

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

2019-CP-21-00750

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S.C. SUPREME COURT

Johnny N. Gregg, # 337041,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Johnny N. Gregg, # 337041, appeals the Order of Dismissal denying his Application for Post-Conviction Relief but Granting Belated Appeal filed November 2, 2020, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

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

November 5, 2020

Other Counsel of Record:
Michael Davidson, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
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Johnny N. Gregg # 337041)
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Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
2019-CP-21-0750

**ORDER DENYING PCR BUT
GRANTING BELATED APPEAL**

The matter before the Court is Johnny Gregg’s (Applicant) action for post-conviction relief (PCR). Applicant commenced this PCR action on March 14, 2019, alleging ineffective assistance of counsel for failing to recognize the trial court lacked subject-matter jurisdiction and failing to file an appeal. The State made its return on July 3, 2019, requesting an evidentiary hearing into the matter. Applicant, through counsel, amended his application on December 18, 2019, raising an additional claim for ineffective assistance of counsel for failure to properly investigate and prepare for trial.

An evidentiary hearing into the matter convened on December 19, 2019, at the Florence County Courthouse before the undersigned. Applicant, and B. Scott Suggs, Esquire (Counsel) testified at the hearing. Also before the Court were the Florence County Clerk of Court’s records of the underlying charges, Applicant’s records from the South Carolina Department of Corrections (SCDC), the trial transcript, and the records of this PCR action. After a full review of the record before the Court, and after observing the testimony presented, for the reasons discussed below, the Court finds Applicant is not entitled to relief in the form of a new trial; however, the Court finds Applicant is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974).

I. PROCEDURAL HISTORY

Applicant is confined in SCDC pursuant to the orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2017 term of the Florence County Grand Jury in an eight count indictment for: (1) possession of a weapon during the commission of a violent crime; (2) possession of a stolen pistol; (3) possession with intent to distribute (PWID) a schedule I–IV controlled substance (Xanax); (4) trafficking heroin—28 grams or more; (5) PWID heroin within proximity of a school; (6) PWID cocaine base; (7) PWID cocaine; and (8) PWID marijuana. (2017-GS-21-0832). Applicant was initially represented by Rose Mary Parham, Esquire. After an order of substitution was issued, B. Scott Suggs, Esquire (Counsel) represented Applicant. Deputy Solicitor John C. Jepertinger prosecuted the case.

On April 16–18, 2018, Applicant proceeded to a jury trial before Judge William H. Seals, Jr. The State amended Applicant's trafficking heroin—28 grams or more, charge to the lesser included offense of trafficking heroin—14 to 28 grams. Tr. 33. Additionally, the State did not go forward on possession of a stolen pistol or PWID cocaine. Tr. 33; 278. The jury convicted Applicant on all charges presented as indicted or amended: (1) the weapons charge; (2) PWID Xanax; (3) trafficking heroin—14 to 28 grams; (4) the proximity charge; (5) PWID cocaine base; and (6) PWID marijuana. Judge Seals sentenced Applicant to serve an aggregate term of thirty years imprisonment: twenty-five years for trafficking heroin—14 to 28 grams, plus five years for PWID cocaine base. Applicant received the remaining concurrent sentences: ten years for PWID marijuana; eight years for the proximity charge; four years on the weapons charge; and three years for PWID Xanax. Applicant did not appeal.

Applicant timely commenced this PCR action on March 14, 2019.

II. FACTS

Applicant's charges stem from an incident that occurred on January 6, 2017. The Florence Police Department Narcotics and Gang Division executed a search warrant on a duplex, within a one-half mile radius of a school, where Applicant was living at the time of the search. Tr. 88-92. Before entering the duplex, the Police announced themselves. Tr. 93. With no response, the investigators forced entry into the apartment and apprehended Applicant. Tr. 96.

