WALLER
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SEP 09 2019
S.C. SUPREME COURT

September 06, 2019

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

Re: Jabriel L. Singleton vs. State of South Carolina
C/A No: 2016-CP-40-1936

Dear Mr. Shearouse:

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

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

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
SEP 09 2019
S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Clifton Newman, Circuit Court Judge

2016-CP-40-1936

Jabriel L. Singleton, # 331891,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jabriel L. Singleton, # 331891, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 28, 2019, issued by the Honorable Clifton Newman, Presiding Judge, Fifth Judicial Circuit.

Jonathan D. Waller

Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

September 06, 2019

Other Counsel of Record:
Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
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Jabriel L. Singleton, # 331891,

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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

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

Christopher Leventis

Christopher Leventis

September 06, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4001936

Jabriel L Singleton
PLAINTIFF(S)

State Of South Carolina
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **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 _____

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

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:

RICHLAND COUNTY FILED
2019 AUG 28 AM 8:30
BARBARA M. MORRIS
CLERK OF COURT

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		$
		$
		$

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.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 28 August 2019 to attorneys of record or to parties (when appearing pro se) as follows:

Jabriel L Singleton | Jonathan D Waller | Lindsey Ann McCallister

Jabriel L Singleton
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jabriel L. Singleton, #331891,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2016-CP-40-1936

ORDER OF DISMISSAL

This matter is before this Court by way of an application for post-conviction relief (PCR) filed March 25, 2016. The State made its return on June 30, 2017. A hearing on the matter was convened at the Richland County Courthouse on December 11, 2017. Applicant was present and represented by Jonathan D. Waller, Esquire. The State was represented by Assistant Attorney General Jessica Kinard.

Applicant testified on his own behalf and presented his trial counsel, Tivis Sutherland, Esquire, as a witness. This Court also had before it the transcript of Applicant's trial, the Applicant's records from the South Carolina Department of Corrections, the clerk of court records regarding the subject convictions, and the pleadings from both parties.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted by the July 2012 term of the Grand Jury for Richland County for murder (2012- GS-40- 2982) and attempted murder (2012- GS-40-2986). Tivis Sutherland, Esquire represented Applicant.. On March 8, 2013, a jury found Applicant guilty of murder and attempted murder. The Honorable

R. Knox McMahon sentenced Applicant to life imprisonment for murder and thirty years imprisonment for attempted murder to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by David Alexander, Esquire of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction on May 6, 2015. State v. Singleton, Op. No. 2015-UP-239 (S.C. Ct. App. filed May 6, 2015).

FACTS AT TRIAL

The State's theory of the case was that Applicant set up a transaction to sell marijuana and a video game console to the murder victim, Deshawn Jones, nicknamed "Breeze." Jonathan Frazier, the second victim, who survived the shooting, was also present. Frazier explained Applicant was supposed to sell Breeze an X-box and four ounces of marijuana. They drove to Hopkins from Columbia to get the X-box. Applicant rode in the back seat. Applicant had a gun in his lap, which at the time did not concern Frazier. He also noticed a glittery black glove in the back seat. They reached a remote road in Hopkins. Frazier testified that when they arrived, Applicant offered to let Frazier shoot his gun. Frazier declined. Applicant got out of the car. Frazier testified he was not looking, but heard several shots. At first, Frazier was not concerned because he thought Applicant was merely shooting in the air or at a target. But Frazier realized he was hit and saw Breeze was also shot. Breeze threw out money for Applicant to take, but Applicant kept firing. Frazier testified he then blacked out. Tr. pp. 87-100.

Frazier came to and Applicant was in the driver seat reloading his gun. Frazier tried to rush Applicant. Applicant demanded Frazier throw down the car keys and phone. When Frazier failed to comply, Applicant fired more shots. Frazier was hit in the hand, and he once again blacked out and lost consciousness. Tr. pp. 100-03. When Frazier came to, he crawled, then

walked, to get help. He reached a house and an older woman answered the door who called 911. Tr. pp. 104-06.

Monica Howell was the lady who answered the door. She testified she answered a knock at the door and saw a man covered with blood at the door. The man asked for somewhere to hide. She called 911, and at the 911 operator's request, asked the man who the shooter was. The man answered Jabriel. When Frazier said "there he go" and exclaimed he "was going to kill me" Howell looked and saw a man dressed in black, running into the woods while trying to hold up his oversized pants. Tr. pp. 148-59.

No weapons were found at the scene. Tr. p. 198; 263-64. Frazier suffered bullet wounds to the neck, shoulder, and hand. A bullet fragment remained in Frazier's jaw and he had to have his mouth wired shut when he was treated. Tr. pp. 248-54. When Deputy David Goff responded to the hospital to speak with Frazier, Frazier was having trouble breathing and speaking, but before medical personnel put a breathing tube on Frazier, Goff asked who the shooter was and Frazier said something to the effect of "Jabriel." Tr. pp. 335-37.

