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. This Court further finds Applicant's plea was entered into freely and voluntarily. The record before this Court reflects that the plea

court thoroughly reviewed all of Applicant's constitutional rights with him, including his right to a jury trial. (Id. at 284:4-21). Specifically, Applicant indicated he understood the jurors had only heard one side of the story, but he was willing to take the case away from the jury and plead guilty. (Id. at 283:3-7). Upon explanation of each constitutional right, Applicant indicated he understood and waived his constitutional rights. (Id. at 284:4-25). Applicant further indicated no one had promised him anything or threatened him in order for him to plead guilty. (Id. at 281:3-5); (Id. at 284:22-24). Additionally, Applicant indicated he was pleading guilty freely and voluntarily. (Id. at 284:25 – 285:2). Moreover, Applicant indicated he was satisfied with the services provided by both Mr. Runyon and Mr. Jaskiewicz, and they had done everything he asked of them. (Id. at 285:3-11).

Specifically, counsels testified they reviewed all discovery materials with Applicant, potential sentences, and reviewed all of the elements which the State would be required to prove at trial to Applicant. Moreover, counsels testified they were able to fully inform him of the consequences of his plea, his constitutional rights, and Applicant ultimately made the decision to plead guilty.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.

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

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application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 7th day of Nov., 2018.

DEADRA L. JEFFERSON
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE 9th JUDICIAL CIRCUIT
)	
Chad Stalnacker, 369754)	
Applicant)	2017-CP-10-272
Vs.)	
State of South Carolina)	APPLICANT'S MOTION TO
Respondent,)	RECONSIDER, ALTER OR AMEND
)	PURSUANT TO RULE 59(e), SCRCP

This matter comes before the Court by way of applicant, Chad P. Stalnaker's # 369754, January 18, 2017 application for Post-Conviction Relief. An evidentiary hearing was held July 23, 2018 before the Honorable Deadra L. Jefferson. On November 7, 2018 Judge Jefferson entered a final order dismissing the PCR application. Undersigned Counsel received notice of the filing of Judge Jefferson's Order on November 12, 2018. Applicant, by and through undersigned counsel, in making its Motion to Reconsider, Alter or Amend, pursuant to Rule 59(e), SCRCP, would respectfully show this court:

PROCEDURAL HISTORY

Applicant adopts the Procedural History set forth in Judge Jefferson's November 7, 2018 Order of Dismissal.

ALLEGATIONS

Applicant reasserts the following allegations of ineffective assistance of counsel which were addressed by counsel at the evidentiary hearing namely,

1. Trial counsel was ineffective for failing to seek a change of venue in light of the substantial media attention devoted to Applicant's General Sessions' proceedings.
2. Trial counsel was ineffective for failing to move to strike juror #36 after it was revealed that the juror was related to a member of the 9th Circuit Solicitor's Office.
3. Trial counsel was ineffective for eliciting testimony form a state's witness that Defendant uttered racial slurs.
4. Trial counsel was ineffective for failing to advise Applicant of the consequences of his guilty plea.
5. Trial counsel was ineffective for failing to request a charge of self-defense or defense of third party.

6. Trial Counsel was ineffective for failing to introduce evidence of victims' toxicology report.

7. Trial Counsel was ineffective for failing to present mitigation evidence at the plea

8. Trial Counsel was ineffective for failing to properly advise Applicant of his right to testify.

STATEMENTS OF FACTS ADDUCED AT THE TRIAL/PLEA & TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING.

With the exception of the following discussion regarding Applicant's claim that trial counsel was ineffective when he adduced testimony of Applicant's racial slurs, Applicant accepts the factual recitations set forth in Judge Jefferson's order but respectfully contends that the facts *support* all of Applicant's allegations of ineffective assistance of counsel and application for Post-Conviction Relief.

Trial counsel was ineffective for eliciting testimony form a state's witness that Defendant uttered racial slurs.

The State called Brad Hutchinson to testify. Mr. Hutchinson testified that he lived "diagonally across the street" from Applicant and witnessed the incident between Applicant and the alleged victim Desmond Casey. (Transcript of Plea/Trial at 170:14-21). The following is Mr. Hutchinson's testimony regarding verbal communications he heard uttered between Applicant and Desmond Casey:

> Q. ...*What did you observe as they made their way towards* [redacted] *Coming Street?*
>
> A. *They were kind of yelling, arguing with each other...*

(Id. 173:19-21)

> Q. *And then what happened as -- can you describe the altercation as you saw it once the defendant jumped down?*
>
> A. *After he jumped down it was a second or so later they started -- well they were arguing and a second or so later it looked like they were getting into a physical altercation. I thought they were just getting into a fight. I thought they were having a fist fight.*
>
> Q. *Could you hear any yelling between the two of them?*
>
> A. *There was some yelling and things going on. There wasn't a whole lot that I could really understand because it was a little bit of a commotion going on.*

(Id. 175: 12-22)

A. *Now once the defendant starts yelling about calling 911 what do you do?*

Q. *I was a little confused. Plus someone was yelling call 911 so it was obvious someone needed help so I walked across the street to see what was going on.*

(Id. 176: 21-25)

At no point during his direct examination did the Solicitor ask for the specifics of what was actually said during the yelling between Desmond Casey and Applicant. On cross exam-examination, trial counsel questioned Mr. Hutchinson about the conversation between Desmond Casey and Applicant.

