

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
HONORABLE WILLIAM A. MCKINNON
2019-CP-42-01576

JASON CASH, SCDC# 347420

APPELLANT,

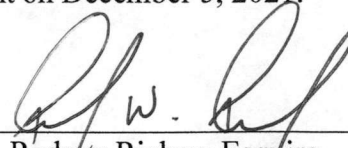
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Jason Cash appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable William A. McKinnon, Circuit Judge on September 17, 2021 an Order issued on November 24, 2021 and filed on December 6, 2021. The Appellant received notice of the judgment on December 5, 2021.



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)
)
Jason Cash, #347420,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-42-01576

ORDER OF DISMISSAL

SPARTANBURG COUNTY
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This matter comes before this Court by way of Applicant's post-conviction relief application filed May 1, 2019. Respondent made its return on August 7, 2019, requesting an evidentiary hearing. An evidentiary hearing was held on September 17, 2021, at Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Travis Moore also testified, as did Applicant's mother, Angela Ross. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2015, the Spartanburg County Grand Jury indicted Applicant for kidnapping (2015-GS-42-3776), attempted murder (2015-GS-42-3777), and murder (2015-GS-42-3778). In February 2017, the Spartanburg County Grand Jury indicted Applicant for armed robbery (2017-GS-42-0495) and first degree burglary (2017-GS-42-0496). Travis A. Moore, Esquire represented Applicant.

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Derrick Balsa and Nicholas Sharpe, Esquires, prosecuted the case. On February 27-March 2, 2017, Applicant proceeded to trial before the Honorable J. Derham Cole, circuit court judge, and a jury. Applicant was found guilty as indicted and Judge Cole sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal on March 15, 2017 that was perfected by Robert Pachak, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion, *State v. Cash*, 218-UP-203 (S.C. Ct. App. filed May 9, 2018). The remittitur was issued on May 25, 2018.

Summary of Relevant Facts

The Victim's Testimony

Casey Scruggs testified she was living with her fiancé, Carey Mauldin, on May 22, 2015. (R. 162-63). Scruggs knew Applicant for around two months before the incident, after Mauldin met him at Wal-Mart and the two became friends. (R. 164-65, 179-80). Mauldin sold Applicant heroin and gave Scruggs Suboxone, Subutex, and methamphetamine. (R. 180-81). Scruggs did not know "Scooter" well, but identified him as Steven Lewis, and explained he lived with the couple until May 17, 2015, when he robbed them. (R. 165-66, 168, 185-86).

Late evening on May 21, 2015, Mauldin received a phone call from Applicant, who "wanted to come by and get a fix." (R. 166). Scruggs' understanding was that Applicant was going to bring a gun stolen by Lewis and exchange it for drugs. (R. 186-87). Scruggs awoke in bed to the sight of the lights in the kitchen and the living room, and a sound followed by Mauldin telling her to call 911. (R. 166-68). Scruggs could hear Lewis, but could not recall what he said. (R. 168). After Mauldin told her to call 911, she heard two gunshots. (R. 169). Lewis ran into the

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bedroom, turned the light on, flipped her over, and began to tie her up with duct tape, binding her mouth, feet, and ankles while wearing blue latex gloves. (R. 169-71).

Scruggs saw Mauldin moaning on his knees. (R. 171). Applicant pointed at Mauldin and asked "man, what did you give me, man, what did you give me?" (R. 171). Mauldin replied that he could not breathe. (R. 171). Applicant replied: "Well, that's how I felt when you gave me what you gave me." (R. 171). With Mauldin ^{UAM} ~~dispensed~~ and Scruggs hogtied, Applicant and Lewis began rummaging through the house, Lewis taking lead. (R. 172-73).

Scruggs said she was probably tied up for an hour and a half to two hours; until the sweat around the bindings allowed her to free her hands. (R. 172). Partially freed, Scruggs got off the bed and hobbled to the front of the house, but could not get outside because the door was locked. (R. 172-73). Scruggs popped open the door by kicking it. (R. 172-73, 183-84). Scruggs saw Applicant outside and heard Lewis say something to the effect of "I couldn't trust this bitch" before Lewis ran back in, beat her over the head with the gun, dragged her through the house, and threw her down next to a rug. (R. 173-74, 184-85).

Scruggs saw Applicant with the gun pointed at her, which she identified as a "Kel-Tec 9" owned by Applicant's sister. (R. 173-74, 178). Scruggs testified she saw Lewis with the Kel-Tec 9mm he stole on May 17, 2015. (R. 184-86). Scruggs saw the road outside, and sensed a presence behind her. (R. 174). Two shots rang out, "and then they were gone." (R. 174-75). Scruggs could not see who pulled the trigger. (R. 174, 184). One bullet grazed the back, right side of Scruggs' skull. (R. 175). Scruggs thought she was going to die. (R. 175).

Scruggs recalled that she saw headlights, then managed to get up and run past Mauldin, until she ended up in a bedroom in neighbor Tony Turner's house. (R. 175-76). She recalled telling neighbors that she did not want to die and asked them to check on Mauldin. (R. 176).

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Scruggs was transported to the hospital. (R. 176). She could only vaguely recall what she said to police and the paramedics, but asserted she had no doubt who was in her house that night. (R. 176, 184-85). Scruggs later learned various things were stolen from her home, including a flat-screen television, jewelry, pocketbook, watch, tablets, phones, and Mauldin's Chrysler PT Cruiser. (R. 176-77).

