THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Oct 05 2020
S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Jocelyn Newman Circuit Court Judge

Case No.: 2015-CP-40-03946

Jamaal Hinson, Petitioner,

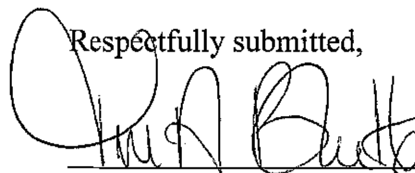
vs.

State of South Carolina Respondent.

NOTICE OF APPEAL

Jamaal Hinson, Petitioner, appeals the Order of Dismissal issued by the Honorable Jocelyn Newman on May 28, 2020, which was filed on June 1, 2020. Petitioner also appeals the Order denying Applicant's Motion Pursuant to Rule 59 (a) & (e), SCRCP, which was issued via Form Four on August 25, 2020 and filed on September 2, 2020. Petitioner, through counsel, received notice of the entry of the latter Order on September 9, 2020.

Respectfully submitted,



Tricia A. Blanchette
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October 5, 2020

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP4003946

JAMAAL HINSON (SCDC #325190)

PLAINTIFF(S)

STATE OF SOUTH CAROLINA

DEFENDANT(S)

Submitted by: NEWMAN, J.	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. ☐ See Page 2 for additional information.

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

☐ **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:

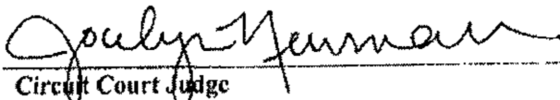
Applicant's "Motion Pursuant to Rule 59(a) & (e), SCRCP" (filed on June 26, 2020) is DENIED.

RICHLAND COUNTY
FILED
2020 SEP -2 AM 11:17
C.C.P., G.S., & F.C.

ORDER INFORMATION

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Circuit Court Judge	2757 Judge Code	August 25, 2020 Date

SCRCP Form 4C (12/2016)

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 ____ day of ____, 20 ____ to attorneys of record or to parties (when appearing pro se) as follows:

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ATTORNEY(S) FOR THE PLAINTIFF(S) ATTORNEY(S) FOR THE DEFENDANT(S)

____

CLERK OF COURT

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jamaal Hinson (SCDC #325190),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2015CP4003926

ORDER OF DISMISSAL

2020 JUN -1 AM 10:45
RICHLAND COUNTY
FILED

This matter comes before the Court by way of Application for Post-Conviction Relief ("PCR Application") filed on June 29, 2015, and amended on July 26, 2017 and January 9, 2018. Respondent filed its Return on January 15, 2016. An evidentiary hearing was conducted on January 24, 2018 at the Richland County Judicial Center. Applicant was present along with his attorney, Tricia A. Blanchette, Esquire. Respondent was represented by Assistant Attorney General Jessica E. Kinard, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED; and this matter is DISMISSED WITH PREJUDICE.

PROCEDURAL HISTORY

Applicant is currently incarcerated at the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment from the Richland County Clerk of Court. During its April 2010 term, the Richland County Grand Jury indicted Applicant for murder (2010-GS-40-00829). Applicant retained Eleanor Cleary, Esquire ("Trial Counsel") to represent him on this charge.

On November 14, 2011, Applicant proceeded to jury trial before the Honorable

DeAndrea G. Benjamin. On November 18, 2011, following deliberations, the jury convicted Applicant as indicted. Judge Benjamin sentenced him to serve forty years' imprisonment at SCDC.

Applicant timely filed a notice of appeal, and Reid T. Sherard, Esquire ("Appellate Counsel"), perfected the appeal on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *See State v. Hinson*, Op. No. 2014-UP-113 (S.C. Ct. App., filed March 19, 2014). Applicant filed a petition for rehearing, which was denied on May 20, 2014. He then filed a petition for a writ of certiorari, asking the Supreme Court of South Carolina to review the decision of the Court of Appeals. His petition was denied by Order dated November 20, 2014. The Remittitur was issued on June 2, 2015.