Q. ... *Did you hear anything about what the argument was about?*

A. I *didn't hear exactly what the argument was about but the white male was being rather aggressive towards the white female and so that's the only thing I could imagine.*

(Id. 182: 16-21)

Trial counsel continued questioning Mr. Hutchinson about any specific communications he heard between Desmond Casey and Applicant.

Q. *And so after the black gentleman ran away, the alleged victim ran away you heard Chad Stalnaker hollering -- what was he hollering?*

A. *He was saying call 911 because he thought his girlfriend's finger had been cut off.*

(Id. 183: 15-19)

The following colloquy then took place through which trial counsel elicited testimony that Applicant uttered racial slurs at Desmond Casey.

Q. *And Desmond, as you later find out who he is Desmond was coming down the street saying something to them?*

A. *They were both exchanging words, yes sir.*

Q. *But you didn't hear what the words were?*

A. *Not exactly.*

Q. *When you say not exactly what ---*

A. *--- no, I did not hear the exact words they were saying.*

Q. *Do you recall any of the words that were being said?*

A. *There was at one point in time after or during the actual stabbing had occurred through the commotion and everything that had been happening I did hear a couple of words that were said; not complete sentences or the exact context of what was being said but yes, there were a couple of words during the actual stabbing that I heard.*

Q. *Did you hear Desmond say anything to this couple at any time that you can recall those words?*

A. *No.*

Q. *And do you know who said the words that you say you heard?*

A. *Yes.*

Q. *And who was that?*

A. *It was Chad.*

Q. *And what did he say?*

A. *I did hear him say a few times during the actual stabbing he did say the N word towards the black gentleman.*

Q. *Okay. So he used a racial epithet?*

A. *Yes.*

(Id. 185: 10- 186: 14)

Once Mr. Hutchinson testified that Applicant used a racial epithet, trial counsel asked him three general questions about the neighborhood and then concluded his cross examination.

At the PCR hearing, trial counsel testified that once Brad Hutchinson made mention of yelling between Desmond Casey and Applicant, it was necessary that it be clarified on cross examination. Additionally trial counsel testified that once the racial epithet was mentioned he had to address it somehow with the witness. However, the trial transcript shows that trial counsel asked Mr. Hutchinson several questions about what specifically was said between Desmond Casey and Applicant. On two occasions Mr. Hutchinson testified that he did "not exactly hear" what was said between the parties. It was only after repeated questioning from trial counsel that Mr. Hutchinson mentioned the racial epithet. Therefore it was trial counsel's repeated attempts to have Mr. Hutchinson testify as to what he specifically heard Applicant say that opened the door to Mr. Hutchinson's testimony regarding the racial slur.

When 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). Although the PCR Court will give deference to trial counsel's strategic decisions, the court can make its own assessment whether trial counsel's articulated strategy was valid. *See* Id. 386 S.C. at 569 (finding that in a CSC case, trial counsel did not have a valid strategy for failing to object to inadmissible hearsay uttered by forensic interviewer); Matthews v State, 350 S.C. 272, 565 S.E.2d 766 (2002); (finding an unreasonable trial strategy where trial counsel did not object to solicitor vouching for credibility of state's witness because trial counsel did not want the trial court to admonish him in front of the jury); Gallman v State, 307 S.C. 273, 414 S.E.2d 780, (1992) (finding that trial counsel failure to object to trial court's comments that invited the jury to engage in premature jury deliberations was not supported by a valid trial strategy).

Trial counsel's own introduction of prejudicial testimony can support an applicant's PCR claim for ineffective assistance of counsel. In Caprood v State, applicant filed a PCR application following his conviction and twenty year sentence for armed robbery. 338 S.C. 103, 525 S.E.2d 514 (2000), *abrogated on other grounds*, Smalls v State, 422 S.C. 174, 810 S.E.2d 836 (2018). During cross examination trial counsel asked the arresting officer whether he ran a license check on defendant. The following colloquy occurred:

> A license check? Yes, sir, I ran a rap sheet and-
>
> Q: Did the Defendant have-the Defendant was driving under suspension, was he not?
>
> A: I believe there was some type of violation, also.

Id. 338 S.C. at 112.

After this testimony the court called a bench conference. The trial court admonished the arresting officer but concluded that no harm had been done by the remark. Id. Trial counsel did not ask for a curative instruction, or move for mistrial. The PCR court held that trial counsel was ineffective for failing to protect his client's interests following the arresting officer's mention of a "rap sheet" and "some type of violation." Id at 113. Since the State did not appeal the portion of the PCR Court's decision, that trial counsel was ineffective in his handling of the arresting officer's testimony, the appellate court held it was the law of the case, and applicant was granted a new trial. Id.