The Neighbors

Neighbor Tony Turner woke around 5:00 a.m. to a loud banging at his door. (R. 100-02). Turner opened the door to find a woman "bound around the face and hands with electrical tape." (R. 102). Terrified, he screamed, and told her not to come in. (R. 102). Shortly thereafter, Turner figured out she had been shot in the head, called 911, and freed the woman's hands from her bindings, leaving the head bindings for fear of relieving pressure from the head wound. (R. 102-03). Turner recalled she was erratic, declared "Scooter did this[.]" and said she was afraid she was going to die and that Mauldin was dead. (R. 103, 105). Other neighbors responded to the disturbance, and Turner told them to call 911. (R. 104-05). On cross-examination, Turner clarified that Scruggs said nothing about who shot Mauldin. (R. 106).

Adam Stewart, a neighbor, was woken the morning of May 22, 2015, by his frank daughter, who told him somebody was beating on the front door and that she dialed 911. (R. 119-21). Stewart looked out the windows and saw Scruggs, unrecognizable and covered in blood, standing next to Turner. (R. 121-22). Stewart went outside to where Turner was cutting tape off of Scruggs, who said that Lewis and Applicant killed Mauldin and shot her. (R. 122).

Judson Paul Sizemore, Jr., a firefighter living across the street, testified Stewart's daughter busted through the door and told him Scruggs was shot. (R. 127-28). Sizemore briefly spoke with the paramedics before they left with Scruggs. (R. 128). Sizemore retrieved his Jeep to

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shine the headlights into the house and entered the residence, where he found "a big pool of blood to the right" and "a bunch of feet print with blood." (R. 128-30). Sizemore observed Mauldin half on the couch, half on the floor, covered with a blanket from his hips down, blood pooling beneath him, pulseless. (R. 130). Sizemore heard a noise and walked outside, where he met an officer at the door and reported his findings. (R. 130-31).

First Responders & Law Enforcement's Investigation

On May 22, 2015, Deputy Nicholas Hullinger of the Spartanburg County Sheriff's Office was dispatched to the scene around 5:00 a.m.. (R. 85). By the time Hullinger arrived, the neighbors had gathered at the house and indicated a man was shot. (R. 86). Hullinger was the first officer on the scene and, by the time he arrived, Scruggs had already left with paramedics. (R. 87). Hullinger was told by the neighbors that Scruggs fled to a neighbor's house and banged on the door, prompting the initial 911 call, but they would not open the door; Scruggs fled to another neighbor, who called 911 and reported she was duct taped and was shot in the head. (R. 87-89, 91-92). Sizemore was on scene and told Hullinger that Mauldin was draped from the couch to the ground. (R. 90). Hullinger cleared the house, and found it in total disarray. (R. 90-91). Hullinger observed no signs of life in Mauldin and left the body where it was. (R. 91). Hullinger went outside and began to separate the witnesses. (R. 91-92).

Sergeant Gregg Satterfield responded as the supervisor and conducted a second search of the house. (R. 94-95). As Satterfield approached the house, he found bloody footprints in the kitchen, and a larger pool of blood to the right of the refrigerator. (R. 95-96). Satterfield also found Mauldin's body draped from the couch and the house in disarray. (R. 96). Satterfield exited the house, directed the deputies on scene to start taking statements, and advised paramedics that Mauldin showed no signs of life. (R. 97-98). Satterfield recalled the neighbors

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reported Scruggs mentioned names to them and to paramedics before she was removed from the scene, and that he supplied that information to a sergeant headed to the hospital. (R. 99-100).

Zachary Hubbard was a paramedic^{WAK} that responded to the scene. (R. 109-112). On scene, Hubbard found "a blonde female with a white shirt that appeared to be soaked and drenched in blood." (R. 112). Hubbard only learned that Scruggs had been shot once he got to the scene. (R. 112-13). Because nobody could tell Hubbard the whereabouts of the shooters and because Scruggs' wound was "a code trauma[,]" Hubbard very quickly loaded her into the ambulance and left the scene. (R. 113). Hubbard hooked Scruggs up to an intravenous drip and a cardiac monitor, removed the tape over her mouth, which prompted Scruggs to start screaming that two men had tied up and shot both her and her boyfriend. (R. 113-14). Scruggs identified the perpetrators as Drew Cash and Steven Lewis, but did not clearly indicate who did what. (R. 114, 117-18). Scruggs was very anxious and upset, but fully alert. (R. 114-15). Hubbard bandaged her head, but found no injury except that on the back of her head. (R. 115-16). At the hospital, Hubbard turned Scruggs over to the emergency room physician and gave a written statement to law enforcement. (R. 116-17).

Investigator Robert Charles Talanges was the primary forensic officer on scene. (R. 133-35). Talanges found a pool of blood, blood smears, and multiple spent cartridge casings, noting that every room except the kitchen was "ransacked." (R. 136-38). The blood smears ran from room to room, indicating a victim was dragged through the house. (R. 138). Talanges found a bloody shoe track and spent cartridge in the kitchen. (R. 142). In the bedroom, Talanges found a bloodstained stuffed animal, a piece of a blue latex glove, a cartridge casing, and a gray roll of duct tape that matched the tape used on the victims. (R. 143-44). Once law enforcement began digging through the house, they found a bullet strike in the carpet and a projectile lodged in the

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floor. (R. 145). Another projectile rolled off of Mauldin's body when law enforcement rolled him over to check for wounds. (R. 147-48). Law enforcement recovered twenty-six latent prints from the crime scene. (R. 157-60).

