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December 31, 2019

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

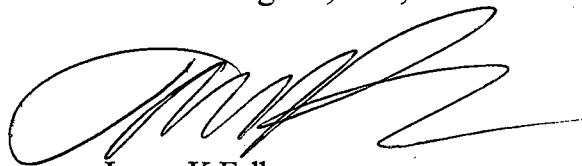
Re: Brittany A. Johnson, #344910 v. State of South Carolina

Dear Clerk Shearouse:

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

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

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc:

Lindsey A McCallister, Esquire  
Brittany Johnson 344910  
Horry County Circuit Court Clerk

**RECEIVED**

JAN 03 2020

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**  
JAN 03 2020  
S.C. SUPREME COURT

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Honorable William H Seals, Jr.

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Case No.: 2016-CP-26-6535

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Brittany A Johnson 344910.....PETITIONER

V.

State of South Carolina.....RESPONDENT

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NOTICE OF APPEAL

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The Petitioner Isaac Williams appeals the Honorable William H Seals Jr's December 5, 2019 Order of Dismissal. Undersigned counsel received notice of entry of the order on December 20, 2019. A copy of the order on appeal is attached hereto.



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

December 31, 2019

Lindsey A McCallister, Esq.  
Office of S.C. Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

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

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHA COUNTY  
Court of Common Pleas  
Honorable William H Seal's Jr.

Case No.: 2016-CP-26-6535

RECEIVED  
JAN 03 2020  
S.C. SUPREME COURT


Brittany A Johnson 344910.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Lindsey A McCallister Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Horry County Clerk of Court. I further certify that all parties required by Rule to be served have been served this December 31, 2019.

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

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF HORRY               | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| Brittany A. Johnson, #344910, | ) | C.A. No. 2016-CP-26-6535           |
|                               | ) |                                    |
| Applicant,                    | ) |                                    |
|                               | ) | <b>ORDER OF DISMISSAL</b>          |
| v.                            | ) |                                    |
|                               | ) |                                    |
| State of South Carolina,      | ) |                                    |
|                               | ) |                                    |
| Respondent.                   | ) |                                    |
| _____)                        |   |                                    |

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Brittany A. Johnson (Applicant) on October 11, 2016. Respondent made its Return on August 3, 2017, moving to dismiss the application for failing to state a claim. Applicant, through counsel, then filed an amended application on November 14, 2018. An evidentiary hearing into the matter was convened on March 26, 2019, at the Horry County Courthouse before the undersigned. James K. Falk represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant and Ronald W. Hazzard, Applicant's trial counsel, was called to testify. This Court also had before it a copy of the records of the Horry County Clerk of Court, Applicant's appellate records, records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return, and the trial transcript.

**PROCEDURAL HISTORY**

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

2008 term of the Horry County Grand Jury for murder (2008-GS-26-03648). As summarized in

Respondent's appellate filings, the facts adduced at trial were as follows:

[On June 24, 2008, Monica Burroughs (Burroughs) was discussing designer sunglasses with her friend, Teresa Cox, and stepsister, Joanne Davis, while sitting in Cox' 1999 Jeep Grand Cherokee outside of Burroughs's residence.] The conversation then shifted, when both Cox and Davis observed [Applicant] approaching the Grand Cherokee on the passenger side.

Cox, who believed [Applicant] was armed with a knife, and Davis, who recognized [Applicant] was armed with a gun, watched as [Applicant] attacked Burroughs with the gun as if she were pistol-whipping her. Reacting to the attack, Burroughs . . . blocked [Applicant's] blows while simultaneously trying to defend herself and get out of the car. Meanwhile, in response, both Cox and Davis jumped out of the Grand Cherokee and were attempting to run around the vehicle to help Burroughs, who was already separated from [Applicant], when they heard a shot. Next, Cox and Davis observed Burroughs running away from the Cherokee. According to both women, [Applicant] then began screaming "I told you I was going to get you, bitch" which she repeated four to five times before she ran away. After [Applicant] left, both Cox and Davis ran to Burroughs who was in the bushes beside her residence. According to both women, Burroughs, who was unarmed, had been shot in the chest and was bleeding profusely. She asked both women why she had been shot.

Burroughs died from her injuries. Applicant was apprehended by the United States Marshals Service in Darlington County on July 2, 2008.