Once in custody, law enforcement conducted a search of the apartment and discovered large quantities of substances that appeared to be marijuana, cocaine, cocaine base, heroin, and Xanax. Additionally, the officers found a scale, \$38,452, and three guns. Tr. 111. Applicant admitted to owning a book bag with smaller quantities of cocaine, marijuana, synthetic heroin, another gun, and \$7,000 dollars in cash. Tr. 316. A razor and small storage bags were also found. Tr. 97. Due to these findings, the Florence County Grand Jury indicted Applicant on multiple charges during the June 2017 term.

III. ALLEGATIONS

Applicant asserts he is unlawfully in custody, alleging ineffective assistance of counsel. Applicant alleges trial counsel was ineffective for: (1) failing to recognize that the trial court lacked subject matter jurisdiction; (2) failing to properly investigate and prepare for trial; and (3) failing to insure that Applicant's ten day notice of appeal allotment had not expired. Applicant requests relief in the form of a new trial.

IV. PCR TESTIMONY

Applicant recalled he was first represented by Assistant Public Defender Emily Crayton, then Rose Mary Parham, Esquire, then Counsel. Applicant recalled discussing with Counsel going for a bond hearing because Parham would not take him back after he hired Counsel.

Applicant recalled law enforcement executed a search warrant on the house he was inside where the drugs were found. Applicant stated Counsel asked him what law enforcement did, how the search warrant came about, and how law enforcement entered the house. Applicant stated he asked Counsel about the informant. Applicant also recalled discussing how there were search warrants for each side of the duplex, and there was a search warrant for the side of the house he was in and the warrant included the book bag. Applicant recalled claiming the contents of the book bag including the drugs and one of the guns found. However, Applicant testified the other drugs and the other gun inside the house were not his and he did not live in the house. Applicant testified he and Counsel discussed this right before trial, but they did not discuss how he could challenge the search warrant if he did not live there. Applicant testified the piece of mail law enforcement discovered was actually in his book bag, but law enforcement claimed they found it under the bed.

Applicant and Counsel discussed how the houses were connected. Applicant stated he told Counsel he heard law enforcement kick in the front door of the neighboring apartment, and then law enforcement came in the back door of the apartment he was in. Applicant stated law enforcement asked him who lived in the apartment and if there were problems going on with drugs.

Applicant recalled the testimony at trial was that he was in the living room running into the kitchen when the police entered. Applicant recalled telling Counsel the living room, the bathroom, and the kitchen were the only rooms open to him because the bedrooms were locked. However, Applicant was charged with drugs found in the kitchen and in the bedrooms. Applicant claimed the resident of the house always locked her bedroom door before leaving. However, Applicant admitted he did not tell Counsel this information.

Applicant recalled meeting Counsel four times during Counsel's representation, two times in the detention center and two times at the courthouse. Applicant recalled talking about the weight

of the drugs with Counsel. Applicant stated they talked about the drugs in his book bag and the drugs from the cabinet. Applicant claimed he and Counsel never discussed the indictments and how one was different than the other because he did not have his discovery in the detention center.

Applicant recalled seeing the drug report. Applicant stated he immediately claimed the contents of his book bag, but the police report stated he claimed all the drugs in the house. Applicant claimed the drug report came back stating he had twenty-five grams of heroin, but he was indicted for more than twenty-eight grams. However, Applicant never asked Counsel about the indictment.

Applicant recalled the State offered dropping all the charges and let him plead guilty to fourteen grams of heroin. Applicant stated that what was in his book bag came back as not actually being heroin, so he wanted the State to make a lower offer. He recalled meeting with the State, with Counsel, at the courthouse to discuss plea negotiations.

Applicant explained he wanted to claim the items in the book bag; however, the remaining drugs in the house he did not want to claim. Applicant recalled Counsel telling him they possibly had a defense to the other drugs in the house because Applicant did not live there. Applicant recalled he never heard the term constructive possession until it came up during trial. However, Applicant did recall Counsel telling him he could be convicted of something not on his person but he did not fully understand it.

Applicant recalled the contents of the book bag came back negative for heroin, but he was also charged with the drugs in the cabinet. In regards to the other drugs in the house, Applicant claimed Counsel told him to get the best deal available or to get the person who actually owned those drugs to claim them. Applicant stated he asked Counsel to try and get the apartment owner to testify he did not live in the apartment during trial. However, Counsel told him she would likely

need a lawyer to testify for him at trial. Applicant stated the apartment owner was never charged in the case.