On June 29, 2015, Applicant filed the instant PCR Application. In it, he alleges that both Trial Counsel and Appellate Counsel rendered ineffective assistance in their representation of him. Specifically, Applicant contends that Trial Counsel was deficient in her failure "to properly prepare Applicant prior to trial" and failure "to call witnesses and utilize evidence." He alleges that Appellate Counsel failed "to raise all meritorious issues on appeal." In an amendment filed on July 26, 2017, Applicant expounded on his original allegations as follows:

> 1. Ineffective assistance of trial counsel for failing to properly represent Applicant in the handling of the State's witnesses. Specifically, but not limited to the following:
> (a) Devan Bailey: Failing to conduct cross-examination.
> (b) Derrick Diamond: Failing to object to leading and reading of a statement on re-direct examination.
> (c) Matthew Ellis: Failure to object to opinion testimony regarding murder being the appropriate charge and eliciting testimony regarding the intentional nature of the shooting. Ineffective assistance for opening the door to prejudicial testimony regarding Applicant.
>
> 2. Ineffective assistance of trial counsel for failing to be attentive and object to line of questioning that resulted in Applicant

their credibility, and to weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. §17-27-80 (2003).

FINDINGS OF FACT: TRIAL TESTIMONY

At the time of the incident Applicant was dating Lauren Banks ("Banks"), who, unbeknownst to Applicant, lived on the same street as Anthony Salley ("Victim") in the Blythewood area of Richland County. Applicant slept at Banks' home on the evening of January 15, 2010, and, the following morning, borrowed Banks' car to sell and deliver marijuana around town. While leaving the neighborhood, Applicant saw Victim nearby with Richard Thomas ("Thomas"), a man with whom Applicant had a contentious relationship. He and Thomas exchanged verbal threats, then Applicant left to drive around town.

During his route, Applicant encountered Devan Bailey ("Bailey"), Derrick Diamond ("Diamond") and Quinton Emerson ("Emerson") at a gas station. Bailey asked Applicant for some marijuana and was told to meet Applicant at Banks' house instead of conducting the transaction at the gas station. Applicant testified that he went back to Banks' home and returned the car to her because "the brakes went out" on it.

When Bailey arrived at Banks' house, Applicant asked for a ride to his home, saying that he needed to go there to retrieve the marijuana (although he testified that he was actually going there to retrieve his gun). The trio – with Emerson driving – took Applicant to his home; Applicant gave Bailey the marijuana; and the trio took Applicant back to Banks' home.

Immediately after leaving Banks' home, Bailey made a phone call to Applicant asking for a cigar to use for smoking the marijuana. The trio returned to the area, but instead of driving back to Banks' house, Emerson stopped his vehicle in front the driveway of Victim's home. At the time, Victim was sitting in a car in the driveway with his girlfriend, Andina Lee ("Lee"), and

Emerson's car blocked them in. Bailey exited Emerson's vehicle, phoned Applicant to tell him where he was, and struck up a conversation with Victim. Applicant, armed with his gun, emerged from Banks' house and walked towards Bailey and Victim.

Applicant testified that as he approached Bailey and Victim, Victim began walking towards him. According to Applicant, as Victim neared, he pulled out his gun and aimed it at Victim to scare him away. Applicant claims that Victim verbally egged him on and eventually punched him, causing him to drop the gun. As they began fighting, Lee grabbed the gun but later threw it down. After the fight ended, Applicant grabbed the gun again and began to walk away; however, he noticed that Victim was again walking towards him, which scared him and caused him to flinch. Applicant testified that the "flinch" caused him to accidentally pull the gun's trigger and shoot Victim. He also admitted that he didn't know Victim to carry a gun.

Applicant's testimony was contradicted by other witnesses, who stated that as Applicant approached Victim and Bailey, it was Applicant who was egging on the trouble, saying things like, "Yes, you bitch... This is exactly what I want." Applicant had his gun pointed at Victim and "racked the gun" while pointing it at Victim's head. The State's witnesses testified that Victim hit Applicant first, knocking the gun from his hand, and the two began to fight. Lee did pick up the gun but then threw it away. The witnesses stated that the fight ended when Victim, after having been punched in the head, face and chest, stopped fighting back. Applicant then instructed Bailey, who has still standing nearby, to "Bust him!" When Bailey didn't, Applicant grabbed the gun from the ground and shot Victim in the abdomen.