Ronald Hazzard (Counsel) represented Applicant, and Scott A. Graustein, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial on February 7, 2011, before the Honorable Edward B. Cottingham and a jury. The jury began its deliberations on February 9, 2011. The jury found Applicant guilty as indicted on February 11, 2011. Judge Cottingham sentenced Applicant to thirty years' imprisonment.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense – Appellate

Defense Division. Brendan J. McDonald, of the South Carolina Attorney General's Office, represented the State. Four questions were presented to the Court of Appeals:

- I. Whether the trial court's credibility determination was clearly erroneous where [Applicant's] testimony during the Jackson v. Denno<sup>1</sup> hearing regarding her alleged invocation of her right to counsel was "simply not plausible."
- II. Whether the trial court abused its discretion in denying defense counsel's motion for a mistrial based on alleged premature deliberations, when the trial court found "there's no basis [in the jury's note] for me to assume that [the jury] discussed any issue in the trial."
- III. Whether the trial court abused its discretion in failing to charge the jury regarding self-defense where: (a) defense counsel failed to present an argument supporting such a suggestion at trial; and (b) the record demonstrates [Applicant], after approaching the car in which the victim was seated, then hitting her with a handgun after which she pointed and presented a firearm at the victim and shot her, was not without fault in bringing about the difficulty.
- IV. Whether the trial court abused its discretion in failing to charge the jury regarding involuntary manslaughter where the uncontradicted testimony from trial established that [Applicant] approached the victim, who was sitting in a car, began hitting her with a handgun, pointed and presented a .45 caliber handgun and admitted shooting the victim.

The parties proceeded to oral arguments on May 14, 2013. By unpublished opinion decided June 26, 2013, the South Carolina Court of Appeals reversed Applicant's conviction and remanded the case on the first question;<sup>2</sup> the Court of Appeals declined to address the remaining

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<sup>1</sup> 378 U.S. 368 (1964).

<sup>2</sup> The Court did not elaborate upon its reasoning, but found the trial court erred in admitting Johnson's inculpatory statement to police, citing "State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986) (noting the trial court must make an affirmative finding that there was no violation of Miranda v. Arizona during a Jackson v. Denno hearing before admitting a statement into evidence); State v. Franklin, 299 S.C. 133, 137, 382 S.E.2d 911, 913 (1989) (noting the State has the burden to prove a defendant validly waived his Miranda rights), and State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) ("If a suspect invokes her right to counsel, police interrogation must cease unless the suspect herself initiates further communication with police.")"

issues. State v. Johnson, Op. No. 2013-UP-288 (S.C. Ct. App. filed June 26, 2013). Respondent petitioned for rehearing, which was denied by order filed August 22, 2013.

Respondent then petitioned the Supreme Court of South Carolina for a writ of certiorari, which was granted by order dated September 11, 2014. Respondent raised three questions to the Supreme Court:

- I. Whether the appellate panel erred in reversing the trial court's ruling in a Jackson v. Denno, 378 U.S. 368 (1964), hearing where the trial court determined, as a factual matter, that [Applicant's] testimony during the Denno hearing, specifically her testimony that she allegedly invoked her right to counsel was "simply not plausible" especially since the trial court was not required to accept Johnson's testimony as true under state law.
- II. Even assuming [Applicant's] testimony from the Jackson v. Denno, 378 U.S. 368 (1964), hearing is true, whether the appellate panel erred in reversing the trial court's ruling where [Applicant] was not being interrogated when she inquired about counsel and did not clearly and unequivocally invoke her right to counsel.
- III. Whether the appellate panel erred when it failed to determine whether [Applicant] had shown she was prejudiced as required by the standard of review, especially since multiple eyewitnesses saw [Applicant] shoot [Burroughs], and [Applicant] admitted to shooting [Burroughs] in her testimony at trial.

The parties again proceeded to oral arguments on March 4, 2015. By unanimous opinion decided August 19, 2015, the Supreme Court reversed the decision of the Court of Appeals, finding that "[b]ecause the trial court found [Applicant's] testimony that she actually invoked her right to counsel was 'simply not plausible'—or lacked credibility—[Applicant] cannot satisfy the first prong of inquiry." State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 372 (2015).

