NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-04-1466

Robert Frost,
S.C.D.C. No. 171218 Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Robert Frost appeals the denial of his Post Conviction Relief by the order of the Honorable R. Scott Sprouse, dated March 25, 2020 and filed April 6, 2020. Appellant received written notice of entry of this order on April 10, 2020.

April 10, 2020

Linda Vallar Whisenhunt
Linda Vallar Whisenhunt, LLC
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ALAN WILSON
ATTORNEY GENERAL

April 3, 2020

The Honorable Richard A. Shirley
Clerk of Court, Anderson County
Post Office Box 8002
Anderson, South Carolina 29622

Re: **Robert Frost, #171218 v. State of South Carolina**
2018-CP-04-1466

Dear Mr. Shirley:

Enclosed please find the original **Order of Dismissal**, signed by the Honorable R. Scott Sprouse, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Lillian L. Meadows
Assistant Attorney General

LLM/ks
Enclosure(s)

cc: Linda V. Whisenhunt, Esquire

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS IN THE TENTH JUDICIAL CIRCUIT
Robert Frost, SCDC #171218, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2018-CP-04-1466 **ORDER OF DISMISSAL**

I. INTRODUCTION

The matter before the Court is an action for post-conviction relief (PCR) commenced by Robert Frost (Applicant) on July 25, 2018. The State requested an evidentiary hearing through its return on October 2, 2018. On February 18, 2020, this Court convened an evidentiary hearing at the Anderson County Courthouse before the undersigned. Applicant was present and represented by Linda Whisenhunt, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his appellate counsel, Kathrine H. Hudgins, Esquire (Appellate Counsel). In addition to the pleadings in this action, the Court had before it a copy of the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's appellate records, including the trial transcript and record on appeal, and Applicant's records from the South Carolina Department of Corrections.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

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II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its April 2013 term, the Anderson County Grand Jury indicted Applicant for murder (2013-GS-04-0646), possession of a weapon during the commission of a violent crime (2013-GS-04-0646), attempted murder (2013-GS-04-0647), first-degree burglary (2013-GS-04-00648), and armed robbery (2013-GS-04-0649). Assistant Solicitor Lauren D. Price, of the Tenth Circuit Solicitor's Office, prosecuted the case.

A. Pre-Trial Hearings

On November 10, 2015, Applicant appeared before the Honorable R. Lawton McIntosh and moved to relieve counsel and proceed *pro se*. At that point, Applicant was represented by his fourth appointed trial counsel, Gregory Lee Cole, Jr., Esquire. (R. 3). After warning Applicant of the dangers of self-representation, Judge McIntosh granted Applicant's motion, but required Mr. Cole to remain as standby counsel. (R. 17–18). In granting the motion, Judge McIntosh found Applicant had waived his right to an attorney and had met the *Faretta*[1] factors. (R. 18).

B. Summary of Evidence Adduced at Trial

During the week leading up to this incident date, July 15, 2012, Applicant was acting abnormally, in that he was angry and depressed. (R. 214). Applicant had called his mother and stepfather and threatened to kill them. (R. 367, 401). On July 15, 2012, Applicant went to a neighbor's house to use the neighbor's phone to call his girlfriend. (R. 229). After calling his girlfriend, Applicant stated: "I'm going to go do something very crazy, I'm going to kill somebody." (R. 229). Neighbors then saw Applicant put two black knives in his saddlebags. (R. 230). Applicant stated to his neighbor: "Samantha, I love you but I gotta go. You can have

[1] *Faretta v. California*, 422 U.S. 806 (1975).

everything out of my house you want because the next time you see me, you'll be seeing me on the 11:00 News." (R. 215, 230). Applicant then got on his motorcycle and left. (R. 215).

Later, neighbors of Faye and James Davenport, Applicant's mother and stepfather, observed a motorcycle park in the Davenport's back driveway. (R. 254–55). Applicant got off the motorcycle with a long, silver object in his hand, which he got from the saddlebag. (R. 255). He then kicked in the back door. (R. 256, 370, 401–02). At the time, Applicant did not live with the Davenports. (R. 387–88).

Applicant put a knife to Mrs. Davenport's throat and said he needed money. (R. 370). She told him she had a billfold on the kitchen island, but Applicant stated: "I'm going in there and kill that son of a bitch, James." (R. 372). She followed Applicant to the bedroom, and Mr. Davenport was standing in the door with a baseball bat. (R. 373). Mrs. Davenport was able to close and lock the bedroom door with her and Mr. Davenport inside, but Applicant kicked the door in with the knife raised in his hand. (R. 374).

Mr. Davenport then hit Applicant with the bat. (R. 374). Applicant went after Mr. Davenport with the knife, and Mr. Davenport fell between the bed and the wall. (R. 375). The two started wrestling, but Applicant was stabbing Mr. Davenport. (R. 375–76). Mrs. Davenport then saw Applicant "going to his throat." (R. 376, 409–10).

Mrs. Davenport then ran from the room, but Applicant caught up with her, stating "I'm going to kill you now." (R. 376). Mrs. Davenport then saw a police car, and she yelled for help. (R. 377, 398). Applicant stabbed her twice and left the knife in her blouse. (R. 377–78). Applicant then ran out the back of the house to his motorcycle. (R. 379–80).