In Ingle v State applicant filed a PCR application following his conviction and 30 and 5 year consecutive sentences for Criminal Sexual Conduct with a Minor, First Degree, and Lewd Acts upon a

Child. 338 S.C. 467, 560 S.E.2d 401 (2002). The victim's mother had been the defendant's live-in girlfriend. The Defense argued that he did not assault the victim rather that the victim came into his bedroom shortly after he and the victim's mother had sexual intercourse, and that his semen was transferred to the victim's shorts after she sat on his bed. Id 338 S.C. at 470. As the first defense witness, trial counsel called the defendant's girlfriend. Id at 471. Trial counsel asked the girlfriend whether she and the defendant had sex the morning of the alleged assault. The girlfriend testified "no, sir, that's wrong." Id. At the PCR hearing trial counsel admitted that he did not interview the girlfriend before calling her as a defense witness. Id. Trial counsel explained that his client assured him that the girlfriend was honest and would admit to having intercourse the morning of the alleged assault. Id. Defendant appealed the PCR court's decision dismissing his PCR application. The appellate court held that trial counsel was clearly deficient in calling the girlfriend to testify without first interviewing her to ascertain whether she would support defendant's theory of defense. Id. The appellate court held further that trial counsel's reliance on his client's assurance that girlfriend would testify truthfully, did not amount to a reasonable trial strategy. Id.

Had Mr. Stalnaker's trial counsel properly prepared his defense, he would have known that Mr. Hutchison heard applicant utter racial epithets at Desmond Casey. Trial counsel's explanation for why he pursued the line of questioning with Mr. Hutchinson was unreasonable. Mr. Hutchinson testified twice that he did not exactly hear specifically what was said between applicant and Mr. Casey. It was only after trial counsel repeated the inquiry for a either a third or fourth time that the witness testified that Applicant used the "N-word." The introduction of this highly inflammatory testimony clearly prejudiced applicant in the eyes of the jury.

CONCLUSION

Based upon the foregoing, Applicant Chad Stalnaker respectfully requests this Court to reconsider its prior ruling dismissing the application for Post-Conviction Relief.

(Continued on next page)

Respectfully, Submitted

James Falk
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on November 20, 2018 a copy of the above was mailed to Kelly Oppenheimer, Esq. at PO Box 11549 Columbia, SC 29211.

James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Chad P. Stalnaker, #369754, Applicant, v. State of South Carolina, Respondent.	Case No. 2017-CP-10-272 **RETURN TO APPLICANT'S "MOTION TO RECONSIDER, ALTER OR AMEND PURSUANT TO RULE 59(E), SCRCP"**

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP," would respectfully show unto this Court:

I.

Chad P. Stalnaker (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2014 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2014-GS-10-05431) and possession of a weapon during the commission of a violent crime (2014-GS-10-05434). William L. Runyon, Jr., Esquire, and Stan W. Jaskiewicz, Jr., Esquire, represented him on these charges. Assistant Solicitors Daniel W. Cooper and David L. Osborne, both of the Ninth Circuit Solicitor's Office, prosecuted the case. On September 12-14, 2016, Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young. On the third day of trial and following the State's case-in-chief, on September 14, 2016, Applicant decided to enter a guilty plea to the weapons charge and to the lesser-included offense of attempted murder, assault and battery of a high and aggravated nature. Judge Young accepted the plea and

sentenced Applicant to a term of imprisonment of ten years for assault and battery of a high and aggravated nature and five years for the weapons charge. The sentences were to be served consecutively. Applicant did not appeal.

II.

On January 18, 2017, Applicant filed an application for post-conviction relief. In this application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; and
   a. "Applicant's defense counsel failed to move for a change in venue, rendering ineffective assistance, depriving the right to a fair trial;"
   b. "Defense Counsel ineffective and deficient for failing to object and/or remove a juror who had a conflict of interest;"
   c. "Counsel ineffective and deficient for failing to object to attempted murder indictment, which alleged intent of murder but the evidence revealed that the alleged victim began the confrontation, started the fight, and was the aggravating force;"
   d. "Defense Counsel ineffective and deficient for failing to request charges to the court on self defense/stand your ground, defense of others and protection of persons and property with the Castle Doctrine;"
   e. "Defense Counsel ineffective for failing to move/motion for a Stand Your Ground hearing;"
   f. "Counsel ineffective for un-objected trial error. For counsel failed to object to inadmissible hearsay evidence. . . . Counsel failed to object to solicitors [sic] opening remarks of hearsay, which he quoted the alleged victim was stabbed 16 times;"
   g. "Defense Counsel ineffective for failing to object to State's failure to disclose potentially exculpatory evidence;"
   h. "Counsel failed to obtain, investigate, introduce newly discovered evidence. . . . Counsel failed to obtain, investigate, and introduce the alleged victims [sic] toxicology report;"
   i. "Counsel failed to obtain and introduce medical reports of the alleged victims [sic] injuries. . . . Counsel failed to investigate and or obtain any true medical report to determine the exact number of stab wounds as well details such as [but not limited to] whether the stabs wore [sic] through and through or entry and exit;"
   j. "Counsel failed to obtain, investigate and introduce the Police Chief's involvement. The police chief never disclosed any statements

