

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN 28 2022

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2021-CP-320-1726 [PCR]

DAVID RICHARD WALKER, JR.....APPELLANT,

V.

STATE OF SOUTH CAROLINA.....RESPONDENT.

NOTICE OF APPEAL
[Petition for Writ of Certiorari/PCR]

David Richard Walker, Jr. appeals and Petitions for a Writ of Certiorari the order/judgment of the Honorable R. Lawton McIntosh within PCR dated May 26, 2022. Appellant received written notice by the State and on June 22, 2022.

Other Counsel on Record:
Ms Lillian L. Meadows, AAG
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

PRO SE APPELLANT:
David Richard Walker, Jr.
Pery Correctional Inst.
430 Oaklawn Road
Pelzer, South Carolina 29669

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

David Richard Walker, Jr., SCDC #294267,)
Applicant,)

Case No. 2021-CP-32-1726

v.)

ORDER

State of South Carolina,)
Respondent.)

FILED
2022 FEB 17 AM 11:59
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

This matter comes before this Court by way of an application for post-conviction relief (PCR) action commenced by David Richard Walker, Jr. (Applicant) on May 21, 2021. Ashley A. McMahan, Esquire, was appointed to represent him. On June 18, 2021, Applicant filed the following *pro se* motions:

1. "Motion to Amend PCR-Application"
2. "Petition for Stand-by Counsel/Proceed Pro se"
3. "Petition to Obtain Discovery/§ 17-27-150"
4. "Ex Parte-Petition for Funds for Private Investigator"

Applicant concurrently submitted a *pro se* request for copies of all filed motions and subpoenas from trial. On June 23, 2021, Applicant filed a *pro se* amended PCR application.

On July 22, 2021, Counsel McMahan filed a motion to be relieved as counsel and attached thereto a *pro se* document from Applicant objecting to appointment of PCR counsel. On September 10, 2021, the State made its return and partial motion to dismiss.¹

¹ Because Applicant was represented by counsel at that time, the State did not respond to Applicant's *pro se* motions in its return. See generally *State v. Stuckey*, 333 S.C. 56, 57-58, 508 S.E.2d 564, 564 (1998) (finding there is no right to "hybrid representation" under either the United States or South Carolina Constitutions and refusing to consider substantive documents filed *pro se*

A hearing into the matter convened before the undersigned on December 14, 2021, at the Lexington County Judicial Center. Assistant Attorney General Lillian L. Meadows appeared on behalf of the State. Applicant was present and initially represented by Ashley A. McMahan, Esquire.²

Before this Court are copies of the Lexington County Clerk of Court records regarding the subject convictions; 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, including both parties' written submissions and oral arguments.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on March 4, 2013, following an investigation into the murder of his girlfriend, Catherine Banty, by manual strangulation and blunt force trauma to her head. During its October 2015 term, the Lexington County Grand Jury indicted Applicant for murder (2015-GS-32-2341). Eleventh Circuit Deputy Public Defender Sarah H. Mauldin was initially appointed to represent Applicant.

The trial court conducted a hearing on March 25, 2015, pursuant to *Faretta v. California*, 422 U.S. 806 (1975), after Applicant filed a motion to proceed *pro se*. (R. 1198-99): The circuit court found Applicant competent to stand trial and competent to represent himself pursuant to *State*

by person represented by counsel); *State v. Devore*, 416 S.C. 115, 120, 784 S.E.2d 690, 692 (Ct. App. 2016) (“[If] the *pro se* letter is a substantive document filed while [the defendant] was represented by counsel, such that his representation is partially *pro se* and partially by counsel, it would be improper and could not be accepted. Rather, it would be considered a nullity.”); *cf. Whelchel v. Bazzle*, 489 F. Supp. 2d 523, 531-32 (D.S.C. 2006) (discussing South Carolina's valid ban on “hybrid” representation and holding PCR court properly ignored represented petitioner's *pro se* amendments to his PCR application).

² Counsel McMahan was relieved at the start of the hearing. Applicant appeared *pro se* for the remainder of the motions hearing.

v. *Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014). The circuit court relieved Ms. Mauldin as counsel and ordered her to serve as standby counsel for Applicant.

On February 21, 2017, the first day of trial, the court convened a pretrial *Blair*³ hearing, and Applicant was found competent. Applicant then proceeded to a jury trial before the Honorable R. Knox McMahon. Applicant proceeded *pro se* with Deputy Public Defender Mauldin appearing as standby counsel. Deputy Solicitor D. Shawn Graham and Assistant Solicitor Shannon A. Davis prosecuted the case. On March 1, 2017, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to fifty years' imprisonment.