Lieutenant Chris Vaughn of the Iva Police Department was dispatched to the incident location in reference to a burglary in progress. (R. 287–88, 331–32, 351–52). Upon arrival, he

noticed a motorcycle in the driveway. (R. 291). He then exited his vehicle and approached the side of the house, where he observed that the doorjamb appeared to be broken. (R. 292). He then approached the front of the house, and he heard a woman crying for help. (R. 293). Lieutenant Vaughn then went to the side of the house and observed Applicant sitting on the motorcycle. (R. 294). Applicant kicked the kickstand up, and Lieutenant Vaughn drew his weapon and ordered Applicant off of the motorcycle and ordered him to lay on the ground. (R. 294). Applicant at first did not comply, stating his had been hit with a baseball hat and could not get down, but then later complied. (R. 294–95). Due to the cut on the man's head, Lieutenant Vaughn called EMS. (R. 296). He also called for additional units. (R. 296).

Mrs. Davenport continued to yell for help, yelling: "He's killed my husband!" (R. 296). After additional officers arrived, Lieutenant Vaughn then went into the house, where he observed Mrs. Davenport slumped over in the kitchen/dining room area. (R. 296–97). A knife was next to Mrs. Davenport. (R. 230). He then proceeded to the front bedroom, where Mrs. Davenport stated her husband was. (R. 297, 300). He observed a man lying on the floor, right behind the door, covered in blood. (R. 301–02). There was a baseball bat behind Mr. Davenport's legs.[2] (R. 302). He again spoke with Mrs. Davenport, who told him he had saved her life because when he pulled up, her son was in the kitchen with her. (R. 304). She also told him when her son saw him appR.ch the front of the house, he took the knife and stabbed her. (R. 304–05).

The autopsy of Mr. Davenport revealed he had multiple blunt force trauma injuries and multiple sharp force traumatic injuries. (R. 466). He had eight stab and cut injuries over the left side of his abdomen, multiple cut injuries on his left arm, which appeared to be defensive wounds, several cuts on his flank, and a cut on the left side of his neck, which went into the neck tissue and cut the jugular vein and carotid artery. (R. 467–68). There was a minimum of eighteen

[2] Lieutenant Vaughn testified he observed EMS move the baseball bat when they arrived on scene. (R. 318).

stab and cut wounds on Mr. Davenport's body. (R. 468). These cuts were received from the front of Mr. Davenport, most likely by a right-handed individual, with a single-edged blade. (R. 468, 471). The cause of death was exsanguination. (R. 471).

C. Verdict & Subsequent Proceedings

On August 25, 2016, the jury found Applicant guilty as indicted on all counts. Judge Maddox sentenced Applicant to concurrent terms of life without the possibility of parole for murder, life without the possibility of parole for first-degree burglary, and 30 years for armed robbery. Judge Maddox also sentenced Applicant to a consecutive term of life without the possibility of parole for attempted murder

Applicant filed a timely notice of appeal, and Appellate Defender Kathrine H. Hudgins perfected the appeal on Applicant's behalf by filing an *Anders*[3] brief with the Court of Appeals. Applicant then filed a *pro se* brief, raising the following issues:

1. Did the judge err in denying [Applicant's] motion for a directed verdict to the burglary charge where evidence was presentend that [Applicant's] checks and other mail was [sic] received at residents [*sic*] (also directed verdict issue (2) argued together;
2. Did the judge err in denying [Applicant's] pretrial motion to question Investigator Thomas E. Miller credibility;
3. Did the judge err in not granting Applicant a [*sic*] expert witness to examine the cuts to verify if it was the correct murder weapon used in evidence;
4. Did the judge err in denying Applicant's motion for a mistrial due to the fact that he could not question Thomas E. Miller on his credibility;
5. Did the court err in failing to grant [Applicant] a [*sic*] investigator because he was African American;
6. Did the court err in not granting a mistrial due to that fact no blood samples or swab samples was produced from the residence; [and]
7. Did the judge err in continuing the trial after Applicant put in a motion for a new file when his file was missing?

[3] *Anders v. California*, 389 U.S. 738 (1967).

After considering Applicant's *pro se* brief and reviewing the case pursuant to *Anders*, the Court of Appeals dismissed Applicant's appeal in an unpublished opinion on April 4, 2018. *State v. Frost*, Op. No. 2018-UP-137 (S.C. Ct. App. filed April 4, 2018). The case was returned to the circuit court on April 25, 2018. Applicant timely commenced this PCR action on July 25, 2018.

III. ISSUES BEFORE THIS COURT

In his original PCR application, Applicant alleged he was being held in custody unlawfully based on

1. 6th Amendment Confrontation Clause violated;
   a. Not being able to question ex-investigator affectedly [*sic*];
2. 5th, 14th Amendment Due Process Clause violated;
   a. Equal right to protection from law;
3. No investigation on false frivolous charges against me;
   a. No investigation ex-investigator credibility;
4. Ineffective assistance of appellate council [*sic*];
5. Solicitor ineffective not [sic] recognize motion, grievance;
6. Ineffective judge not recognize pergery [*sic*] on ex-investigator Thomas E. Miller.