from the incident until I personally discovered a video of him telling his version of the story of the case at hand;"

k. "Counsel was extremely deficient when attempting to use, explain and identify the map graphic the State introduced as evidence to illistrate [sic] the locations and routes of defendant and alleged victim. . . . Counsel failed to discredit the alleged victim who stated he was heading home but went the total opposite direction;"

l. "Counsel was ineffective and deficient for failing to interview and or call any defense witnesses;"

m. "Counsel deficient and ineffective for failure to investigate the State's witnesses. Counsel failed to investigate the alleged victim, the State's main witness. . . . Defense Counsel failed to impeach all the State's main eye-witness witnesses who all openly admitted to consuming alcohol beyond a clear point;"

n. "Counsel failed to interview/call an independent expert witness. Counsel never investigated the State's medical witness, and was taken by surprise at the State's expert testimony. Counsel did not seek an independent witness to challenge or agree with the State's expert;"

o. "Counsel was ineffective for failing to present any mitigation evidence that would have helped with plea negotiations as well as sentencing;"

p. "Defense Counsel failed to properly advise client of plea deal. . . . Defense Counsel said the deal was if I, the defendant plead guilty the State would reduce the charge from attempted murder to Assault and Battery High and Aggravated Nature. Defense Counsel advised the defendant that [ABHAN] was a common misdemeanor, that it would be a non-violent sentences and that I would do 55% of the time. Defense Counsel also advised defendant that he would be eligible for parole every year. With work credits and good time the sentence could even be less than 55%;"

q. "Defense Counsel ineffective and deficient for failing to advise client of the right to withdraw his plea;"

r. "Counsel extremely ineffective by failing to communicate. Not only failed to communicate but in fact had a complete breakdown in communication;"

s. "Defense Counsel failed to tell me he was no longer my active counsel;"

t. "Defense Counsel failed to advise me of the right to testify;"

u. "Defense Counsel suffered from serious health problems and was on medication. Counsel never informed me that he was on serious prescription medication that altered the state of his mind;"

v. "Defense Counsel beyond ineffective and deficient for failing to obtain complete discovery, failed to interview witnesses – State and

defense, failed to move for a stand your ground hearing, failed to move for a change of venue, failed to properly instruct/charge the jury, failed to introduce material evidence, failed to object – failed to object to State's failure to disclose evidence and State's failure to correct false evidence, failed to advise client on: testifying, plea deal, appeal, failed to investigate the scene, failed to communicate, failed to disclose medication usage and condition. . . . Defense Counsel failed to expose and impeach witness who visited the alleged victim in the hospital potentially corroborating stories, Counsel failed to cross defendant's girlfriend and ask about her statements originally made;"

w. "Counsel failed to interview detectives;"

x. "Counsel failed to call EMS to testify who would of [sic] testified that the alleged victim did not know what happened;"

y. "Trial Counsel found ineffective for failing to raise a meritorious Fourth Amendment claim that defendant was improperly detained;"

z. "With regards to defense counsel failing to advise me of an appeal. Applicant was denied the right to a direct appeal of his sentence;" and

aa. "Trial Counsel did not attempt to prepare Applicant to testify in his own defense."

2. Prosecutorial Misconduct.

a. "The State failed to disclose a news broadcast of the alleged victim and States [sic] main witness. . . . The State failed to disclose material impeachment evidence related to the States [sic] primary witness who is also the alleged victim;"

b. "The State failed to disclose the alleged victims [sic] toxicology report;"

c. "The State failed to disclose any medical/forensic report(s);"

d. "The State failed to correct false testimony, the State gave omission of hearsay to the jury and judge . . . the State failed to correct the judge's misunderstanding;"

e. "The State failed to disclose potentially exculpatory evidence of the Police Chief of Charleston's: notes, speeches, meetings with the alleged victim, video(s) – any and all inadvertent of the Chief in the case at hand;"

f. "The State held misconduct for the prosecuting solicitor Daniel Cooper should of [sic] either recused himself or disclosed a conflict of interest;"

g. "The State failed to uphold their plea deal offer in which was detrimentally relief on by the defendant. The offer informed was a non-violent sentence at 55% with parole eligibility every year, starting with the first year;"

h. "The judge never questioned the defendant or informed that the charge and sentence were of great severity;" and

i. "The State forced the alleged victim to testify."

Respondent made its return and partial motion to dismiss on June 21, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and requesting Applicant's allegations of prosecutorial misconduct be summarily dismissed. Subsequently, through his counsel, Applicant filed an amended application for post-conviction relief on July 10, 2017. In this amendment Applicant raised the following grounds for relief:

1. "Trial counsel provided ineffective assistance of counsel for failing to make contemporaneous objections to the conduct described in the above paragraph and thereby failed to preserve these issues for appellate review;" and
2. "Applicant further alleges that trial counsel's failure to preserve these issue[s] for appellate review diminished his options for direct review and coerced him to accept a guilty plea."

