

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SALUDA COUNTY  
Court of Common Pleas

The Honorable Debra R. McCaslin, Circuit Court Judge

Case No. 2019-CP-41-00263

Demarcus L. Robinson, #374512, ..... Petitioner,

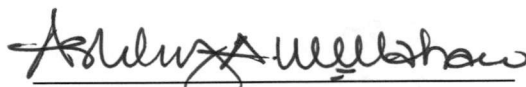
v.

State of South Carolina, ..... Respondent.

NOTICE OF APPEAL

Applicant, Demarcus L. Robinson, appeals the order of the Honorable Debra R. McCaslin, dated May 24, 2021, and filed June 2, 2021.

June 10th, 2021



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 COUNTY OF SALUDA )  
 )  
 Demarcus L. Robinson, SCDC #374512, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-41-0263

**ORDER OF DISMISSAL**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Demarcus Robinson (Applicant) on December 3, 2019. The State requested an evidentiary hearing through its return and motion for a more definite statement on April 1, 2020. Applicant, through PCR counsel, thereafter filed an amended application on April 22, 2021.

On April 30, 2021, a hearing into the matter convened at the Lexington County Judicial Center before the undersigned. Applicant was present and represented by Ashley McMahan, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his trial counsel, Aimee Zmroczek, Esquire.

In addition to the pleadings in this action, this Court had before it a copy of the Saluda County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

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

## **I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. During its November 2016 term, the Saluda County Grand Jury indicted Applicant for kidnapping (2012-GS-41-0310); armed robbery (2016-GS-41-0311); and possession of a weapon during the commission of a violent crime (2016-GS-41-0312). On November 6, 2017, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. Aimee Zmroczek, Esquire (Counsel) represented Applicant. Assistant Solicitors Douglas Wayne Fender, II, and Alton H. Eargle, Jr., prosecuted the case.

### **A. Summary of Evidence Adduced at Trial**

During the early morning hours of August 1, 2016, Applicant robbed the Circle K in Ridge Spring. (R. 147-48). Applicant pointed a pistol at the clerk and demanded the clerk open the register. (R. 148). He stole an undetermined amount of cash consisting exclusively of five and one-dollar bills, along with a case of cigarettes and a cigar. (R. 149-50, 157).

The clerk gave the 911 operator a general description of the perpetrator. (R. 178-79). However, when law enforcement arrived at the store, the clerk for the first time identified Applicant as the robber. (R. 182-83). While he initially did not recognize the man, the clerk later realized the robber was Applicant, who was "a regular" at the Circle K and visited the store frequently. (R. 152). The clerk also claimed that on several occasions that while walking to work he observed Applicant playing football in a neighbor's yard without a shirt on. (R. 152-53). The clerk recognized a scar on Applicant's shoulder and a star tattoo on his arm. (R. 160-62).

While enroute to the store to assist in the investigation, Ridge Spring Chief of Police Michael Raffield learned Applicant had been named as a suspect and responded to Applicant's house, which was less than a mile from the Circle K. (R. 47). Applicant's mother greeted Chief

Raffield at the door and led him upstairs to Applicant's bedroom. (R. 48). Applicant was asleep on top of a sleeping bag on the floor of the bedroom. (R. 49, 250). Chief Raffield observed numerous five and one-dollar bills in the immediate area around Applicant. (R. 49, 251).

After securing Applicant, Chief Raffield obtained a search warrant to search the remainder of Applicant's bedroom. (R. 49, 53–54, 252). During the execution of the search warrant, officers found two pairs of black shorts and forty-one dollars in cash underneath the sleeping bag, all of which consisted of five and one-dollar bills. (R. 49, 251). Officers also found a silver revolver with a black handle, a box of ammunition, several packs of Newport cigarettes, and a cigarillo in the bedroom closet. (R. 49–50, R. 252–53). Chief Raffield later seized Applicant's gray underwear from his property at the detention center, which matched the underwear worn by the robber. (R. 260).

#### **B. Verdict & Subsequent Proceedings**

On November 8, 2017, the jury returned a verdict of guilty on each indictment. Judge Hood sentenced Applicant to concurrent terms of twenty-five years' imprisonment for armed robbery, twenty-five years for kidnapping, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Lara M. Caudy perfected Applicant's appeal by filing an *Anders*<sup>1</sup> brief with the Court of Appeals. On October 9, 2019, the Court issued an unpublished opinion affirming Applicant's convictions and sentences. *State v. Robinson*, 2019-UP-334 (S.C. Ct. App. filed Oct. 9, 2019). The case was remitted to the circuit court on October 25, 2019. Applicant commenced this PCR action on December 3, 2019.