Investigators collected all casings and projectiles in the house. (R. 147). In total, Talanges testified they recovered three spent casings: two on the living room floor and one on the bedroom floor. (R. 148). Three projectiles were recovered on scene: one in the kitchen ceiling, one in the living room floor, and one in the bedroom floor. (R. 148-49). A fourth projectile was recovered from Mauldin's body at the morgue, but no forth casing was ever found. (R. 149-50). Law enforcement sought no fingerprints from the shell casings because firing the bullet would have destroyed the prints. (R. 156).

Talanges executed a search warrant on July 8, 2015, at a location on Flynn Road between Landrum and Campobello, South Carolina, following a lead on a Chrysler PT Cruiser missing from the scene. (R. 150-51). There officers found a clump of cloth, beneath which they recovered a ring of keys including a key to a Chrysler. (R. 151-52). Talanges and another detective returned to the original scene with the keys, tried the keys on the locks to the house, and discovered they opened the doors. (R. 153-54). Talanges executed a search warrant on a silver Mazda, from which he recovered "a yellow and black bag containing some type of drug paraphernalia[.]" (R. 154-55).

Investigator Todd Ruffner, of the South Carolina Law Enforcement Division, received a call about the shooting and was dispatched to the hospital to check on Scruggs. (R. 189-90). Ruffner found Scruggs alert in the trauma area of the emergency room. (R. 190). After Scruggs was moved from the E.R. to a room, Ruffner took a statement, obtained a lineup including Applicant from the SLED Fusion Center, and directed other investigators to Applicant's last

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known address in Inman, South Carolina. (R. 190-91). Ruffner joined officers at the Inman address, where they did not find Applicant, but executed a search warrant and took photographs. (R. 191-93). Ruffner found blue gloves in a filing cabinet in Applicant's bedroom. (R. 196-97). Ruffner affirmed that Scruggs told him she had been present and witnessed Applicant's sister purchase the Kel-Tec 9mm used in the burglary and murder. (R. 197-98).

Corporal Brian Ezell, a canine handler with the Guilford County Sheriff's Office in Greensboro, North Carolina, converged on an address in Guilford County on May 23, 2015, following a lead that Applicant and Lewis were at the property. (R. 232-33). Law enforcement approached the building in the dark of night, around 2:30 a.m., and set a perimeter around the two suspect houses. (R. 233-35). When Ezell pulled around to the back of one of the houses, Applicant fled out the back and into the woods; Ezell found Applicant in the woods in thick underbrush at 2:53 a.m., and apprehended him. (R. 235-36). Lewis remained in the house until the S.W.A.T. team breached the front door with explosives. (R. 236-37).

Detective Paul Anthony Norris, SCSO, interviewed Applicant's sister, Nicole Cash, after the burglary and killing. (R. 282-84). Norris told Nicole that he wanted to talk to her about a possible shooting. (R. 284-85). Norris denied Nicole was slurring her speech and that she appeared to not have any issues. (R. 285-86). In July 2015, Norris learned that the missing Cruiser might be located at the Flynn Road property, but when law enforcement got there, the only things they found were a set of keys and "a bumper absorber that goes to a Chrysler product based on the Chrysler stamp that's on the bumper or on the styrofoam." (R. 287-88). Norris and Talenges returned to the original crime scene and found the keys worked on the doors to the house and storage shed. (R. 288). Norris testified he sent three cartridges and four bullets to the Greenville County Sheriff's Office for ballistics analysis, and noted that the .38/9mm bullets and

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cartridges all could have been fired from a Kel-Tec 9mm. (R. 289-90). The gun was never found and none of the latent prints lifted from the crime scene matched Applicant. (R. 290-91). Too much time passed between the killing and Applicant's capture to conduct meaningful testing for gunshot residue. (R. 295).

Dr. John David Wren, the forensic pathologist, testified Mauldin suffered a gunshot wound to the head, two to his back, and one to his left forearm. (R. 299-300). Dr. Wren recovered the bullet from Mauldin's arm. (R. 301-02). Mauldin also fractured his ulnar of his left forearm, had four lacerations to the left side of his head, and some various other superficial abrasions. (R. 300-01). Dr. Wren concluded Mauldin bled to death. (R. 303-04).

Applicant's Family and Friends

Emma Cooke, Applicant's grandmother, confirmed Applicant lived in a downstairs bedroom of her home. (R. 199-203). Cooke first learned of the incident when she returned home from her youngest son's court hearing to find police cars surrounding her home. (R. 204). Cooke testified she only met Lewis once, when Applicant came home May 21, 2015, with Lewis in tow, prompting Cooke to tell Applicant that Lewis could not stay. (R. 205-06). They left fifteen minutes later. (R. 205-06). The next morning, Cooke left for court and exchanged kind words with Applicant as she left; she did not see Lewis. (R. 206-07). Sometime after Applicant's arrest, Applicant asked her during a phone conversation to obtain a gun from her husband's property that Applicant expected to inherit. (R. 208-11). Cooke refused, but searched for the gun and could not find it. (R. 210-11). Applicant asked her to retrieve a second gun from her youngest son's home, but she could not find it. (R. 211-12).

Tracy Lanning, a friend of Cooke's, was with her for the court hearing and on the way back home. (R. 204, 214-15). Lanning was dropped her off at Cooke's around 7:00 to 7:15 a.m.