A hearing into the matter was convened at the Charleston County Courthouse on July 23, 2018, before the Honorable Deadra L. Jefferson. Applicant was present at the hearing and represented by James K. Falk, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant proceeded on the following allegations:

1. Ineffective assistance of counsel for failing to move for a change in venue;
2. Ineffective assistance of counsel for failing to strike a juror;
3. Ineffective assistance of counsel for eliciting racial slurs made by Applicant;
4. Ineffective assistance of counsel for misinforming Applicant as to the consequences of his plea;
5. Ineffective assistance of counsel for failing to present evidence of self-defense and defense of others;
6. Ineffective assistance of counsel for failing to introduce evidence of the victim's toxicology report;
7. Ineffective assistance of counsel for failing to present mitigation evidence;
8. Ineffective assistance of counsel for failing to advise Applicant of his right to testify; and
9. Involuntary guilty plea.

After hearing all the testimony presented at the evidentiary hearing, as well as arguments from both parties, this Court issued an order of dismissal on November 7, 2018, denying and dismissing the application with prejudice.

Subsequently, on November 20, 2018, Applicant, through his counsel, filed a "Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP." Respondent received a copy of said motion on November 20 2018. This Return follows.

III.

In his "Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP," Applicant asserts trial counsel was ineffective for eliciting testimony from a State's witness that Applicant uttered racial slurs. Applicant contends although the solicitor, during direct examination, elicited testimony from Brad Hutchinson that Applicant and the victim were yelling, he never asked the witness what was actually said. Rather, Applicant asserts it was not until trial counsel questioned the witness about the specific language he heard between Applicant and the victim that the witness testified Applicant uttered racial slurs towards the victim. Applicant contends trial counsel's reasoning behind going into this line of questioning was unreasonable.

Respondent submits this Court's order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits this Court fully ruled on all issues properly presented through Applicant's post-conviction relief application, and amendment thereto, and Applicant's "Motion to Reconsider, Alter or Amend

Pursuant to Rule 59(e), SCRCP" should be denied. As each properly raised allegation was addressed fully in the order, Respondent submits Applicant's assertions are without merit.

IV.

WHEREFORE, having made its Return to the motion, the State requests the relief requested in the motion be denied and that said motion be dismissed.

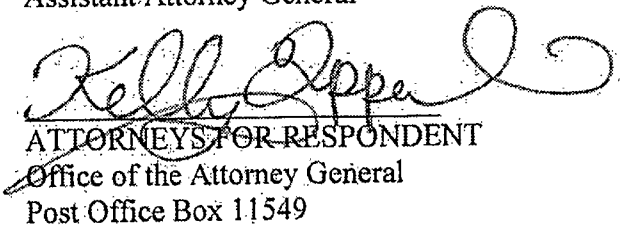
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

BY: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

November 27, 2018.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS 2017-CP-10-272
CHAD STALNAKER, #369754 Applicant, vs STATE OF SOUTH CAROLINA, Respondent,	AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to Applicant's "Motion to Reconsider, Alter or Amend Pursuant to Rule 59(E), SCRCP"** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 27th day of November, 2018.

Jennifer Jenhison

Jennifer Jenhison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Chad P. Stalnaker, #369754, Applicant, v. State of South Carolina, Respondent.	Case No. 2017-CP-10-272 **ORDER DENYING APPLICANT'S "MOTION TO RECONSIDER, ALTER OR AMEND PURSUANT TO RULE 59(E), SCRCP"**

Presiding Judge:	Hon. Deadra L. Jefferson
State's Attorney:	Kelly Oppenheimer, Esq.
Trial/Plea Counsel:	William L. Runyon, Jr., Esq. Stan W. Jaskiewicz, Jr., Esq.
Applicant's Attorney:	James K. Falk, Esq.
Date of Hearing:	July 23, 2018
Court Reporter:	Joyce C. Rueger

This matter comes before this Court by way of Applicant's "Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP," asking this Court to alter or amend its order of dismissal denying Applicant's application for post-conviction relief.

I.

Chad P. Stalnaker (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2014 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2014-GS-10-05431) and possession of a weapon during the commission of a violent crime (2014-GS-10-05434). William L. Runyon, Jr., Esquire, and Stan W. Jaskiewicz, Jr., Esquire, represented him on these charges. Assistant Solicitors Daniel W. Cooper and David L. Osborne, both of the Ninth Circuit Solicitor's Office, prosecuted the case. On September 12-14, 2016, Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young. On the third day of trial and following the State's case-in-chief, on September 14, 2016,

Applicant decided to enter a guilty plea to the weapons charge and to the lesser-included offense of attempted murder, assault and battery of a high and aggravated nature. Judge Young accepted the plea and sentenced Applicant to a term of imprisonment of ten (10) years for assault and battery of a high and aggravated nature and five (5) years for the weapons charge. The sentences were to be served consecutively. Applicant did not appeal.