The Court of Appeals subsequently affirmed Applicant's conviction and sentence in a published opinion filed May 20, 2020.⁴ *State v. Walker*, 430 S.C. 411, 844 S.E.2d 405 (Ct. App. 2020). The case was remitted back to the circuit court on June 30, 2020.⁵

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. "Applicant was entitled to 'Immunity from Prosecution' under the 'Protection of Persons and Property Act', — (S.C. Code Ann. 16-11-440(A) and S.C. Code Ann. 16-11-440(C)."
2. "Applicant was entitled to 'Directed – Verdict' under 'Rule 50, Motion for a Directed Verdict and for Judgement[*sic*] notwithstanding the verdict.'"
3. "Applicant was entitled to 'Effective Assistance of Counsel' by ('stand-by counsel' Sarah Hahn (Mauldin) — Public-Defender to gain proper collection and/enseekment[*sic*] of evidence (prior

³ *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

⁴ On June 8, 2020, Applicant filed a *pro se* extension of time to file the petition for rehearing. By letter dated June 16, 2020, the Court informed Applicant it would not take any action on the *pro se* filing because he is represented by counsel.

⁵ On August 10, 2020, Applicant filed a *pro se* motion to relieve counsel and second extension of time to file the petition for rehearing. By letter dated August 20, 2020, the Court informed Applicant it no longer had jurisdiction over his case because the remittitur had been issued.

to evidence being lost/terminated by —) (holder), And — Investigation/SI — when/while Counsel for Applicant.”

4. “Applicant was convicted and sentenced under — S.C. Code Ann. 16-3-10/murder — And, Insignificant of Evidence to convict (and sentence), occurred[sic]/shown.”
5. Applicant was entitled to be ‘Competent to Stand-trial’ Standard/s/ during trial.”
6. “Applicant was entitled to ‘Effective-Assistance of Counsel’ by (Appellate Counsel) David Alexander, SCCID — Appellate Division, to raise all significant and — obvious claim/s/ on ‘Direct-Appeal’ under Appellate-Duties/Duty to raise all significant/obvious claim/s/.”
7. “Applicant was convicted/sentenced under — S.C. Code Ann. 16-3-10/murder — And, no evidence of shown/brought evidence of malice (by applicant), and/or aforethought of malice (by applicant) E.g – Failure of showing attent[sic] to commit a crime, Especially murder and the aforethought of malice and/or malice in general.”
8. “Applicant was entitled to ‘fair-trial’ under the Safeguard-Standard/s/. Etc.”

On June 23, 2021, Applicant filed an amended application, raising the following additional grounds for relief (excerpted verbatim).⁶

9. “The jury and the court did not have sufficient – evidence to convict or/and – sentence. (Note: non collateral-attack on insufficient)(evidence to convict/sentence).”
10. “Applicant was entitled to only the usage of evidence or/and testimony used within (at) the Ducan[sic]/Pretrial Hearing pursuant to case-law/s/ and/or pursuant to S.C. Code Ann. §§ 16-11-440(A); 16-11-440(C).”
11. “Applicant was entitled to only relevant fact/s/ or/and Ground/s/ — relevant to immunity/from prosecution at the Ducan[sic]/Pretrial Hearing (—whereof, Eg – Heard irrelevant testimony, facts or grounds) at the Ducan[sic]/Pre-trial Hearing/pursuant to Supra).”
12. “Applicant was entitled to Sufficient — evidence/s/ – to convict, i.e. — Insufficient-Evidence to convict. The State failed to produce adequate-evidence, to convict, and failed to produce evidence of shown intent, motive, etc.”

⁶ Because the amended PCR application is stamped as received by the Perry Correctional Institution on June 16, 2021, the State included these allegations in its return because PCR counsel had not yet been appointed.

13. "Applicant was entitled to effective — assistance of appellate-counsel, David Alexander — to file an[sic] 'motion/petition for rehearing, at denial of direct appeal, and must of[sic] argued the Court overlooked and misapprehended his — argument.'"
14. "Applicant's indictment (document) was — un-constitutional, due to trial court lack[sic] subject-matter jurisdiction when the indictment alleged two different means of death outside legislative."

III. APPLICANT'S MOTIONS BEFORE THIS COURT⁷

A. Motion to Relieve Counsel, Proceed *Pro Se*, & Appoint Standby Counsel

On June 18, 2021, Applicant filed *pro se* motions requesting the Court relieve PCR counsel; allow Applicant to proceed *pro se*; and appoint standby counsel. The State had no objection to these motions; however, PCR counsel objected to appearing as standby counsel. Accordingly, this Court **GRANTS** Applicant's motions to relieve counsel and proceed *pro se* and **DENIES** Applicant's motion requesting appointment of standby counsel.