Applicant stated he was the only person in the house when the warrant was executed, but someone had just left the house prior to the search warrant. Applicant claimed he told this to Counsel. Applicant conceded he was not convicted of greater than twenty-eight grams of heroin.

Applicant recalled law enforcement attempted to get him to act as a confidential informant, but he rejected that proposition. Applicant recalled signing a form to verify how much money was confiscated, but at the time, he did not know he was claiming everything. Applicant stated he was asked to sign the form to verify the amount of money taken from the house, but he did not think that meant he claimed the money. Applicant stated he claimed the money from his book bag and his pockets, but the rest of the money from the house was not his. Finally, Applicant stated he asked Counsel to file an appeal.

Counsel recalled getting the case as a referral from the Gardner Law Firm based on Parham's failure to visit him in jail. Counsel stated he could not recall how many times he met with Applicant, and he did not disagree with how many times Applicant claimed they met.

Counsel recalled the State's best plea offer was for ten years concurrent on everything, plus the State would drop some additional charges. Counsel informed Applicant of the State's offers and that some other charges would be dropped. Counsel stated Applicant rejected the State's offer. Additionally, Counsel recalled the State put their final offer on the record, and he still wanted to go forward with his trial because he had a problem with the charges being considered a violent offense. Counsel also recalled the State never offered anything that did not include a violent offense.

Counsel recalled reviewing the discovery with Applicant. Counsel stated there was information about a confidential informant (CI) that had observed drugs in this duplex within seventy-two hours. Counsel stated the search warrant was based on the CI's information. Counsel also recalled Applicant was the only person inside the duplex when the warrant was executed, and there was testimony that Applicant was sitting or standing by the table where most of the drugs were. Counsel could not recall if Applicant ever told him the bedrooms were locked.

Counsel recalled there being problems with the search warrant and he raised those issues at trial. Counsel recalled the search warrant was for apartment A and B and the warrants were executed simultaneously. Counsel testified he raised an issue with the address on the warrant, but the trial court did not see an issue with the warrant and did not suppress the evidence.

Counsel could not recall specifically explaining constructive possession to Applicant, but he always explains the difference between actual and constructive possession to his clients in drug cases. Counsel stated he did not think Applicant asked him to file an appeal. Counsel stated Applicant's mother may have asked him to file an appeal but he told her that he does not do appellate work, and he did not file an appeal in this case.

Counsel could not remember investigating the woman who lived in the house. However, Counsel did not see how that would be helpful for Applicant because he would not have been able to challenge the search warrant if he did not live there.

Counsel could not remember there being jail phone calls in the discovery, and Counsel stated he gave Applicant's mother the defense file. Counsel did recall Applicant made jail phone calls close to trial. However, Counsel stated he was not aware of the phone calls until the last minute and he advises his clients not to talk to anyone in jail or on the phone regarding their case.

Counsel stated he challenged the search warrants because he thinks the police got the sides of the duplex confused. Counsel stated his trial strategy was to claim some of the drugs, but not all, and that was what Applicant wanted the strategy to be. Further, Counsel also recalled challenging Applicant's statement to police claiming all the drugs at trial.

V. DISCUSSION

This Court has reviewed the entire record and evidence introduced at the hearing, and the Court has also 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 fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

Applicant alleged trial counsel was constitutionally ineffective for (1) failing to recognize the trial court lacked subject-matter jurisdiction and (2) failing to file an appeal. It appears from the PCR testimony presented at the PCR hearing Applicant's jurisdiction claim regards Counsel's challenge to the search warrant and Counsel's advice regarding constructive possession.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "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.

For the reasons discussed below, the Court finds Counsel was not constitutionally ineffective in challenging the search warrant or explaining constructive possession. However, the Court finds Applicant is entitled to a belated appeal.