II.

On January 18, 2017, Applicant filed an application for post-conviction relief. In this application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; and
   a. "Applicant's defense counsel failed to move for a change in venue, rendering ineffective assistance, depriving the right to a fair trial;"
   b. "Defense Counsel ineffective and deficient for failing to object and/or remove a juror who had a conflict of interest;"
   c. "Counsel ineffective and deficient for failing to object to attempted murder indictment, which alleged intent of murder but the evidence revealed that the alleged victim began the confrontation, started the fight, and was the aggravating force;"
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j. "Counsel failed to obtain, investigate and introduce the Police Chief's involvement. The police chief never disclosed any statements from the incident until I personally discovered a video of him telling his version of the story of the case at hand;"

k. "Counsel was extremely deficient when attempting to use, explain and identify the map graphic the State introduced as evidence to illistrate [sic] the locations and routes of defendant and alleged victim. . . . Counsel failed to discredit the alleged victim who stated he was heading home but went the total opposite direction;"

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y. "Trial Counsel found ineffective for failing to raise a meritorious Fourth Amendment claim that defendant was improperly detained;"

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a. "The State failed to disclose a news broadcast of the alleged victim and States [sic] main witness. . . . The State failed to disclose material impeachment evidence related to the States [sic] primary witness who is also the alleged victim;"

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Respondent filed its return and partial motion to dismiss on July 7, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and requesting Applicant's allegations of prosecutorial misconduct be summarily dismissed. Subsequently, through his counsel, Applicant filed an amended application for post-conviction relief on July 10, 2017. In this amendment Applicant raised the following grounds for relief:

1. "Trial counsel provided ineffective assistance of counsel for failing to make contemporaneous objections to the conduct described in the above paragraph and thereby failed to preserve these issues for appellate review;" and
2. "Applicant further alleges that trial counsel's failure to preserve these issue[s] for appellate review diminished his options for direct review and coerced him to accept a guilty plea."

A hearing into the matter was convened at the Charleston County Courthouse on July 23, 2018, before this Court. Applicant was present at the hearing and represented by James K. Falk, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant proceeded on the following allegations:

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7. Ineffective assistance of counsel for failing to present mitigation evidence;
8. Ineffective assistance of counsel for failing to advise Applicant of his right to testify; and
9. Involuntary guilty plea.

After hearing all the testimony presented at the evidentiary hearing, as well as arguments from both parties, this Court issued an order of dismissal on November 7, 2018, denying and dismissing the application with prejudice.

"A motion to alter or amend the judgment shall be served not later than ten (10) days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the [ruling] judge to 'reconsider matters properly encompassed in a decision on the merits." Collins Music Co. v. IGT, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002). Subsequently, on November 20, 2018, Applicant, through his counsel, filed a "Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP." Respondent submitted and filed its return on November 29, 2018.

III.

This Court finds its order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a), SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds there is no basis for altering or amending its prior ruling.[1] Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes if Applicant desires to secure appellate review of this order and the order of dismissal, a notice of appeal must be filed and served within thirty (30) days of the service of this order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 4th day of Jan., 2018.

HON. DEADRA L. JEFFERSON
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

[1] The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Chad P. Stalnaker, #369754, Applicant, v. State of South Carolina, Respondent.	Case No. 2017-CP-10-272 **AMENDED[1]** **ORDER DENYING APPLICANT'S "MOTION TO RECONSIDER, ALTER OR AMEND PURSUANT TO RULE 59(E), SCRCP"**

Presiding Judge:	Hon. Deadra L. Jefferson
State's Attorney:	Kelly Oppenheimer, Esq.
Trial/Plea Counsel:	William L. Runyon, Jr., Esq. Stan W. Jaskiewicz, Jr., Esq.
Applicant's Attorney:	James K. Falk, Esq.
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1 Amended to correct scrivener's error.

true medical report to determine the exact number of stab wounds as well details such as [but not limited to] whether the stabs wore [sic] through and through or entry and exit;"

j. "Counsel failed to obtain, investigate and introduce the Police Chief's involvement. The police chief never disclosed any statements from the incident until I personally discovered a video of him telling his version of the story of the case at hand;"

k. "Counsel was extremely deficient when attempting to use, explain and identify the map graphic the State introduced as evidence to illistrate [sic] the locations and routes of defendant and alleged victim. . . . Counsel failed to discredit the alleged victim who stated he was heading home but went the total opposite direction;"

l. "Counsel was ineffective and deficient for failing to interview and or call any defense witnesses;"

m. "Counsel deficient and ineffective for failure to investigate the State's witnesses. Counsel failed to investigate the alleged victim, the State's main witness. . . . Defense Counsel failed to impeach all the State's main eye-witness witnesses who all openly admitted to consuming alcohol beyond a clear point;"

n. "Counsel failed to interview/call an independent expert witness. Counsel never investigated the State's medical witness, and was taken by surprise at the State's expert testimony. Counsel did not seek an independent witness to challenge or agree with the State's expert;"