On August 20, 2015, Applicant filed a motion to remand the matter to the Court of Appeals on grounds that the appellate court did not rule on three of the four issues she raised. The Supreme Court granted the motion by order dated November 6, 2015. On remand, without further argument or briefing, the Court of Appeals affirmed Applicant's conviction on the merits of the remaining

issues by unpublished opinion. State v. Johnson, Op. No. 2016-UP-353 (S.C. Ct. App. filed July 6, 2016). The Remittitur was issued on July 22, 2016.

### **ALLEGATIONS**

In her original application for post-conviction relief, Applicant alleged she is being held in custody unlawfully for the following reasons:

1. "Admission of statement made to police at trial"
2. "Refusing to grant a mistrial"
3. "Refusing to submit charges of involuntary manslaughter"
4. "Refusal to charge jury on self-defense."

In her amended application filed, through counsel, on November 14, 2018, Applicant additionally alleged:

1. "There was evidence introduced at trial that would 'reduce, mitigate, justify, or excuse the homicide,' [and] therefore, trial counsel provided ineffective assistance of counsel by failing to object to the inferred malice charge found at p. 405, l. 12-23. As this issue was not preserved for appeal, it could not have been raised on direct appeal."
2. "Trial counsel provided ineffective assistance of counsel by not objecting to the 'seek the truth' language included in the Court's charge at p. 402, l. 22-25."
3. "Trial counsel provided ineffective [assistance of counsel] by failing to interview Joseph Gagum who could have testified to the victim's role in escalating the hostilities between her and Applicant."

At the evidentiary hearing, counsel indicated Applicant wished to proceed solely on the allegations contained in her amended application. Therefore, to the extent the allegations outlined in Applicant's original application constitute separate issues for relief, this Court finds those allegations are voluntarily waived and abandoned. As such, those allegations are hereby denied and dismissed with prejudice.

### **SUMMARY OF TESTIMONY**

Counsel testified Joseph Gagum was on the defense witness list because Counsel believed Gagum would testify Cox, Davis, and Borroughs were in the parking lot to "jump" Applicant.

Counsel testified there was a history of bad blood between Borroughs and Applicant due to a love triangle involving both women and a man named Franklin Pyatt. Counsel explained there was a history of confrontation going back to November 2007, including threats and previous physical altercations.

Counsel explained the witness at trial testified Davis woke up Borroughs around 1:15 p.m. on the day of the incident, and sometime later, Cox came by. All three women sat talking in Cox's Jeep in front of Borroughs' apartment when Applicant came up and attacked Borroughs. The witnesses testified Borroughs jumped out of the car and struggled with Applicant before Borroughs was shot and killed. Another witness testified she saw Applicant heading in the direction of Borroughs' apartment because Applicant was looking for Davis, who was the neighborhood bootlegger. The witness recalled seeing four people exit the Jeep and surround Applicant before hearing a shot. Counsel explained he believed Gagum could testify Cox made different statements to him than what she told the police. Counsel stated he had no independent recollection of why Gagum did not ultimately testify, but the transcript reflects Counsel subpoenaed Gagum, Gagum was not initially present at trial, and the trial court recessed to allow Counsel time to speak to Gagum; Counsel then informed the court he would not call Gagum to testify.

Counsel explained Judge Cottingham's practice is to give an initial jury charge, allow each side to present their closing argument, and then to "clean up" with additional instructions. Counsel testified he did not object to the "seek the truth" language in the jury charge because he did not think to do so. Counsel also testified he did not object to the implied malice instruction, although in hindsight he should have, and his failure to do so was not due to any particular strategic decision.

Counsel testified the defense was happy to receive any kind of mitigating instruction, such as the manslaughter charge. Counsel explained his strategy was to present a defense of self-defense by showing there was an inevitable escalation of hostilities between Applicant and Burroughs, and there was testimony at trial regarding verbal threats and physical altercations between the two. Counsel noted Applicant testified Burroughs had previously shown her a gun Burroughs' carried in her purse. Counsel also explained one witness testified "everyone in the projects" knew about the issues between Applicant and Burroughs because of the love triangle with Pyatt. That witness described seeing Applicant walk down the street past Burroughs' apartment towards the bootlegger's house when the Jeep with Burroughs, Cox, Davis, and another woman inside backed up, and the four women surrounded Applicant. The witness described seeing the four women converge on Applicant, then hearing a shot.