When law enforcement went to Applicant's father's house in Hopkins to effect an arrest, they saw a person flee into the woods. A few yards into the woodline, they recovered a hoody, jacket, and cell phone. The phone was Applicant's cell phone. Applicant was apprehended the next day at a hotel. No one answered the hotel door when deputies knocked on the door. Law enforcement used a key to the room to enter, but they needed to break open the locked bathroom door. Applicant and his girlfriend were found standing behind the drawn shower curtain in the bathtub, fully clothed. Tr. pp. 375-83; pp. 547-49.

A black glove found at the crime scene had gunshot residue consistent with being worn by a person firing a weapon. Tr. p. 517. DNA recovered from inside the glove matched

Applicant's DNA. Tr. pp. 747-48.

The pathologist performing the autopsy on the deceased victim testified he suffered multiple gunshot wounds to the head, chest, and abdomen. Only one injury, a shot to the head, had stipling, indicating the victim was shot at close range. The trajectory of that injury was from right to left, whereas other injuries on the victim indicated a bullet trajectory of left to right. Victim was shot at least six times. Tr. pp. 581-94.

Seven fired cartridges were recovered from the crime scene. Ballistics examination revealed they were all fired by the same gun. Tr. pp. 629-36. Six bullets were recovered from the deceased. They all were capable of being fired by the same gun as the spent cartridges found at the crime scene. Tr. pp. 634-36.

Applicant gave a statement to law enforcement after he was arrested in which he claimed he smoked marijuana with the victims at a recording studio in Columbia, won between five and seven hundred dollars playing cards, but then left and went to his girlfriend's house in Columbia and stayed there all day until he went to a bar in Columbia at night. When he was confronted with records showing his cell phone was used in Hopkins, Applicant claimed he left his cellphone at his father's residence in Hopkins. Tr. pp. 810-13.

Phone records and cell phone records show that Applicant made several phone calls from Hopkins around the time of Howell's 911 call and later in the evening. Tr. pp. 680-700. This contradicted Applicant's later alibi statement to law enforcement.

Applicant testified before the jury. He was no longer asserting alibi, he was now asserting self-defense. Applicant agreed that he was going to sell marijuana to Jones. He testified after providing marijuana to Jones, Jones demanded more. According to Applicant, Jones grabbed his neck and tried going through Applicant's pockets. Frazier started hitting

Applicant in the head. Jones started reaching down below the car seat. Applicant saw Jones put a gun underneath the seat before, so he thought Jones was going for the gun. Applicant started firing his weapon until it was empty. He did not know where Jones was, so he reloaded. He saw Frazier get up with a gun, so he fired. Frazier dropped the gun and fell to the ground. Applicant ran. Tr. pp. 858-880. Applicant admitted the glove found at the scene was his girlfriend's glove. He said he did not wear the glove that day, but put it on as a joke on a previous occasion. Tr. p. 903. Applicant claimed that when he ran from his father's residence, he did not realize law enforcement was looking for him. Tr. pp. 895-96.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

I. Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant

must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons: "Ineffective Assistance of Counsel[:] a. "Jurors and Prosecutor's witness were acquaintances[.]" Applicant did not amend the pleadings. However, Applicant moved at the conclusion of evidence to conform the pleadings to the evidence he presented over the State's objection.

This Court will now address each allegation of ineffective assistance of trial counsel below:

Failure to call witnesses/ retain an investigator/ retain experts

Applicant alleges counsel should have hired an investigator to speak with two fact witnesses, his girlfriend at the time and a friend. Neither witness testified at the PCR hearing. Further, Applicant alleges counsel should have retained an expert. No expert testimony was presented at the PCR hearing and it was unclear what experts should have been hired and how they would help the Applicant's case. Counsel testified that Applicant may have provided witnesses to him, but he has no recollection of that occurring. Counsel testified that the case essentially came down to a credibility contest between Applicant, who claimed self-defense, and the surviving victim, who claimed he and the other victim were robbed and Applicant was the aggressor. Counsel explained that the defense was not denying Applicant shot the people and he

did not think an accident reconstruction expert was likely to be helpful. He did not consider hiring any experts. Counsel testified that nearly all the time he spent with Applicant the week before the trial was focused on preparing Applicant to testify at trial.

This Court finds Applicant failed to meet his burden of proving counsel was ineffective. Applicant did not present any evidence to show what evidence the fact witnesses or expert witnesses would have been able to provide that would assist Applicant's case. Applicant further failed to show what benefits, if any, a private investigator would have provided or what beneficial evidence an investigator would have found. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to relief because no evidence was presented to show how additional preparation would have affected the result of trial); Bannister v. State, 333 S.C. 298, 302-03, 509 S.E.2d 807, 809 (1998) (allegation that counsel was ineffective for failing to call a witness must be supported by testimony of the favorable witness at the PCR hearing or the applicant must otherwise offer the testimony under the rules of evidence).