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on May 22, 2015, to accompany Cooke to court. (R. 216). Lanning recalled seeing Cooke, Lewis, Applicant, and Applicant's sister Nicole at Cooke's house that morning. (R. 216-17). Applicant's car was backed up to an outbuilding with the passenger side door open, where Lewis stood and stared at her. (R. 217). On her way in, Lanning grabbed a little black bag laying at the steps up to the house, brought it inside, looked in it with Cooke, and then took it downstairs to Applicant. (R. 218). Lanning overheard Lewis ask Applicant if she looked through the bag, which Applicant denied; Lanning did not correct him. (R. 218-19). Lanning recalled the bag contained women's jewelry, perfume, and a piece of paper. (R. 219). Applicant and Lewis were still at the house when Lanning and Cooke left for court. (R. 219). On their way home after court, Applicant called and texted Lanning multiple times to indicate that police were at Cooke's and he wanted them to find out why. (R. 215-16). They arrived home to find police present; the two went inside and were separated and interviewed by police. (R. 220).

Clifford Cash, Applicant's father, received a call from Applicant at around 2:00 or 3:00 a.m. on May 22, 2015; Clifford asked where Applicant was, and that he would come get him, but his son would not tell him. (R. 221-24). Clifford could not recall if he learned of Applicant's arrest from Cooke or the television. (R. 224). After his son's arrest, Clifford set himself to maintaining the Flynn Road property that Applicant expected to inherit, and which Applicant was renovating. (R. 225). Clifford eventually noticed the PT Cruiser parked behind the building with a tarp cloaked over it and pallets stacked atop. (R. 226). Clifford, while out-of-state, spoke to a detective about the vehicle, but by the time he returned to show law enforcement where it was, it was gone. (R. 226). Clifford spoke to Applicant about the PT cruiser, the gun, and other things in the vehicle while Applicant was in jail; Applicant told him that Lewis' fingerprints were all over the things and would lead to Applicant's acquittal. (R. 231-32).

Angela Ross, Applicant's mother, testified. (R. 246-47). Applicant explained to Ross he was in North Carolina for work. (R. 247-49). Applicant asked Ross to talk to somebody named "Jay" about testifying that Applicant was with him the night of the incident. (R. 249-50, 254). Ross denied knowing whether or not the requested alibi was true. (R. 249-51). Applicant encouraged Ross to talk his sister out of testifying at court, but Ross denied that his sister deliberately attempted to hide from a subpoena. (R. 255-56).

Bridgette Nicole Cash, Applicant's sister, testified that she had owned five guns at various points in her life, but that she owned only one when the police were searching for her brother and the gun. (R. 258-59, 264-65). Nicole was on the phone with Applicant and Lewis when law enforcement arrived, and the two argued over what she should do: supposedly Applicant told her to go to the door, while Lewis wanted her to not cooperate. (R. 279). Nicole opted to answer the door, and placed the phone, while still on the call, in her bra. (R. 279). Nicole permitted the police to search for the gun, but they could not find it. (R. 265).

Nicole testified her gun "had gotten pawned off[...]" and wound up in Mauldin's possession, who told her he would return it, but never did. Lewis subsequently showed up the night before the killing in possession of the gun, among various other goods belonging to Mauldin, but refused to return the pistol, explaining he wanted to sell it to Mauldin. Nicole only wanted to return the pistol to the pawn shop from which she originally purchased it. (R. 265-67). Lewis also mentioned his desire to rob Mauldin again, but Applicant replied "[n]o, Man, that's not why we're here." (R. 267). Nicole testified Applicant went into detail about his own experience getting robbed, and that he did not want to lose his connection to Mauldin, who was his only dealer. (R. 267-68, 276). Nicole acknowledged telling police that her brother stated he was planning on robbing Mauldin, and acknowledged reporting Applicant said he "should put

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them on their knees and shoot them in the head[.]” but explained she had been under the influence of “Roxies¹ and Xanax bars[.]” and was interrogated for seven hours. (R. 269, 274, 279-81). Nicole denied trying to dodge a subpoena, but acknowledged Applicant was upset with her upon learning that she was subpoenaed. (R. 270-72). Nicole denied Scruggs was with her when she originally purchased the gun. (R. 275).

Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. “Ineffective Assistance of Counsel”
 - a. “Approx. (2) years of time lapsed awaiting trial and during that period of time my attorney, Travis Moore, only spent time on my case in a direct of me entering a plea of “Guilt” and negotiating a plea offer.”
“He, T. Moore, continuously advised me to do this even after informing him multiple times that I was not guilty of the charges that was being charged.”
 - b. “Also the fact that he and the Solicitor were discussing rounds of golf the coming Saturday after my trial being in shared plans scheduled to occur in leisure. This could have caused a conflict of interest due to the relationship being more than business oriented.”
2. “At the time of my trial proceedings I was under an influence of psychotropic medication that put me in a state of mind to be unaware of the [severity] of my situation and to lack the ability to assist in my own defense due to the dose was being administered in an amount 3 times the intended/prescribed amount.”
 - a. Applicant contends that officials at Spartanburg County Detention Facility administered doses of Seroquel two to three times the amount prescribed by his doctor prior to his incarceration.
3. “Multiple States witness’ gave false testimony, under oath, on the stand at my trial.”
 - a. “During my trial proceedings, the state called (2) different witness’ to the stand to testify in which stated they lied; (after a noted contradiction in stories), just moments prior and had NO logical OR rational reasons in reasons to why they testified to false allegations.”
“The fact that a states witness claimed to have heard the victim state my name in addition to (co-defendant) Mr. Lewis’ name the night of the incident and