It is undisputed that Victim died of the gunshot wound inflicted by Applicant. It is also undisputed that Applicant ran from the scene of the incident, eventually left town, and was

ultimately arrested in Georgia. Bailey testified that while Applicant was still in South Carolina, they met in person and Applicant wanted them to "get their story straight."

In addition to Applicant testifying at trial, Trial Counsel argued to the jury that Victim's death was an accident. Trial Counsel also argued the lack of malice aforethought in Applicant's actions, meaning that he was not guilty of murder, and that Applicant acted in self-defense. Ultimately, the jury found Applicant guilty of murder – the only charge submitted to them for consideration.

CONCLUSIONS OF LAW AND EVIDENTIARY HEARING TESTIMONY

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Where an application for PCR alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "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." *Id.* 466 U.S. at 686; *see Butler v. State*, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. *Bell v. State*, 321 S.C. 238 (1996); *see also Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRCP.

The court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing

professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18. In the absence of sufficient proof, the PCR Application must be denied.

I. Failure to Call Witnesses

Applicant's first argument is that Trial Counsel was ineffective for failing to call witnesses and to utilize evidence at trial. Specifically, Applicant contends that Trial Counsel should have called his girlfriend, his girlfriend's sister, and his friend Raymond Asbury, to testify at trial about Applicant's character. The Court disagrees that this amounts to ineffective assistance of counsel.

The law is well settled on this issue.

> [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 from the witness' failure to testify at trial. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); *see also Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records).

Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover*, 318 S.C. at 498-99, 458 S.E.2d at 540.

Here, only Applicant and Trial Counsel testified at the evidentiary hearing. Applicant did not offer the testimony of any other witnesses, any affidavits from them, or any other evidence of what their trial testimony might have been. In addition, Applicant admitted during the evidentiary hearing that he only provided Trial Counsel with the name of a single witness, Shanequa Lee. Because the Court cannot be left to speculate as to what the witnesses' testimony might have been; therefore, this portion of the PCR Application must be denied. Similarly, because Applicant failed to specify which evidence he believes Trial Counsel should have introduced at trial, that portion of the PCR Application must also be denied.

II. Trial Counsel's Handling of Witnesses

Next, Applicant contends that Trial Counsel was ineffective in her treatment of the State's witnesses at trial. He argues that Trial Counsel failed to properly ask questions of, or object to questions posed to, three witnesses. Again, the Court disagrees.

A. Cross-Examination of Devan Bailey

With respect to Bailey, Applicant argues that Trial Counsel was ineffective for failing to cross-examine him at trial. However, at the evidentiary hearing, Trial Counsel testified that she made the decision not to ask questions of this witness because his testimony could have been harmful to Applicant's defense. According to Trial Counsel, Bailey had given multiple conflicting statements to law enforcement, which could have been detrimental to the case. In addition, she believed that Bailey's testimony had been favorable to Applicant; so she didn't

want to cross-examine him and, thus, give the State the opportunity (in re-direct examination) to undo the benefits of his initial testimony.

The law is clear that counsel must be given leeway to make strategic decisions in representing their clients' interests without being scrutinized for doing do. *See, e.g., Strickland,* 466 U.S. 668, 89 ("[j]udicial scrutiny of counsel's performance must be highly deferential"). "Where trial counsel articulates a valid reason for employing certain trial strategy, counsel will not be deemed ineffective." *Roseboro v. State,* 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Here, the Court finds that Trial Counsel's strategy was absolutely reasonable under the circumstances. Where there appears to be nothing to gain – and only a potential loss – in the questioning of a witness, it is reasonable not to engage the witness.

Based on the foregoing, Applicant has failed to demonstrate that Trial Counsel was ineffective in this regard. In addition, Applicant put forth no evidence whatsoever to demonstrate any prejudice he may have suffered as a result of Trial Counsel's strategic decision. Therefore, this portion of the PCR Application must be denied and dismissed with prejudice.

B. Derrick Diamond

Next, Applicant contends that Trial Counsel was ineffective for failing to object during the Diamond's testimony. He argues that the State posed many leading questions to Diamond and inappropriately published portions of Diamond's written statement to the jury, all of which was objectionable. Trial Counsel testified that although, in hindsight, she cannot recall why she did not object to these actions, she also does not believe that her failure to do so was harmful to Applicant's case.