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<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

## **II. ISSUES BEFORE THIS COURT**

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. "Based on the improper testimony from SLED agent."
  - a. "Improper testimony in my defense."
2. "Counsel to use demonstrative evidence during closing."
  - a. "Demonstrative evidence could have had an impact on the jury's verdict."
3. "My lawyer fail to call alibi witnesses."

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

1. Ineffective Assistance of Counsel as to Aimee Zmroczek, Esquire
  - a. Failure to call witnesses to support Applicant's alibi
  - b. Failure to request a charge on strong arm robbery.

At the outset of the evidentiary hearing, PCR counsel stated Applicant was proceeding only on the claims pled in the amended 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.

## **III. 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 by the Sixth Amendment. 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).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a 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. *Id.* at 687-88; *accord. Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, 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.”). 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 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). 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.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland's* deferential standard.

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; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] 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). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. 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 *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. 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, 122, 417 S.E.2d 529, 531 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690; Rule 71.1(e), SCRPC. 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. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

#### IV. 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.

### A. Failure to Call Alibi Witnesses

Applicant first contends Counsel was ineffective for failing to investigate and call witnesses to support Applicant's alibi. Specifically, Applicant argues his mother could have testified he was home at the time the robbery occurred. This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating that his mother's testimony would have affected the outcome of his trial. *See generally Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (holding trial counsel's failure to contact an alleged alibi witnesses did not prejudice the applicant where the applicant failed to show the witness's testimony would have established an alibi defense). This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of the events leading up to Applicant's trial.

#### 1. Trial Testimony

At trial, the only testimony presented involving Applicant's mother was from Chief Raffield, who testified she greeted him at the door and led him upstairs to Applicant's bedroom. (R. 48, 249-50). Chief Raffield further testified that Applicant's mother and sister stated Applicant got home the morning of the robbery at approximately 2:30 AM. (App'x 283, 302). Crucially, Chief Raffield testified that neither Applicant's mother nor anyone else had ever provided an alibi for Applicant. (App'x 303).

#### 2. PCR Testimony

At the PCR hearing, Applicant testified he did not know if Counsel ever spoke to his mother. He was asked how his mother's testimony would have helped him given that she told Chief Raffield he had just gotten home. Applicant disagreed, and stated his mother said he was home at the time the robbery occurred. Applicant stated he thought "it would have been stronger" had his mother been called as a witness.

Counsel testified Applicant told her from the beginning that he did not commit the robbery and he was not there. Counsel told him she would need to have witnesses in court testify about his whereabouts at the time of the robbery. She further testified that several women identifying themselves as either Applicant's sister or girlfriend would call her office and ask about his case. However, none of them ever provided her with an alibi. Counsel also stated that none of the witnesses ever showed up to court, and that they stopped answering her calls as soon as the trial date got closer. Applicant did not provide her with addresses for any witnesses.

Counsel agreed that Applicant's mother told Chief Raffield he had just gotten home, and it was therefore questionable whether her testimony would have been helpful. She further testified she spoke with Applicant's mother several times about his case. Applicant's mother never told Counsel that she would be an alibi witness or that Applicant was home at the time of the robbery. Counsel nonetheless stated she would have loved to have his mother or anyone testify on Applicant's behalf. She stated again that she could not get ahold of anyone—including Applicant's mother—as the trial date approached.

### 3. Discussion

“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392

S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

This Court finds Applicant failed to establish Counsel was ineffective for failing to investigate and present testimony from alibi witnesses. Our Supreme Court has repeatedly held 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" to prevail on this type of claim. *Glover v. State*, 318 S.C. at 498-99, 458 S.E.2d at 540 (citing *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992)); see *Bannister*, 333 S.C. at 303, 509 S.E.2d at 809; see also *Ard*, 372 S.C. at 331, 642 S.E.2d at 596 ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."). "Mere speculation" by the applicant as to what the witness's testimony would have been "cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover*, 318 S.C. at 499, 458 S.E.2d at 540; see *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (explaining that pure conjecture as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different).