1. Search warrant

Applicant alleged Counsel was ineffective for failing to properly challenge the search warrant, and for failing to adequately explain constructive possession to Applicant. The Court disagrees.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort 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." *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' 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 witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant alleged Counsel was ineffective for failing to properly challenge the search warrant. The Court disagrees. Counsel challenged the search warrant pretrial arguing the warrant was invalid because it was returned after the statutory time had run. However, the Court denied Counsel's motion. Tr. 75-76. Counsel contemporaneously objected to the search warrant at trial, and renewed his objections at the appropriate times. Counsel explained at the PCR hearing he saw issues with the search warrant and raised those issues at trial. Therefore, Counsel was not deficient in challenging the search warrant.

Applicant also alleges Counsel failed to adequately explain constructive possession. It is unclear what prejudice Applicant suffered from not understanding constructive possession. Further, Applicant testified Counsel told him he could be convicted of something not on his person. Counsel testified he had no independent recollection of whether he explained constructive possession to Applicant, but that it is his standard practice to do so with clients. It is clear that Applicant wanted to take responsibility for the drugs and gun in his back pack; however, Applicant did not want to claim the rest of the drugs in the house. The main problem with Applicant asserting

he did not understand constructive possession was that Applicant claimed all the drugs, guns, and money in the house to law enforcement, and even helped law enforcement locate some of the drugs hidden in the kitchen. Applicant has failed to specify what Counsel should have done differently regarding constructive possession, therefore, Counsel was not deficient. Further, Applicant has failed to show prejudice resulted from his misunderstanding of constructive possession. The Court also notes that Applicant confessed to all the drugs, guns, and money inside the house after he was the only person in the house when the police executed a lawful search warrant. Therefore, Counsel was not constitutionally ineffective and this allegation is denied and dismissed with prejudice.

2. Failure to investigate and prepare for trial

Applicant alleged Counsel was ineffective for failing to investigate and prepare for trial. The Court disagrees and finds Counsel reasonably investigated the case and was prepared for trial.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64; *Walker*, 407 S.C. at 405, 756 S.E.2d at 147. “While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel’s duty to investigate: reasonableness.” *Edwards*, 392 S.C. at 457, 710 S.E.2d at 64. To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover*, 318 S.C. at 498-99, 458 S.E.2d at 540. The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

As noted above, Applicant claimed he met with Counsel four times to prepare for trial, and he told Counsel his version of events. Applicant stated he told Counsel he heard law enforcement enter the neighboring apartment front door, and shortly thereafter, law enforcement entered the apartment he was in from the back door. Applicant immediately claimed the contents of his book bag, but did not want to claim the rest of the drugs. Applicant told Counsel he was the only person inside the apartment when law enforcement entered, but someone had just left the apartment before law enforcement entered. Applicant also admitted he did not tell Counsel that the woman who lived in the apartment always locks her bedroom door when she is not there. Finally, Applicant claimed the letter was in his book bag, but law enforcement at trial claimed the letter was in the bedroom where drugs and money were found.

Counsel testified his trial strategy centered on challenging the search warrant. Counsel also testified Applicant insisted on him making the mitigating argument that Applicant took responsibility for the contents of his book bag, but the other illicit items in the house were not his.

The Court finds Applicant has failed to show Counsel's trial strategy was unreasonable. Counsel faced a difficult task in defending Applicant in this case because (1) Applicant was the only person in the house when law enforcement executed the search warrant; (2) Applicant was standing in the kitchen near most of the drugs and guns when law enforcement entered; (3) Applicant signed a form claiming all the illicit items in the house; and (4) Applicant verbally claimed all the illicit items in the house post-*Miranda*. It is clear from the trial transcript Counsel was prepared for the case and presented a reasonable trial strategy in attacking the validity of the search warrant and the voluntariness of Applicant's statement to law enforcement. Counsel attacked the validity of the search warrant arguing it was invalid because it was not returned within the statutory period. Counsel also argued to the jury that law enforcement executed the search

warrant on the wrong side of the duplex—Applicant was inside apartment-A, but law enforcement entered thinking it was apartment-B. However, law enforcement had valid search warrants for apartments A and B. Finally, Counsel argued Applicant was credible and did not claim all the drugs in the house as testified to by law enforcement. Counsel argued Applicant meant to only claim the contents of his book bag, but did not intend to claim all the illicit items in the house. The Court finds Counsel was not deficient in investigating the case and preparing for trial, as the trial transcript shows Counsel clearly had a reasonable trial strategy against the damaging State's evidence. Therefore, Applicant has failed to prove Counsel was deficient in failing to investigate and prepare for trial.