¹ Short for Roxicodone, an instant release form of oxycodone, an opioid painkiller.

after 're-reading' HIS statement, given the same night, concluded and admitted to testifying moment prior to a lie and my name was in fact NOT spoken by Casey Scruggs (victim) to be involved; could have made an impact on the jury to have altered the verdict decision in the State's favor and the he also supported Solicitor's opening arguments and the story led to be believed as the truth. This being facts of my case and testimony given in my trial, this should be sufficient in reasons to grant an appeal in my favor for a re-trial."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel
 - a. Failure to properly impeach the State's witnesses, particularly the victim
 - b. Failure to investigate taped evidence from the victim which was allegedly exculpatory
 - c. Failure to properly prepare for trial
 - d. Failure to investigate the victim's background
 - e. Failure to properly respond to Applicant's drug abuse leading up to trial

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All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated that he was currently incarcerated because he was convicted at trial of murder, attempted murder, first degree burglary, and kidnapping. Applicant stated he was represented by Travis Moore on these charges.

Applicant testified that the charges arose out of a drug deal and that there was a male and a female victim involved. He stated he called the male before he came and called again when he arrived. He stated the victims allowed him inside and he proceeded to do his first dose of drugs so he could have a safe environment to test out what he was given. Applicant testified the male told him to hurry up so he could go to bed. Applicant stated that after his arrival "some people pulled up" and that there was a knock at the door. Applicant stated that Hell's Angels gang members arrived, demanding money and drugs. Applicant testified that he was just a bystander

during the incident. Applicant stated that he was not involved in the incident, but was only there to buy drugs and while there he was taken hostage along with the victims. He also stated Lewis forced his way into the home once the door was opened. Applicant stated he was sitting in the living room shooting up drugs. Applicant testified that the male ran at Lewis and two gunshots went off. Applicant stated the male was shot and bleeding while Lewis ran to the bedroom to the female. Applicant stated he did not know where duct tape came from, but Lewis taped up the female. He stated he had a gun pulled on him.

He stated he was followed to his house in the victim's vehicle by the perpetrators. He stated he was able to flee from the scene and leave in his own vehicle. He testified that they stopped at his grandfather's house, and he was forced to drive the perpetrator to North Carolina at gunpoint. He testified that he was running from the perpetrator, not the police who happened to be arriving at the same time. He stated someone was sleeping on the couch at the time.

Applicant acknowledged the State alleged he was involved as a perpetrator during the incident. Applicant stated he discussed the case with Counsel, who told him to testify against Lewis so he could take advantage of a thirty year plea offer. Applicant stated he was unwilling to do that because he was not a perpetrator. Applicant stated Counsel told him the offer was all he could do for him, but he still rejected the offer.

Applicant stated that the female, who survived, spoke with Applicant's mother leading up to trial. Applicant stated the victim's narrative corroborated his own. Applicant stated that the female was worried about Applicant being charged under the hand of one hand of all theory because he was present. Applicant stated that once Counsel heard Applicant's side of the story he brought it to the prosecutor's attention and they told his mother and sister that the tapes were inadmissible evidence. He stated that the surviving victim spoke with his mother and the victim

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COURT REPORTER
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could substantiate this. Applicant testified that the prosecutor confused the victim by questioning her, which kept her from stating the correct information that would have exposed issues in the State's case. Applicant stated that Counsel did not properly cross-examine the witness.

Applicant stated that Counsel did not properly cross-examine the female. Applicant testified that she told Counsel that the weapon Applicant was accused of using during the exchange was actually in her possession at the time. Applicant stated that that gun was taken by Lewis prior to the incident. Applicant stated that the gun used in the incident, a Kel-Tec 9mm, was in the surviving victim's possession. Applicant stated that Lewis stole the gun, but he was unsure whether this was the gun used in the crime. Applicant testified that Counsel did not speak with the victim in this case.

He stated he did not flee to North Carolina to evade the crime but, instead, left because he was under duress. He stated he went to and was apprehended at his grandfather's house that he was going to inherit. He stated that the perpetrator did not want to drive a stolen vehicle from the scene of a murder all the way home. Applicant stated that the man who was sleeping when the police arrived was the perpetrator and that the perpetrator fell asleep at the exact moment the police arrived and he was fleeing.

Applicant stated he was prescribed psychotropic medication at the county jail. Applicant stated he was prescribed 150mg but was given 450mg every day. He stated he was told this by the nurse. He stated he asked what the dosage was, but was told he was receiving significantly more than what was prescribed. He stated he did not understand the case fully as a result. He stated he told Counsel that he was prescribed medication making him slow, weary, and "dead zone in his mind." Applicant stated they did not know that they were dealing with such a significant overdose at the time. He stated he found out about the overdosing through his Aunt

Kathy, who is the head nurse at the county jail.

On cross-examination, Applicant stated he only met with Counsel very briefly while in the county jail. Applicant stated Counsel only met with him to encourage him to take the plea. Applicant stated that the State offered him a thirty year plea deal if he agreed to testify at trial. Applicant stated he rejected the offer because he was not guilty.

Applicant stated he tried to talk to Counsel about the discovery, but Counsel only gave him basic answers about why he was wrong. He stated he had questions about bloody shoeprints in the kitchen and how someone made a comment about how the prints reflected someone with big feet, but Applicant stated he only wears a 9.5. Applicant stated the officer also noted that there was no blood in the vehicle despite him possibly walking through blood. He testified he had no GSR on his clothing and that the kits were done but nothing was processed. Applicant testified that Counsel told him that there was not much evidence against him at all, though he still encouraged Applicant to plead guilty.