o. "Counsel was ineffective for failing to present any mitigation evidence that would have helped with plea negotiations as well as sentencing;"

p. "Defense Counsel failed to properly advise client of plea deal. . . . Defense Counsel said the deal was if I, the defendant plead guilty the State would reduce the charge from attempted murder to Assault and Battery High and Aggravated Nature. Defense Counsel advised the defendant that [ABHAN] was a common misdemeanor, that it would be a non-violent sentences and that I would do 55% of the time. Defense Counsel also advised defendant that he would be eligible for parole every year. With work credits and good time the sentence could even be less than 55%;"

q. "Defense Counsel ineffective and deficient for failing to advise client of the right to withdraw his plea;"

r. "Counsel extremely ineffective by failing to communicate. Not only failed to communicate but in fact had a complete breakdown in communication;"

s. "Defense Counsel failed to tell me he was no longer my active counsel;"

t. "Defense Counsel failed to advise me of the right to testify;"

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u. "Defense Counsel suffered from serious health problems and was on medication. Counsel never informed me that he was on serious prescription medication that altered the state of his mind;"

v. "Defense Counsel beyond ineffective and deficient for failing to obtain complete discovery, failed to interview witnesses – State and defense, failed to move for a stand your ground hearing, failed to move for a change of venue, failed to properly instruct/charge the jury, failed to introduce material evidence, failed to object – failed to object to State's failure to disclose evidence and State's failure to correct false evidence, failed to advise client on: testifying, plea deal, appeal, failed to investigate the scene, failed to communicate, failed to disclose medication usage and condition. . . . Defense Counsel failed to expose and impeach witness who visited the alleged victim in the hospital potentially corroborating stories, Counsel failed to cross defendant's girlfriend and ask about her statements originally made;"

w. "Counsel failed to interview detectives;"

x. "Counsel failed to call EMS to testify who would of [sic] testified that the alleged victim did not know what happened;"

y. "Trial Counsel found ineffective for failing to raise a meritorious Fourth Amendment claim that defendant was improperly detained;"

z. "With regards to defense counsel failing to advise me of an appeal. Applicant was denied the right to a direct appeal of his sentence;" and

aa. "Trial Counsel did not attempt to prepare Applicant to testify in his own defense."

2. Prosecutorial Misconduct.

a. "The State failed to disclose a news broadcast of the alleged victim and States [sic] main witness. . . . The State failed to disclose material impeachment evidence related to the States [sic] primary witness who is also the alleged victim;"

b. "The State failed to disclose the alleged victims [sic] toxicology report;"

c. "The State failed to disclose any medical/forensic report(s);"

d. "The State failed to correct false testimony, the State gave omission of hearsay to the jury and judge . . . the State failed to correct the judge's misunderstanding;"

e. "The State failed to disclose potentially exculpatory evidence of the Police Chief of Charleston's: notes, speeches, meetings with the alleged victim, video(s) – any and all inadvertent of the Chief in the case at hand;"

f. "The State held misconduct for the prosecuting solicitor Daniel Cooper should of [sic] either recused himself or disclosed a conflict of interest;"

g. "The State failed to uphold their plea deal offer in which was detrimentally relief on by the defendant. The offer informed was a non-

violent sentence at 55% with parole eligibility every year, starting with the first year;"

h. "The judge never questioned the defendant or informed that the charge and sentence were of great severity;" and

i. "The State forced the alleged victim to testify."

Respondent filed its return and partial motion to dismiss on July 7, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and requesting Applicant's allegations of prosecutorial misconduct be summarily dismissed. Subsequently, through his counsel, Applicant filed an amended application for post-conviction relief on July 10, 2017. In this amendment Applicant raised the following grounds for relief:

1. "Trial counsel provided ineffective assistance of counsel for failing to make contemporaneous objections to the conduct described in the above paragraph and thereby failed to preserve these issues for appellate review;" and
2. "Applicant further alleges that trial counsel's failure to preserve these issue[s] for appellate review diminished his options for direct review and coerced him to accept a guilty plea."

A hearing into the matter was convened at the Charleston County Courthouse on July 23, 2018, before this Court. Applicant was present at the hearing and represented by James K. Falk, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant proceeded on the following allegations:

1. Ineffective assistance of counsel for failing to move for a change in venue;
2. Ineffective assistance of counsel for failing to strike a juror;
3. Ineffective assistance of counsel for eliciting racial slurs made by Applicant;
4. Ineffective assistance of counsel for misinforming Applicant as to the consequences of his plea;
5. Ineffective assistance of counsel for failing to present evidence of self-defense and defense of others;
6. Ineffective assistance of counsel for failing to introduce evidence of the victim's toxicology report;
7. Ineffective assistance of counsel for failing to present mitigation evidence;
8. Ineffective assistance of counsel for failing to advise Applicant of his right to testify; and
9. Involuntary guilty plea.