Failure to object to publishing Applicant's statement to law enforcement

Applicant alleges counsel should have renewed his objection to Investigator David Unger publishing Applicant's statement. Before the jury, Unger first testified as to what Applicant told him. He testified he wrote a statement based on their conversation, but Applicant did not want to sign the statement. Unger then published the statement to the jury, which was consistent with his prior testimony about his conversation with Applicant. Tr. pp. 810-17. Previously, during the pretrial Jackson v. Denno hearing,[1] Applicant admitted that most of the written statement was correct but testified he did not want to sign the statement because some of what he told Unger

[1] Jackson v. Denno, 378 U.S. 368 (1964)

was not in the written statement. March 4, 2013 transcript, pp. 111-116. During the Denno hearing, Counsel did not have an argument that the oral statement was not voluntarily made, but he objected to the written statement being admitted because it was unsigned. Mar. 4 tr. pp. 120-22. The trial court ruled that the physical statement itself could not be admitted, but that Investigator Unger would be able to publish the statement to the jury. Trial counsel seemed to agree with the ruling. Tr. pp. 10-13. Trial counsel did not renew any prior objections when the statement was published to the jury. Tr. p. 813.

This Court finds counsel was not ineffective. Counsel was successful in suppressing the physical exhibit. Further, Investigator Unger testified without having his memory refreshed by the statement as to the conversation. The statement itself was consistent with Investigator's testimony. This Court finds publishing the statement was not consequential to Applicant's defense, but was cumulative to Investigator Unger's testimony about the conversation and publication of the statement was not prejudicial to Applicant. This Court finds Applicant did not meet his burden of proving either prong of Strickland.

Applicant's testimony that he was incarcerated since arrested

When Applicant was cross-examined at trial, the prosecutor asked Applicant where he resided since his arrest and Applicant testified at the Alvin Glenn jail. Tr. pp. 884-85. Applicant alleges counsel should have objected. The prosecutor later asked Applicant about phone calls he made to his mother and girlfriend from jail. Applicant admitted he was aware that phone conversations from jail are recorded. He asked his mother to see if the deceased mother's victim would testify on his behalf. He admitted his girlfriend visited him in jail and tried to help him with his alibi. He told his mother he was at his girlfriend's when the shootings occurred. He admitted telling his mother he was not involved in the shooting. Tr. pp. 884-92. The prosecutor

asked, but Applicant denied, that during a phone conversation from jail Applicant told his girlfriend that "your basically my alibi." Tr. p. 893.

This Court finds the question about Applicant being in jail was proper and not unfairly prejudicial. First, a jury would expect it likely that a defendant in a murder and attempted murder prosecution would be subject to pretrial incarceration. Second, the question was probative to establish foundation for the series of cross-examination questions about Applicant's post-arrest conversations with his mother and girlfriend in which he pursued the abandoned alibi defense and gave statements inconsistent with the self-defense testimony he was now presenting at trial. This Court finds counsel's performance was not deficient for failing to object to the question and finds that Applicant was not prejudiced as the question was a proper foundation question and Applicant's admission to pretrial incarceration was unlikely to have affected the outcome of trial in light of the abundant evidence of his guilt.

Failure to object to closing argument

Applicant alleges counsel was ineffective for failing to object to the prosecutor's argument that Applicant "actually tried to come back multiple times, the State submits, to make sure that he finishes the job but he was unsuccessful." Tr. p. 967, lines 12-15. This Court finds that the comments reflect a reasonable inference from the evidence presented at trial and was not an improper argument. Frazier testified that Jones and him were both shot before he lost consciousness. He regained consciousness at some point and Applicant was next to him. He struggled with Applicant and was shot again. When Frazier managed to make it to a neighbor's house, Applicant appeared again in close proximity and Frazier was worried Applicant was going to get him. Physical evidence indicated that Jones received one shot at close range in a

trajectory going the opposite direction from the other shots. The State further theorized Frazier was not conscious when Applicant inflicted the close range shot on Jones.

Further, counsel made two objections on the basis that the prosecution was arguing facts not in evidence. The first time, the State agreed and made a correction sufficient for counsel to withdraw the objection. Tr. pp. 981-82. The second time counsel objected, the trial court gave the following instruction: "All right. Ladies and gentlemen, . . . the determination of the facts are in evidence solely for, you the jury, to decide based on your individual and collective memory in that regard." Tr. p. 989, lines 10-15.

The prosecution "may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony." State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999). The solicitor's closing argument is permissible where it stays within the record and reasonable inferences to it. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002); State v. Condrey, 349 S.C. 184, 562 S.E.2d 320, 325 (Ct. App. 2002) ("A trial judge is allowed broad discretion in dealing with the range and propriety of closing argument to the jury.").