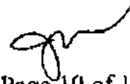
In order to prevail in a PCR action, the applicant must not only demonstrate that his counsel was deficient, but also must prove that the deficiency resulted in prejudice. *See, e.g.,*

Strickland, 466 U.S. 668. In this case, while Trial Counsel acknowledged no specific reason – strategic or otherwise – for failing to object, the Court cannot make a *res ipsa loquitor*-style conclusion that the failure amounts to a deficiency. However, even assuming error in the failure to object, there is no evidence that Applicant suffered resulting prejudice. In fact, the Court agrees with Trial Counsel's assessment that the statement and testimony were not particularly detrimental to Applicant's case. In fact, the testimony corroborates portions of Applicant's trial testimony. Without proof of deficiency and prejudice, this allegation must be denied and dismissed with prejudice.

C. Matthew Ellis

Applicant's next complaint is that Trial Counsel should have objected to opinion testimony given by Sergeant Matthew Ellis ("Sgt. Ellis") of the Richland County Sheriff's Department, who was involved in the investigation of this case. Sgt. Ellis testified that "murder ... is the appropriate charge for this case," and later recounted a conversation between himself and Bailey, testifying that Bailey said that he "could tell by [Applicant's] eyes ... something was up." Trial Counsel conceded that the opinion testimony was inappropriate, but she explained the second portion by explaining her strategy leading up to the testimony.

The Court finds Sgt. Ellis's opinion about the "appropriate charge" to have been harmless, and Applicant has provided no evidence to the contrary. Trial Counsel is correct that it is within the jury's province to determine whether the accused is *guilty* of the crime charged, but the determination of *which crime, if any, to charge* is within the province of law enforcement.[1] Next, as to the testimony about Applicant's appearance, Trial Counsel agrees with Applicant that it was harmful to his defense because it suggests that he acted with malice. However, Trial



Counsel also explained that she "opened the door" to this testimony in her attempt to elicit testimony helpful to Applicant – that the incident was an accident. Thus, it was an inadvertent side effect of a valid trial strategy articulated by Trial Counsel. Moreover, there has been no showing of prejudice. Therefore, these allegations must be denied and dismissed with prejudice.

III. Prior Bad Act Testimony

Applicant alleges that Trial Counsel was ineffective for failing to be attentive at trial, resulting in her failure to object to the State questioning Applicant about prior bad acts. Specifically, Applicant contends that Trial Counsel should have objected when, on cross-examination, the State asked Applicant whether he had ever shot at anyone. The Court disagrees.

Under normal circumstances, such a question would be objectionable. It was not under these circumstances. "Evidence of a person's character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except ... [e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same..." Rule 404(a), SCRE. In this case, during his direct examination Applicant volunteered testimony that he had never shot anyone before. That testimony "opened the door" for the State's questions. In fact, this issue was raised and ruled on by the trial court, even in the absence of a contemporaneous objection by Trial Counsel. Therefore, any failure to object was harmless.

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[1] *See also* Rule 701, SCRE ("If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions of inferences which (a) are rationally based on the perception of the witness...")

Applicant has failed to demonstrate any deficiency in the actions of Trial Counsel. He has also failed to put forth evidence of any resulting prejudice.[2] In fact, the trial court curtailed the State's questioning to protect Applicant, which effectively ended that line of questioning. Without evidence of Trial Counsel's deficiency or any resulting prejudice, this allegation must be denied and dismissed with prejudice.

IV. Self-Defense

Next, Applicant argues that Trial Counsel was ineffective for failing to properly present the defense of self-defense at trial. Specifically, he contends that Trial Counsel failed to address the prior difficulties between Applicant and Richard Thomas, failed to properly address Applicant's knowledge that Victim had a gun, was improperly "thrown for a loop" by the trial court's ruling on character evidence, and inappropriately gave the State a preview of Applicant's defense. The Court disagrees that any of this amounts to ineffective assistance of counsel.