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following claims:

1. Ineffective assistance of appellate counsel for failing to raise the following issues, which would have entitled Mr. Frost to reversal on appeal:
   a. The trial judge allowing the testimony of an investigator (Mr. Miller) Mr. Frost alleges was the actual murderer;
   b. The refusal of the trial court to allow Mr. Frost to impeach a police investigator regarding that Investigator Miller's subsequent arrest in what Mr. Frost alleges was a similar incident;
   c. The failure of the trial court to dismiss the burglary

charge where the evidence shows Mr. Frost received mail at the residence;

d. The trial court's denial of Mr. Frost's applications for a defense expert witness to examine the wounds to the decedent and for a defense investigator to investigate Mr. Frost's allegations of the Investigator Miller's involvement in the crime; and

e. The prosecution's and the court's failure to charge Investigator Miller with perjury.

At the outset of the evidentiary hearing, PCR counsel expressly withdrew all allegations pled in the original PCR application. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed them by the Sixth and Fourteenth Amendments to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013); *see generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler,* 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky,* 559 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State,* 300 S.C. 115, 117–18, 386 S.E.2d 624, 625

(1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (*quoting Strickland,* 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland,* 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.*

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an

applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland,* 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland,* at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in

this action incorporated by way of the State's return, this Court proceeds to the claims raised in the amended application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Appellate Counsel

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair). However, "Counsel is not obligated to assert all nonfrivolous issues on appeal, as '[t]here can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review.'" *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000) (quoting *Jones v. Barnes*, 463 U.S. 745, 752 (1983)). Indeed, "[w]innowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Id.* (quoting *Smith v. Murray,* 477 U.S. 527, 536 (1986).

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g., Southerland v. State,* 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must demonstrate (1) that his "counsel's representation fell below an objective standard of reasonableness" in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *Id.* at 694; *see Smith v. Robbins*, 528 U.S. 259

(2000) (holding that habeas applicant must demonstrate that "counsel was objectively unreasonable" in failing to file a merits brief addressing a nonfrivolous issue and that there is "a reasonable probability that, but for his counsel's unreasonable failure . . . , he would have prevailed on his appeal").

Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836; *Anderson v. State,* 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). In applying *Strickland* to claims of ineffective assistance of counsel on appeal, however, "reviewing courts must accord appellate counsel the presumption that he decided which issues were most likely to afford relief on appeal." *Jarvis*, 236 F.3d at 164 (internal citation omitted). "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." *Id.* (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

In the *Anders* brief filed on Applicant's behalf, Appellate Counsel raised the following issue: "Did the trial judge err in instructing the jury that a specific intent to kill is not an element of attempted murder?"[4] Appellate Counsel testified that she believed this issue had merit, however, it was unpreserved. Appellate Counsel testified that she hoped the Court of Appeals would overlook the preservation issue since Applicant represented himself at trial. However, this was not the case.

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[4] To the extent Applicant alleges Appellate Counsel should have filed a merits brief, the *Strickland* standard similarly applies. *See Smith v. Robbins*, 528 U.S. 259, 285 (2000) (finding that *Strickland* is the proper standard for evaluating claim that appellate counsel was ineffective in neglecting to file a merits brief). Thus, an applicant must first show appellate counsel was objectively unreasonable . . . in failing to find arguable issues to appeal—that is, that counsel unreasonably failed to discover nonfrivolous issues and to file a merits brief raising them." *Id.* The applicant must then show a reasonable probability that, "but for his counsel's unreasonable failure to file a merits brief, he would have prepared on appeal." *Id.*

Appellate Counsel further testified that she was aware of the issues Applicant wanted her to raise, as they are nearly identical to several issues Applicant raised in his *pro se* brief. Appellate Counsel testified she did not follow Applicant's requests to raise these issues because she did not find them to be legally sufficient. This Court agrees, and finds Applicant failed to show that any of the issues he contends Appellate Counsel should have raised were stronger than the issue raised.

As an initial matter, issues (a) and (e), both relating to Investigator Miller, were not raised by Applicant at trial, and therefore not preserved for appellate review. Appellate Counsel cannot be found ineffective for failing to raise unpreserved issues. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised and ruled upon by the trial judge."). Issues (b), (c), and (d), were all raised by Applicant in his *pro se* brief. Applicant has therefore failed to show either deficiency or prejudice on the part of Appellate Counsel. Accordingly, Applicant's ineffective assistance claim pertaining to appellate counsel is **DENIED.**

VI. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VII. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorugh review of ther record, this Court finds and concludes Applicant has not established any constitutional violations or

deprivations that would require this Court to grant his application for post-conviction relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action 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 pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, 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 appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 25 day of March, 2020.

THE HONORABLE R. SCOTT SPROUSE
Presiding Circuit Court Judge
Tenth Judicial Circuit

Walhalla, South Carolina

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Anderson, SC COC, CP/GS

2018-CP-04-1466