Applicant stated that the victims were the male that was murdered, the female that survived, and himself. Applicant stated he knew the other victims and, though he did not live at the house, he was over there all the time. Applicant stated that he had feelings for the female and, though they were not dating, they had talked about her leaving the man she was dating and moving into Applicant's grandfather's house together. Applicant stated that the female testified at trial and implicated Applicant along with Lewis because she was confused about the details in the case. Applicant stated he knew Lewis because he used to live with the victims leading up to the incident.

Applicant stated that he was merely present at the scene and could not be implicated under hand of one hand of all. Applicant stated Counsel disagreed with him on this point.

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COUNTY CLERK

Applicant stated that Counsel may have mentioned evidence concerning the stolen PT cruiser, but did not want to listen to Applicant's explanation regarding it. He stated Counsel thought he was guilty and working against him. He stated that Counsel playing golf with the prosecutor prior to trial was proof of this.

Applicant stated that Counsel told him that there was little to no chance of success at trial and that he would be sentenced to life imprisonment if found guilty at trial. Applicant acknowledged Counsel was correct in his warning. Applicant stated that though there was not a lot of evidence at first, as things came together, Counsel warned him about his odds at trial that he would be given "a lot of time."

Applicant stated that the neighbors testified at trial. Applicant stated that one of the neighbors and said she said his name when everything was happening, but that this was never stated in any statements prior to trial. Applicant stated that Counsel pointed this out at trial. Applicant stated that this witness testified that he was with Lewis. Applicant stated that the written statement only implicated Lewis, but the statement at trial said that it was both Lewis and Applicant.

Applicant stated that his grandmother, father, and sister testified at trial and answered questions asked. Applicant stated he told his father he was running from the police, but that this statement was intended as a joke. He stated he was trying to impress his father because he eluded twenty men and two dogs chasing him for a mile and a half. He stated he was not taking ownership over why they were chasing him. He stated he was not running from the police as a joke, but was joking about running from the police on the phone with his father. Applicant stated that the officers did not state that they were the police, so he initially thought he was running from Lewis and a gang of Hell's Angels members. He said the only gun he had was given to Mauldin prior to the robbery. Applicant stated Lewis fired the gun and could not state whether

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the gun was stolen or not. Thereafter, he stated that he stole the gun from his sister, gave it to Mauldin, and was then taken and used by Lewis. Applicant stated this gun was not necessarily used to commit the crime.

Concerning cross-examination of the victim, Applicant stated he wanted more questions about the fact that she claimed to know the exact type of gun used. However, he conceded that Counsel told him that the evidence he wanted to impeach the victim with was inadmissible. Applicant stated she said that she saw him with the gun, but also said that he was outside when she saw it. Applicant stated she stated to his mother that she loved him and did not want him to get more time. Applicant stated that everyone was saying that it would be inadmissible to bring to the court that he was on mental health medication at the time. Applicant stated that mental health issues, if raised, could have led to him being found not guilty. Applicant stated that Counsel's efforts were directed towards getting him to plead guilty and cooperating with the State, but that Lewis, whom he was told to testify against, was held in the same institution.

Applicant stated that his mother did not testify at his trial, but that she should have because one of the victims regularly called her concerning the case proceeding to trial. However, upon being refreshed, he stated that she did testify in the State's case-in-chief.

Concerning phone conversations between the victim and Applicant's mother, Applicant stated he did not know what the conversations consisted of because Counsel did not share them with him. However, he stated that after Counsel showed the tapes to the prosecutor, Counsel told him the tapes were inadmissible.

Applicant stated that the victim's prior history of drug usage would have affected their recollection. However, upon being refreshed, Applicant conceded Counsel pointed out the victim used drugs. However, Applicant stated she was not drug tested the day of trial. Applicant pointed

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STATE OF ARIZONA
CLERK OF SUPERIOR COURT

out the victim lied about chewing gum while on the stand, which he acknowledged Counsel pointed out.

The Court confirmed that Counsel told Applicant he would be found guilty and sentenced to life at trial and should plead instead. However, Applicant stated he decided to reject the plea and went to trial. Applicant stated that Counsel told him not to go to trial, but he went to trial because he was not guilty. Because he was not guilty, he explained, Counsel gave poor advice when telling him to plead. He acknowledged that he was convicted at trial and sentenced to life just as Counsel had advised him.

Counsel Testimony

Counsel testified he represented Applicant leading up to and at trial. Counsel stated that when he met with Applicant prior to trial often stated he was not guilty and at other stated he was there to buy drugs. Counsel stated that Applicant never said that Lewis and some other people came in the home after he did. Instead, Counsel stated Applicant told him that he arrived with Lewis to buy drugs and Lewis escalated it to a robbery then a murder. Counsel stated that he did not think this narrative would be believable at trial, based on the evidence. Counsel stated that the narrative Applicant told on the stand at the PCR hearing, namely that he went to the home alone, the Hell's Angels showed up, and he was forced to flee to North Carolina, was new to him. Counsel stated that they discussed the Hell's Angels at some point, but Applicant had no affiliation with them. He stated he did not recall any evidence in the case suggesting that he was under duress at the time.