Both Trial Counsel and Applicant testified at the evidentiary hearing that Applicant had prior difficulties with Victim's friend Thomas, not with Victim himself. Applicant also testified at trial that he and Thomas did not get along, that he knew Thomas to carry a gun and brag about killing people, and that he had previously exchanged threats with Thomas. Furthermore, Applicant testified at trial in detail regarding a previous fight he had with Thomas, during which Applicant pistol-whipped Thomas. Applicant did not make any similar claims about Victim. Instead, Applicant testified at trial that he didn't really know Victim and had little prior involvement with him. He buttressed this testimony during the evidentiary hearing when he testified that he had no ill will towards Victim and that he armed himself because of difficulties with Thomas, not Victim. Therefore, Applicant's claims that Trial Counsel (1) failed to address

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[2] To the extent that Applicant suffered any detriment, it appears owing to his own testimony and not to the actions or inactions of Trial Counsel.

prior difficulties with Victim, and (2) failed to address Applicant's knowledge that Victim had a gun, are meritless.

With respect to the trial court's rulings on character evidence, Trial Counsel repeatedly argued to the trial court that she should be permitted to introduce evidence of Victim's character, specifically that Victim was known to carry a gun. Those arguments were denied by the trial court, finding if she did introduce such evidence that would consequently open the door for the State to introduce evidence of Applicant's character. Whether Trial Counsel was "thrown for a loop" by the ruling is immaterial. She repeatedly raised and argued the issue, only to be rebuffed by the trial judge. Based on the foregoing, the Court finds that Trial Counsel's conduct was reasonable under the circumstances, and Applicant has failed to establish any deficiency.

With respect to Applicant's allegation that Trial Counsel was ineffective for giving the State a complete preview Applicant's defense and arguments, Applicant has, once again, failed to establish any deficiency. Trial Counsel made arguments in favor of self-defense and accident at every stage of the trial in an effort to show the need for evidence of Victim's character. Without those arguments, her arguments about character evidence would have been baseless. It is evident that Trial Counsel made a reasonable strategic decision on this issue, and Applicant has shown no deficiency.

Not only has Applicant failed to show any deficiency in any of the three issues, but he has also failed to demonstrate that he suffered any resulting prejudice. As to Victim's propensity for carrying a weapon, Applicant testified at trial that he didn't have any such knowledge. So even when given the opportunity to introduce the evidence (despite Trial Counsel's alleged failures), Applicant didn't do so. And as to Applicant's defenses, the trial jury was instructed on both self-defense and accident, thereby allowing them to consider both theories during their

deliberations. Given that the jurors were presented with instructions with respect to both of these defenses, there is no indication the result of the proceeding would have been different but for Trial Counsel's alleged errors. Based on the foregoing, these allegations must be denied and dismissed with prejudice.

V. Involuntary Manslaughter

Applicant's fourth argument is that both Trial Counsel and Appellate Counsel were ineffective for failing to argue "applicable and favorable cases" regarding involuntary manslaughter. Specifically, he argues that Trial Counsel should not have anticipated that the trial court would charge the jury on the law of involuntary manslaughter but should have ensured that the trial court did so. No specific allegations are made as to Appellate Counsel.[3] Nevertheless, the Court disagrees with Applicant's contentions.

The record reflect that Trial Counsel did, in fact, request that the jury be permitted to consider involuntary manslaughter as an alternative to murder. In fact, there was a detailed discussion at trial, outside of the jury's presence, regarding the applicability of involuntary manslaughter to the facts presented in this case. Case law was presented both by the State and by Trial Counsel.[4] Armed with that information and the arguments of counsel, the trial court ruled that involuntary manslaughter would not be presented to the jury.

There is no evidence that the ruling of the trial court resulted from any deficiency on the part of Trial Counsel. In addition, Applicant has failed to indicate which "applicable and favorable cases" he believes Trial Counsel overlooked. Based on the record – and without any specificity in Applicant's allegations – the Court finds that neither Trial Counsel nor Appellate

[3] In fact, no evidence or testimony were offered as to any allegations against Appellate Counsel regarding any issue.
[4] These cases include, but are not limited to, *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006), *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994), and *State v. Burris*, 334 S.C. 256, 513 S.E.2d 104 (1999).

Counsel was deficient in this regard. Moreover, without evidence of any resulting prejudice, this allegation must be denied and dismissed with prejudice.