Additionally, Applicant testified that during trial, he asked Counsel to call the woman who lived in the apartment as a witness at trial to show he did not live in the apartment. Counsel testified he could not recall Applicant asking him to investigate or interview the woman, but he did not think offering her as a witness would have been helpful because Applicant could lose his standing to challenge the search warrant if he did not live in the apartment. The Court finds Counsel's decision not to call the woman who lived in the apartment as a witness at trial reasonable for two reasons.

First, Applicant did not ask Counsel to call her as a witness until the middle of trial. During trial, it would have been too late for Counsel to interview the woman before putting her on the stand to know how she would testify. Arguably, calling the woman as a defense witness could have been ineffective because Counsel had not previously interviewed her. *See Ingle v. State*, 348 S.C. 467, 471, 560 S.E.2d 401, 403 (2002) (finding trial counsel deficient for calling a defense witness without first interviewing the witness to ascertain whether she would support the theory of the defense).

Second, the Court finds reasonable Counsel's statement for why he would not have called the woman as a witness even if he had been asked to investigate her prior to trial. The crux of Counsel's trial strategy was to challenge the search warrant. If the defense had called the woman as a witness at trial and she testified Applicant did not live in the apartment, Applicant could have lost his ability to challenge the validity of the search warrant as he potentially had no reasonable expectation of privacy in the apartment he was merely visiting. *See State v. McKnight*, 291 S.C. 110, 115, 352 S.E.2d 471, 473 (1987) ("The defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search."); *see also Edwards*, 392 S.C. at 457, 710 S.E.2d at 64-65 ("[I]t would be an absurdity to require criminal defense lawyers to interview every potential witness when they can articulate reasonable grounds not to."). Therefore, the Court finds Counsel was not deficient in failing to investigate the woman who lived in the apartment as a witness at trial.

Finally, Applicant has failed to show how Counsel could have investigated the case differently, and how a different investigation approach could have produced a valid defense strategy. For these reasons, Applicant has failed to show prejudice resulted. Further, Applicant failed to produce admissible evidence as to what the woman who lived in the apartment would have testified to. Therefore, Applicant has failed to show prejudice resulted from Counsel's alleged deficiency of failing to investigate the woman as a potential defense witness. *See Glover*, 318 S.C. at 498-99, 458 S.E.2d at 540 (stating the applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice).

Based on the forgoing, the Court finds Counsel was not constitutionally ineffective for failing to investigate and prepare the case for trial. Accordingly, the Court denies relief on this allegation and dismisses it with prejudice.

3. Failure to appeal

Applicant testified he asked Counsel to file an appeal after he was convicted. Counsel testified Applicant's mother asked him to file an appeal and he did not. The State conceded Applicant is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974). Therefore, this Court finds Applicant is entitled to a belated appeal pursuant to *White*.

VI. CONCLUSION

Based on the forgoing, the Court finds Counsel was not constitutionally ineffective in representing Applicant at trial. Counsel had a clear trial strategy for attacking the search warrant and preserved his arguments for appeal, and Counsel adequately advised Applicant on the case. Counsel also was not constitutionally ineffective for failing to investigate and prepare the case for trial as Counsel had a clear reasonable trial strategy, and offered a reasonable explanation for not calling the woman who lived in the apartment as a witness at trial. However, the Court finds Applicant is entitled to a belated appeal pursuant to *White v. State*.

The Court notes 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. 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 PCR. 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 appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief and dismisses the allegations relating to Counsel's performance before and during trial with prejudice;
2. Grants Applicant a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974); and
3. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.

D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

_____, South Carolina

_____, 2020.