Counsel testified, furthermore, the testimony given by Davis at trial was different than her original statement, particularly in the critical respect that, at trial, Davis testified there was separation between Applicant and Burroughs when Applicant fired the shot. Counsel explained he tried to point out these discrepancies in cross-examination, including the fact that Davis's original statement seemed to indicate she did not think the shooting was intentional. However, the trial judge would not allow Counsel to ask that question directly.

Counsel agreed there was evidence of an unprovoked attack if the jury believed Cox and Davis's testimony as they testified Applicant and Burroughs had stopped fighting hand-to-hand and had separated from each other when Applicant fired the shot. Counsel also noted there was evidence Applicant yelled, "I told you I was gonna get you, bitch" at Burroughs four or five times after the shot, and Applicant then fled the scene and was apprehended days later in another county.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges she received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant has failed to prove she was prejudiced by Counsel's performance in any way. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

1. Failure to object to implied malice jury instruction when evidence was presented tending to mitigate, justify, or excuse the homicide

Applicant alleges Counsel was constitutionally ineffective for failing to object to the trial court's instruction that the jury could infer malice from Applicant's use of a deadly weapon in the commission of the crime. This Court agrees Counsel was deficient in failing to object to this instruction because the trial court charged the lesser-included offense of voluntary manslaughter. See State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) (holding jury charges instructing malice may be inferred from the use of a deadly weapon are improper where evidence is presented that would reduce, mitigate, excuse or justify the homicide). However, this Court finds Applicant failed to prove she was prejudiced by Counsel's failure to object because there was substantial evidence from which the jury could find malice other than Applicant's use of a deadly weapon. Therefore, the Court finds this allegation should be denied and dismissed with prejudice.

In this case, in addition to instructing the jury that malice may be implied from the defendant's use of a deadly weapon in the commission of the crime, he also explained express malice and set forth two additional bases on which the jury could find implied malice:

Malice is said to be expressed when there is manifested a violent, deliberate intention unlawfully to take away the life of another human.

Malice may be implied where one intentionally and deliberately does an unlawful act which he or she then knows to be wrong and in violation of her duty to another.

Malice may be implied when no excuse or legal provocation for the killing appears and when the circumstances attending the killing show an abandoned heart, a heart fatally bent upon mischief.

Tr. pp. 404-05.

"In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in way that violates the Constitution." Battle v. State, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009); see also In re Winship, 397 U.S. 358 (1970) (holding the Due Process Clause mandates that the government prove every element of the charged offense beyond a reasonable doubt). Most significantly, in this case, the evidence at trial showed Applicant went looking for Burroughs the day before the shooting and stood outside Burroughs' house waving her gun and yelling at Burroughs to "come on out and eat the bullets." Tr. p. 370. The next day Applicant initiated an unprovoked attack on Burroughs and screamed, "I told you I was gonna get you, bitch" at Burroughs four or five times immediately after firing the fatal shot. Tr. pp. 193, 226-28. Additionally, Applicant fled the scene and was apprehended days later by the U.S. Marshals' in another county. Tr. pp. 194, 229, 359.

The fact Applicant had a gun and shot Burroughs was not a contested issue at trial, and the State did not argue the jury should find implied malice from the use of the gun. Rather, the record

reflects the State argued the evidence of malice was found in Applicant's own statements – "Come on out and eat the bullets" and then, "I told you I was gonna get you, bitch." Tr. pp. 370, 446-50. This Court finds these two statements were sufficient evidence by which the jury could find the existence of expressed malice, beyond a reasonable doubt. Accordingly, due to the significant evidence of malice other than Applicant's use of deadly weapon, this Court finds there is no reasonable probability the erroneous jury instruction contributed to the jury's verdict, and therefore, Applicant was not prejudiced by Counsel's failure to object to it.<sup>3</sup>

Because Applicant has failed to meet her burden of proving prejudice, this allegation is hereby denied and dismissed.