VI. Inferred Malice

Applicant's final argument is that Trial Counsel was ineffective for failing to object to the trial court's jury instruction on inferred malice. Specifically, Applicant contends Trial Counsel should have objected when she discovered that the trial court's proposed jury charge lacked any discussion of permissive inference of malice, as discussed in *State v. Mattison*, 276 S.C. 235, 277 S.E.2d 598 (1981). The Court disagrees.

Applicant correctly relies on *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016), in support of his argument. In *Gibson*, a PCR action following the petitioner's murder conviction, the appellate court reaffirmed the necessity of the "permissive inference" language in charging a jury on malice. *Id.* In that case, trial counsel was found to be deficient for failing to object to the "complete omission" of language regarding permissive inference because "slight deviation" is permitted from the language suggested in *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), but complete omission is not. *Id.* at 265, 786 S.E.2d at 124. In addition, because there was "little [other] evidence of malice aside from the use of a gun," the appellate court found that the petitioner must have been prejudiced by the error. *Id.* at 266, 786 S.E.2d at 124.

However, while Applicant relies on correct law, his application to the facts of this case is misguided. Here, there was no "complete omission" of permissive inference in the jury charge; rather, it was included. The trial court charged that malice may be express or inferred, that malice may be inferred from the facts and circumstances, that malice may be inferred from conduct showing a total disregard for human life – most of the language suggested by *Elmore* and no more than a slight deviation therefrom. Therefore, Trial Counsel was not deficient for

failing to object. *See, e.g.*, *State v. Adkins*, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct. App. 2003) ("the substance of the law is what must be charged to the jury, not any particular verbiage").

In addition, Applicant has not demonstrated that he suffered prejudice as a result of this slight deviation from *Elmore*. Unlike the facts in *Gibson*, there was substantial other evidence of Applicant's malice presented at trial. At trial, witnesses testified that Applicant had referred to Victim as "a pussy," that Applicant disliked Victim, that as Applicant approached Victim he called him "a bitch ass n****r," that immediately before the fight Applicant said "this is exactly what I want," that Applicant instructed Bailey to shoot Victim, and that Applicant "racked the gun" before firing it at Victim to intimidate him. It is also uncontradicted that Applicant and Victim engaged in a fist fight immediately prior to the shooting, with Applicant being the "winner" of the fight. Here, there is overwhelming evidence of malice such that, even if Trial Counsel erred in failing to object, there is no evidence that her error "contributed to the verdict based on all the evidence presented to the jury." *Gibson*, 416 S.C. at 265, 786 S.E.2d at 124 (citations omitted). Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

The Court finds that Applicant has not established any constitutional violations or deprivations that would require that his PCR Application be granted. Therefore, this PCR Application is denied and dismissed with prejudice in its entirety.

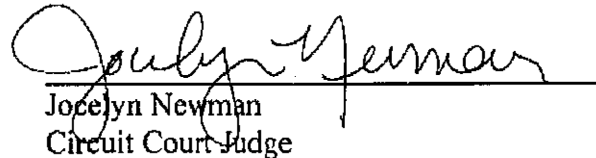
Applicant must file and serve a notice of appeal, if any, within thirty (30) days from the receipt by counsel of written notice of entry of this judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to the assistance of appellate counsel in seeking review of the denial of post-

conviction relief. Rule 71.1(g) of the South Carolina Rules of Civil Procedure provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS, THERFORE, ORDERED that the Application for Post-Conviction Relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant shall be remanded to the custody of the South Carolina Department of Corrections to complete the service of his sentence.

AND IT IS SO ORDERED.



Jocelyn Newman
Circuit Court Judge

May 28, 2020
Columbia, South Carolina.

For Clerk of Court Office Use Only

This judgment was entered on the 1st day of June, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT Jeanette W. McBride

Court Reporter:

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

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

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-40-03946

JAMAAL HINSON (SCDC #325190)

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. ☐ See Page 2 for additional information.

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

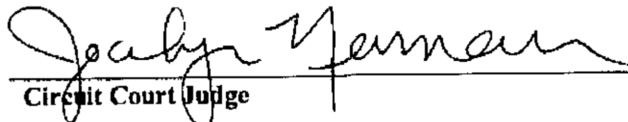
RICHLAND COUNTY
FILED
2020 JUN -1 AM 10:45

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

ORDER INFORMATION

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Circuit Court Judge	2757 Judge Code	MAY 28, 2020 Date