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After hearing all the testimony presented at the evidentiary hearing, as well as arguments from both parties, this Court issued an order of dismissal on November 7, 2018, denying and dismissing the application with prejudice.

"A motion to alter or amend the judgment shall be served not later than ten (10) days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the [ruling] judge to 'reconsider matters properly encompassed in a decision on the merits." Collins Music Co. v. IGT, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002). Subsequently, on November 20, 2018, Applicant, through his counsel, filed a "Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP." Respondent submitted and filed its return on November 29, 2018.

III.

This Court finds its order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a), SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds there is no basis for altering or amending its prior ruling.[2] Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes if Applicant desires to secure appellate review of this order and the order of dismissal, a notice of appeal must be filed and served within thirty (30) days of the service of this order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

[2] The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction

AND, IT IS SO ORDERED this 7th day of Jan., 2019.

HON. DEADRA L. JEFFERSON
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OFCHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
Chad Stalmaker	)	
Applicant	)	2016-CP-10-0272
Vs.	)	
State of South Carolina	)	Applicant's Return to
Respondent,	)	Respondent's Partial Motion
	)	to Dismiss and Amended PCR

TO: Megan Jameson, Esq., Office of SC Attorney General, PO Box 11549, Columbia, SC 29211-1549.

Applicant by counsel hereby replies to the Respondent's Partial Motion to Dismiss and hereby amends his Application for PCR Relief as follows:

1. Applicant incorporates by reference the grounds for relief set forth in his initial application.
2. The grounds Applicant asserted in his initial PCR application included:
   a. State's misconduct result in a due process violation and right to fair trial were violated
   b. Failed to disclose the victim's toxicology report and other medical evidence
   c. Failed to correct false testimony
   d. Gave omission of hearsay to the jury
   e. Failed to correct the judge's misunderstanding
   f. Failed to disclose potentially exculpatory evidence of the police chief of Charleston's notes
   g. Failed to obey the judge's order
   h. Prosecutor should have recused himself or disclosed a conflict of interest
   i. Failed to uphold their plea deal offer
   j. Never questioned the defendant or informed him that the charge and sentence were of great severity
   k. Forced the victim to testify

In its Partial Motion to Dismiss, the State alleges that the above grounds are barred by S.C. Code Ann § 17-27-20(b), namely that the above grounds can

only be raised on direct appeal. Applicant's counsel is informed and believes that the above grounds provide additional support for its claim of ineffective assistance of trial counsel.

3. Applicant hereby amends his PCR application to assert that trial counsel provided ineffective assistance of counsel for failing to make contemporaneous objections to the conduct described in the above paragraph and thereby failed to preserve these issues for appellate review. Applicant further alleges that trial counsel's failure to preserve these issue for appellate review diminished his options for direct review and coerced him to accept a guilty plea.

4. Counsel reserves the right to timely file additional amendments to this PCR application.

Wherefore Applicant requests:

1. That the court set an evidentiary hearing on all matters raised in its initial PCR application and the additional claims set forth herein.

2. That Applicant have the opportunity to file additional timely amendments to its PCR application

3. For all other relief to which he may appear entitled.

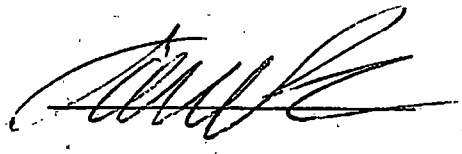
Respectfully Submitted,

James Falk
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CONTINUED ON NEXT PAGE

CERTIFICATE OF SERVICE

Undersigned certifies that on July 7, 2017 a copy of the above was mailed to Megan Jameson, Esq. at the address listed above.



James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 2, 2014 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about May 18, 2014, the Defendant, CHAD PATRICK STALNAKER, did, with intent to kill and malice aforethought, attempt to kill Desmond Casey. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

LINDSEY BYRD
ASSISTANT SOLICITOR

LMC20140504967

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1408058

ARREST WARRANT NUMBER

2014A1010202578

DATE OF ARREST

May 18, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury SEP 2 - 2014
Date:

VERDICT

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2014GS1005431

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

vs.

CHAD PATRICK STALNAKER
DOB: [redacted]
W/M

Indictment for

Attempted Murder

FILED
9/23/2014 2:27:56 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 2, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Weapon During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about May 18, 2014, the Defendant, CHAD PATRICK STALNAKER, did possess a Shun culinary knife or visibly display what appeared to be a knife during the commission, or attempted commission, of attempted murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

LMcByrd

LINDSEY BYRD
ASSISTANT SOLICITOR

LMC20140504967

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1408058

ARREST WARRANT NUMBER

2014A1010202579

DATE OF ARREST

May 18, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *Date:* SEP 2 – 2014

VERDICT

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2014GS1005434

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

vs.

CHAD PATRICK STALNAKER
DOB: [redacted]
W/M

Indictment for

Possession Of A Weapon During The Commission Of A Violent Crime

FILED
9/23/2014 2:27:56 PM
JULIE J. ARMSTRONG
CLERK OF COURT