The United States Supreme Court observed:

> [The prosecution's] arguments, like all closing arguments of counsel, are seldom carefully constructed in toto before the event; improvisation frequently results in syntax left imperfect and meaning less than crystal clear. While these general observations in no way justify prosecutorial misconduct, they do suggest that a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.

Donnelly v. DeChristoforo, 416 U.S. 637, 646-47, 94 S.Ct. 1868, 1873, 40 L.Ed.2d 431 (1974).

Appellate courts should be "careful and critical" in finding allegedly improper statements of counsel to be reversible error, and "[e]very case must necessarily depend upon its own particular circumstances." State v. Gilstrap, 205 S.C. 412, 415, 32 S.E.2d 163, 164 (1944).

Trial counsel testified he did not recall a strategic reason for not objecting. However, this Court finds the prosecution's argument is a reasonable inference from the evidence presented, and on the balance, the argument was not critical to the prosecution or unduly prejudicial to the defense. Ample evidence supports malice and the absence of self-defense, including the evidence of the number of shots Applicant fired, his conduct following the shooting, and his failed pursuit of an alibi defense before resorting to a self-defense claim at trial. Further, the trial court's subsequent instruction to the jury in response to counsel's later objection put the jury on notice that it needed to determine the facts based on its own collective memory of the evidence presented. This Court finds Applicant failed to prove either prong of Strickland and denies this allegation.

Juror issue

The only allegation actually contained in the application was a complaint that one of the jurors was acquainted with one of the witnesses. The parties chose twelve jurors and two alternates. During the course of trial, two jurors were excused because they realized they knew witnesses as the trial progressed. Then David Collins, a ballistics expert with the Richland County Sheriff's Department reported to the prosecution that he recognized a juror. Collins reported he went to high school with the juror. They both graduated in 1980. He reported he never had direct social interaction with the juror, but they had seen each other a number of times. Tr. pp. 556-59.

The trial court then questioned the juror. The juror admitted he recognized the name, but when the trial court indicated Collins was with Richland County, and he thought the Collins he knew worked for SLED. The juror advised that he went to high school with David Collins and he remembered Collins saying he worked for SLED. He advised the trial court he does not see Collins much. He told the trial court they both went to Cardinal Newman together. When he was advised that Collins used to work for SLED, but now works for Richland County, the juror apologized. The juror indicated he could be fair and impartial. The juror told the trial court he would have disclosed the relationship if he realized it was the same David Collins he knew. Tr. pp. 560-63.

Trial counsel moved to have the juror excused due to the relationship between the witness and the juror. Trial counsel noted that while the social action was limited, it spanned thirty years. Tr. p. 564-65. However, the trial court found that the juror did not intentionally conceal any information and indicated he could be fair and impartial. The trial court denied the motion and cited a number of cases in making his ruling.

If jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been struck through a preemptory challenge, challenged for cause, or excused by the court. State v. Gulledge, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982). If the juror's concealment was intentional, the challenging party is not required to show prejudice, the prejudice is inferred. However, if the nondisclosure is unintentional, the trial court may exercise its discretion to determine whether to proceed with the trial with the juror in place, replace the juror with an alternate, or declare a mistrial. State v. Coaxum, 410 S.C. 320, 328, 764 S.E.2d 242, 245-46 (2014). The trial court "should not grant a mistrial based on a juror's concealment of information unless absolutely necessary." Id. The denial of a new trial motion based on an

allegation that a juror concealed information during voir dire will be affirmed absent a prejudicial abuse of discretion. State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004).

The issue was presented as a direct appeal issue in the PCR application, and neither Applicant nor PCR counsel explained at the PCR hearing how counsel's performance was supposed to be ineffective. This Court finds counsel made the requisite motion and stated the grounds sufficiently. Obviously, it is beyond the purview of this Court to determine direct appeal issues. However, this Court believes the trial court acted within its discretion in denying the motion to excuse the juror. This Court notes that Collins was not a fact witness to the crime or involved directly in the investigation, but merely analyzed some of the State's evidence in the role of a ballistics expert. Therefore, his credibility and involvement were not central to the State's case. Further, no misconduct occurred as the juror thought the David Collins referenced was another David Collins and their relationship was not a close one. The juror indicated he could be fair and impartial, and by its ruling, the trial court obviously believed the juror. This Court finds counsel's performance was not deficient and Applicant was not prejudiced by any deficiency. This allegation is denied.

CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See

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

IT IS THEREFORE ORDERED THAT:

1. This Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

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

Clifton Newman
Presiding Judge
Fifth Judicial Circuit

Conway, South Carolina

WALLER
LAW GROUP
Columbia, SC 29201

$1.60⁰
US POSTAGE
FIRST-CLASS

071M01360636
29201
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Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211