Counsel stated that he remembered talking about the tapes of the calls between Applicant's mother and the victim, but could not remember whether he was given a copy of them. Counsel stated he attempted to get in touch with the victim and he admitted the tapes could

STATE OF TEXAS
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have been helpful at trial if he was given a copy of them. Counsel stated that if the victim testified that Applicant did not mean to hurt her and the Hell's Angels appeared at the house while he was there it could have been helpful, but that he was unaware of that testimony.

On cross-examination, Counsel stated that Applicant may have been previously represented by someone who was conflicted due to his potential cooperation. Counsel stated he met with Applicant multiple times at the detention center and the courthouse and that he met with his mother and sister on many occasions.

Counsel stated he reviewed all the discovery and evidence. As a part of the discovery, Counsel stated that there were eyewitness testimonies, neighbor statements, and jail phone calls. Counsel stated that all of this was problematic, with the eyewitness testimony being the most compelling. Counsel stated that Applicant's sister's testimony was also problematic concerning her testimony that Lewis escalated the situation, but that both Lewis and Applicant planned it and were wiping down bullets in preparation. Counsel stated that the police locating the stolen PT cruiser on the land Applicant was expected to inherit was also problematic, as was the phone call Applicant had with his grandmother about losing the gun. Counsel stated that there was a great deal of evidence against Applicant.

Counsel stated he encouraged Applicant to plead because Lewis was more culpable. He stated that he thought that if Applicant cooperated and told the truth it could mitigate and get him between thirty and forty years imprisonment. He stated he told Applicant that there was no chance of winning at trial and he made special arrangements for his mother and father to meet at the courthouse. Counsel stated that they pled with him to take the offer and not go to trial. He stated Applicant was confident that the victim and his sister would not testify, even though they did. Counsel stated that Applicant's sister was in a difficult situation because she did not want to

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hurt Applicant's case, and was addicted to drugs. Counsel testified they talked about this in preparing for trial.

Counsel stated he had no recollection of an overdose and never felt that Applicant was under the influence during their interactions. Instead, Counsel stated that Applicant was very active in trial preparation and there was never an issue of his competency. Counsel stated that Applicant followed everything they discussed and he believed they were working together.

Counsel stated that cross-examining the victim was very difficult because the victim was very sympathetic. Counsel stated she was shot in the head, making it difficult to be aggressive on cross-examination. Counsel stated that she was scared, nervous, and had a history of drug abuse. He stated he wanted to be polite to her and point out inconsistencies with her statements, but could not do anything else. Counsel stated that the victim was present during the incident and testified to that effect. Counsel stated he pointed out the victim's drug abuse at trial.

He stated he got the impression from Applicant's mother that the victim was hesitant to testify and stated that if she did not testify that it would have presented a large obstacle for the State. Counsel stated that there was a lot of speculation that she was not going to testify because she wanted Lewis to take the fall for the entire incident. He stated he could not get in touch with the victim and she would not call him back. He stated he ran this by the prosecutor who stated that he did not instruct her not to speak with him. He stated he inquired into this because he wanted to ensure that nobody influenced her not to cooperate. Counsel stated he did not speak with the victim until he was cross-examining her.

Counsel stated that he did not recall specifics of the tapes or listening to the tapes, but that when preparing for trial "you grasp everything you can", he could not recall anything being beneficial. Counsel stated that he did not see a way to overcome the evidence presented by the

State. Counsel stated that though, in retrospect, you can always think of something you could have done differently at trial, it probably would have not changed the result given the strength of Applicant's sister's and the victim's testimonies.

Angela Ross Testimony

Applicant's mother, Angela Ross, also testified at the PCR hearing. She stated she heard the testimonies of both Applicant and Counsel at the PCR hearing and stated that, during her conversations with the surviving victim, she stated the victim mentioned Hell's Angels and she stated she knew Applicant feared for his life that day. She stated she did not fully understand why the incident occurred, but stated the victim told her she could see in Applicant's eyes that he was afraid. She stated the victim said she would have done the same thing if she was in Applicant's situation.

On cross-examination, Ross stated she did not remember her testimony at Applicant's trial. She testified she did not remember testifying that Applicant said he was running from the police. She stated she remembered a phone call was played with Applicant and his dad where he was cracking jokes about running from the police and claimed that that call was between herself and Applicant. She stated the call was played at trial. Ross stated she recalled talking about Applicant fabricating an alibi and that that was mentioned on the phone. Ross stated Applicant was afraid and said something stupid.

Ross stated she remembered talking to Counsel about the phone calls between her and the surviving victim and that Counsel initially acted like they were a big deal, showed them to the prosecutor, and then told them to come back and pick them up. After this, Ross testified that Counsel was no longer of the opinion they were helpful after Counsel spoke with the prosecutor. Ross stated she was not told the reason why Counsel's opinion of the calls seemingly changed.

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She stated she did not know why the prosecutor would have found them damaging. Ross testified that the victim stated the total opposite of what was said in court while on the calls. Ross stated she did not know the victim personally, but that they spoke in detail on the phone.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

STATE OF SOUTH CAROLINA
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
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Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d

624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S.

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at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Properly Impeach the Victim

Applicant's claim that Counsel was ineffective for failing to properly impeach the victim is without merit. Applicant claims he wanted the victim impeached based upon her knowledge of the type of gun used, her drug use, and that she lied on the stand about chewing gum. Concerning questions concerning the type of gun used, Applicant stated that when he brought this to Counsel's attention, Counsel informed Applicant that what he wanted to impeach the victim on was not admissible. This Court finds that Counsel is not deficient for failing to pursue a line of questioning that is inadmissible. Additionally, Applicant conceded that Counsel questioned the victim on both drug use and the gum incident during cross-examination.