2. Failure to object to "seek the truth" jury instruction

Applicant alleges Counsel was constitutionally ineffective because he did not object to the trial court's jury charge to "seek the truth." Tr. p. 402. Again, the Court finds this instruction was improper, and Counsel was deficient for failing to object. However, Applicant failed to prove she was prejudiced by this instruction, and therefore, this Court finds the allegation should be denied and dismissed.

Jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error. State v.

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<sup>3</sup> This Court is aware of the recent South Carolina Supreme Court decision holding trial courts should not instruct the jury that use of deadly weapon may give rise to implied malice under any circumstances because it is an improper comment on the facts. State v. Burdette, 427 S.C. 490, 404-05, 832 S.E.2d 575, 583 (2019). However, the law at the time of Applicant's trial in 2011 prohibited the giving of the instruction only in cases in which evidence was presented tending to mitigate, reduce, or justify the homicide. Belcher, 385 S.C. at 612, 685 S.E.2d at 810. Thus, the issue is whether the inclusion of the erroneous instruction in that circumstance would have been deemed a harmless error on appeal at the time, had it been preserved.

Aleksy, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). In Aleksy, the Supreme Court examined the use of “seek the truth” language in the context of a reasonable doubt instruction and concluded the instruction was harmless because it did not appear in the reasonable doubt or circumstantial evidence portion of the jury charge, but rather in the witness credibility portion. Id.

The instruction appears in the same context in Applicant’s case. At the conclusion of the trial court’s charge on the jury’s role “as the sole judge of the credibility, meaning reliability, of the witnesses” in the case, the court stated the jury had one objective, “to seek the truth *regardless of from what witness that testimony may have been derived.*” Tr. pp. 401-02 (emphasis added). The trial court later explained in detail the State’s burden of proving Applicant’s guilt beyond a reasonable doubt, and Applicant has not challenged that portion of the jury instructions, nor does this Court find any fault with that section of the charge. Accordingly, “the instruction as a whole properly conveyed the law to the jury, and there is not a reasonable likelihood the jury applied the judge’s instructions to convict [Applicant] on less than proof beyond a reasonable doubt.” Id. at 29, 538 S.E.2d 253.

Because Applicant has failed to prove the improper instruction caused the jury to dilute the standard of proof and reach its verdict in a way that violates the Constitution, she was not prejudiced by Counsel’s failure to object to the instruction. This allegation is denied and dismissed.

### 3. Failure to call witness

Finally, Applicant alleges Counsel was ineffective for failing to call a witness, Joseph Gagum, at trial. However, in order to support a claim that trial counsel was ineffective for failing to interview or call a witness, “a PCR applicant must produce the [witness] at the PCR hearing or otherwise introduce the [witness’s] testimony in a manner consistent with the rules of evidence.”

Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). “The applicant’s mere speculation about what the [witness’s] testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” Id. As Applicant failed to present the testimony of Gagum at the evidentiary hearing, this Court finds she has not met her burden of proving Counsel was constitutionally ineffective as to this issue. This allegation is therefore denied and dismissed with prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant relief. While Counsel was deficient in failing to object to the “seek the truth” and implied malice jury instructions, Applicant was not prejudiced by those deficiencies. Further, Applicant failed to meet her burden of proving deficiency or prejudice regarding the allegation Counsel failed to call a helpful defense witness. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED.**

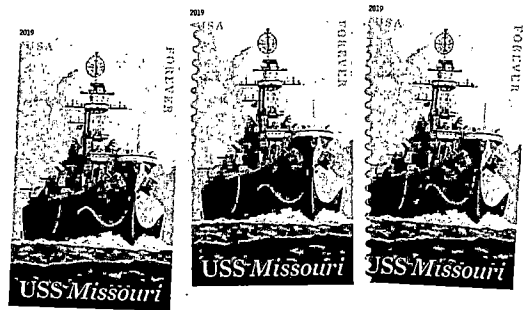
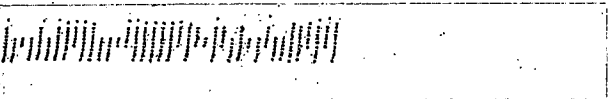


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WILLIAM H. SEALS, JR.  
Presiding Circuit Court Judge  
Fifteenth Judicial Circuit

December 5, 2019

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JAN 03 2020  
S.C. SUPREME COURT



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**FIRM**

C 29402

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Supreme Court of South Carolina  
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