Here, Applicant did not present testimony from his mother or any other witness who could have supported an alibi defense. However, even had Applicant's mother testified, Chief Raffield's testimony refutes Applicant's claim that his mother stated he was home at the time of the robbery. Rather, she stated Applicant had gotten home shortly before Chief Raffield knocked on the door looking for him. *Cf. Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that the applicant showed uncalled witness' testimony would have made a difference in the trial because it

would have cast doubt on the sole witness' identification of the petitioner). She also never indicated to anyone, including Counsel, that she could provide an alibi for Applicant. *See State v. Robbins*, 275 S.C. 373, 271 S.E.2d 319 (1980) (since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all).

Accordingly, Applicant's claims pertaining to Counsel's failure to investigate and call witnesses to support Applicant's alibi are **DENIED**.

### **B. Failure to Request Strong Arm Robbery Charge**

Applicant next contends Counsel was ineffective for failure to request a jury charge on the lesser-included offense of strong arm robbery. This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating either the judge would have agreed to charge the jury on strong arm robbery or that the jury would have convicted him of strong arm robbery rather than armed robbery had the charge been given.

#### **1. PCR Testimony**

At the PCR hearing, Applicant testified Counsel never discussed the possibility of requesting a strong arm robbery charge. Counsel testified she did not consider asking the judge to charge the jury on strong arm robbery because the surveillance video from the Circle K clearly showed the perpetrator putting a gun to the store clerk's head. She stated strong arm robbery does not apply where the person is armed with a deadly weapon.<sup>2</sup> She further testified it would have

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<sup>2</sup> Counsel's understanding of strong arm robbery as opposed to armed robbery is correct under South Carolina Law. *See* S.C. Code Ann. § 16-11-330(A) (defining armed robbery as the commission of a "robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon . . ."); *Abney v. State*, 408 S.C. 41, 45, 757 S.E.2d 544, 546 (Ct. App. 2014) ("Strong arm robbery is defined under common law 'as the

been counterintuitive to argue a lesser-included offense to the jury because her defense strategy was that Applicant was not the perpetrator. Counsel further testified she had tried several cases before Judge Hood, and she was confident he would not have agreed to charge the jury on strong arm robbery had she requested it. However, she again testified she believed a strong arm charge would have hurt Applicant's case given her strategy that he was misidentified as the perpetrator.

## 2. Discussion

The trial court is required to charge a jury on a lesser included offense "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense. *Suber v. State*, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007).

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard*, 372 S.C. at 331, 642 S.E.2d at 596. When counsel articulates a strategy, it is measured under an objective standard of reasonableness. *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent

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felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.'" (quoting *State v. Rosemond*, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003)); *State v. Tasco*, 292 S.C. 270, 272, 356 S.E.2d 117, 118 (1987) ("[W]hen a person perpetrates a robbery by brandishing an instrument which appears to be a firearm . . . in the absence of any evidence to the contrary, the law will presume the instrument to be what his conduct represents it to be . . ." (quoting *State v. Thompson*, 254 S.E.2d 526, 528 (N.C. 1979))).

that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 691.

Here, Counsel’s credible testimony indicates she did not request a charge on strong arm robbery because (1) strong arm robbery was not applicable in Applicant’s case; (2) she did not believe the trial judge would have agreed to give a strong arm robbery charge; and (3) arguing strong arm robbery would have been inconsistent with her trial strategy—that Applicant was not the perpetrator. Counsel’s strategy was objectively reasonable in this regard, particularly in light of the surveillance video, which clearly depicted Applicant holding a gun to the clerk’s head. *See Abney v. State*, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (finding trial counsel articulated a valid reason for failing to request an instruction on the lesser-included offense of strong arm robbery where trial counsel felt the trial was going well and believed his client would be acquitted of armed robbery).

Accordingly, Applicant’s claim pertaining to Counsel’s failure to request a jury charge on strong arm robbery is **DENIED**.

#### V. 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.

#### VI. CONCLUSION

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

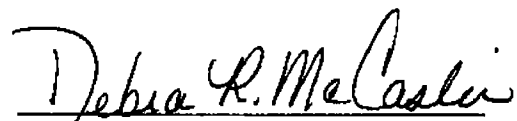
deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses 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 application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 24<sup>th</sup> day of May, 2021.

  
DEBRA R. MCCASLIN  
Presiding Circuit Court Judge  
Eleventh Judicial Circuit

Lexington, South Carolina