Additionally, this Court finds that Counsel articulated a valid trial strategy when describing his approach to cross-examination of the victim. Counsel stated that cross-examining the victim was very difficult because the victim was very sympathetic. Counsel stated she was shot in the head, making it difficult to be aggressive on cross-examination. Counsel stated that she was scared, nervous, and had a history of drug abuse. He stated he wanted to be polite to her and point out inconsistencies with her statements, but could not do anything else. Counsel stated that the victim was present during the incident and testified to that effect. Counsel stated he pointed out the victim's drug abuse at trial. Thus, Counsel is not deficient because he acted reasonably under the circumstances.

Additionally, no prejudice can be found. All potential topics that could have been

covered on cross-examination were either inadmissible or, in fact, covered. (Tr. 179-81). Applicant has made no showing of what else could have been uncovered during cross-examination or how a specific line of questioning that is both admissible and not previously explored would have had an impact on the outcome of trial. Accordingly, relief is denied on this ground.

Failure to Investigate Taped Evidence

Applicant alleges ineffective assistance of counsel for failure to investigate the taped evidence *Strickland* makes clear that Defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* However, counsel is required to, at minimum, “interview potential witnesses and 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) (quoting *Troedel & Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)) including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

To establish prejudice, Applicant is required to produce the evidence at issue into evidence at the PCR hearing. *Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999)

Counsel was not deficient on this ground. By Applicant’s own admission, Counsel

obtained and reviewed the tapes, and brought them to the prosecutor to review together. Applicant stated that Counsel told him they would not be admitted at trial because they were inadmissible. Counsel testified that he reviewed the tapes but never located any evidence in the case that was particularly helpful in asserting a defense. Thus, Counsel acted reasonably under the circumstances by reviewing the tapes and failing to admit inadmissible evidence at trial. Thus, no deficiency is found. Additionally, because Applicant failed to play or otherwise enter the tapes in question into evidence at the PCR hearing, no prejudice is established. Accordingly, relief is denied on this ground.

Failure to Investigate the Victim

Applicant's claim that Counsel was ineffective for failing to investigate the victim's background and for failing to speak with the victim before trial is without merit. Counsel credibly testified that he could not get in touch with the victim and she would not call him back. He stated he ran this by the prosecutor who stated that he did not instruct her not to speak with him. He stated he inquired into this because he wanted to ensure that nobody influenced her not to cooperate. Accordingly, Counsel stated he did not speak with the victim until he was cross-examining her.

The victim was not required to return Counsel's call and Counsel is not deficient for failing to compel the victim to communicate with him. Counsel acted reasonably in attempting to get into contact with the victim and that he was unable to get the victim to communicate with him does not render his performance deficient or unreasonable. Additionally, Applicant has failed to show what would have been revealed through further investigation. Thus, no prejudice has been established. Accordingly, relief is denied on this ground.

Failure to Properly Prepare for Trial

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Applicant's claim that Counsel was ineffective for failing to properly prepare for trial is without merit. Specifically, Applicant alleges that Counsel failed to pursue a defense that the Hell's Angels committed the crime instead of Applicant. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* "[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 418 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by

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the scientific community):

Counsel stated that Applicant never said that Lewis and some other people came in the home after he did. Instead, Counsel stated Applicant told him that he arrived with Lewis to buy drugs and Lewis escalated it to a robbery then a murder. Counsel stated that he did not think this narrative would be believable at trial, based on the evidence. Counsel stated that the narrative Applicant told on the stand at the PCR hearing, namely that he went to the home alone, the Hell's Angels showed up, and he was forced to flee to North Carolina, was new to him. Counsel stated that they discussed the Hell's Angels at some point, but Applicant had no affiliation with him. He stated he did not recall any evidence in the case suggesting that Applicant was under duress from anybody. Counsel is not required to prepare a defense at trial that he was not informed of until the PCR hearing. Thus, Counsel is not deficient on this ground. Additionally, beyond mere speculation, Applicant has failed to present any evidence or witnesses to substantiate this defense. Accordingly, no prejudice is found and relief is denied on this ground.

Applicant's Drug Abuse

This Court finds Applicant's allegation that Counsel was ineffective for failing to properly respond to Applicant's drug use leading up to trial, specifically that he was overprescribed medication and suffered an overdose, was without merit. Counsel credibly testified that he had no recollection of an overdose and never felt that Applicant was under the influence during their interactions. Counsel credibly testified that Applicant was very active in trial preparation and there was never an issue of his competency. Counsel stated that Applicant followed everything they discussed and he believed they were working together. Additionally, though Applicant stated that this overprescribing of medication made him feel groggy, he did not show how it impacted trial preparation, how Counsel was deficient for failing to respond, or how

it impacted the trial results. Accordingly, relief is denied on this ground.

Conclusion

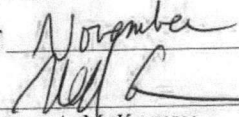
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

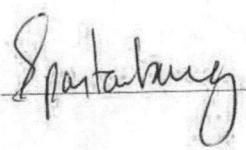
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 24 day of November, 2021.


WILLIAM A. MCKINNON
Presiding Judge
Seventh Judicial Circuit

 Spartanburg, South Carolina.

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SPARTANBURG COUNTY