B. Motion to Amend PCR Application

Seeking to clarify the allegations raised in his original application, Applicant requested leave to amend his application by motion filed June 18, 2021. Applicant filed a second motion to amend his PCR application on the day of the hearing.⁸ The State had no objection. Accordingly, this Court **GRANTS** Applicant's motion to amend his PCR application.

⁷ At the hearing, Applicant served the State with a motion for expert and investigative services; a motion for summary judgment; a second motion for leave to file an amended PCR application; a second amended application for PCR; a reply to the State's return; and memorandum. Additionally, Applicant submitted to this Court a proposed order granting his request to subpoena Gmail and Facebook for messages between himself and the victim. This Court heard arguments on Applicant's motion for expert and investigative services; second motion for leave to file an amended PCR application; and request to subpoena Gmail and Facebook messages. However, this Court did not hear arguments or rule on the remaining motions and pleadings because they were not served on the State prior to the hearing.

⁸ This motion was clock-stamped by the Clerk of Court on December 30, 2021.

C. Motions to Obtain Trial Exhibits

On June 18, 2021, Applicant also filed a motion requesting “all subpoenas, motions, and exhibits” from his trial. Because Applicant could not articulate which exhibits he is seeking to obtain and why, this Court **DENIES** this motion **WITHOUT PREJUDICE**.

D. Motions for Discovery

On June 18, 2021, Applicant filed numerous discovery motions, including a general motion to obtain affidavits, depositions, interrogatories, etc., but did not articulate any specific person’s testimony or document he was seeking. Applicant also filed a motion for funding for a private investigator and a separate motion for expert and investigative services.⁹ Additionally, at the start of the hearing, Applicant presented this Court with a proposed order granting Applicant permission to subpoena Gmail and Facebook for messages between himself and the victim.

Unlike most civil litigants, a party in a noncapital PCR is not entitled to discovery as a matter of ordinary course. Specifically, S.C. Code Ann. §17-27-150(A) provides the following:

A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the process of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise.

Aside from his request to subpoena Gmail and Facebook messages, Applicant failed to articulate any particular person or document he was seeking to obtain through discovery. Instead, Applicant’s grounds for discovery involve nothing more than speculation about what he might find and where he might find it. Such speculation cannot support a finding of good cause. *See, e.g., Strickler v. Greene*, 527 U.S. 263, 286 (1999) (“Mere speculation that some exculpatory material

⁹ Applicant served the State with the motion for expert funding and investigative services on the day of the hearing. This motion was clock-stamped by the Clerk of Court on December 30, 2021.

may have been withheld is unlikely to establish good cause for a discovery request on collateral review.”). This Court finds Applicant is not entitled to invoke the discovery process in this case because he has not made the requisite showing of good cause. Accordingly, this Court **DENIES** Applicant’s motion for discovery; motion for funding for a private investigator; and motion for expert and investigative services.

Additionally, at the hearing, Applicant requested to subpoena Gmail and Facebook for messages between himself and the Victim that he submitted to this Court via proposed order. As discussed further below, Applicant’s request to subpoena these messages relates to his allegations regarding the *Duncan* hearing. At the hearing, this Court granted the State’s motion to dismiss these allegations as non-cognizable, direct appeal issues. Therefore, Applicant failed to show good cause. Accordingly, this Court **DENIES** Applicant’s request to subpoena Gmail and Facebook messages between himself and the victim.

IV. THE STATE’S MOTIONS BEFORE THIS COURT

A. Motion to Dismiss Direct Appeal Issues¹⁰

This Court finds Applicant’s allegations that he was entitled to immunity from prosecution under the Protection of Persons and Property Act¹¹ (PPP Act) and claims challenging the relevancy and sufficiency of the evidence against him must be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act¹² (PCR Act). An applicant may seek PCR based 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;

¹⁰ Claims 1, 2, 4, 7, 9, 10, 11, and 12

¹¹ S.C. Code Ann. §§ 16-11-410 to -450.

¹² S.C. Code Ann. §§ 17-27-10 to -160.

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). Post-conviction relief “is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.*” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000).

Claims by an applicant that he is actually innocent, is not guilty, or that the evidence against him was insufficient to prove guilt are not cognizable grounds for post-conviction relief. S.C. Code Ann. § 17-27-20(A)(6) (providing that “this section *shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*” (emphasis added); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims). Because an application for post-conviction relief is not a substitute for a direct appeal, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment of the United States Constitution. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR).

Free-standing claims of trial court error are not cognizable claims for post-conviction relief, and this prohibition has long been recognized. *See id.*; e.g., *Simmons*, 264 S.C. at 423, 215 S.E.2d at 885 (“Errors in petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“The *Simmons* rule gives effect to the Legislature’s clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel).

Applicant’s allegation that the trial court erroneously denied his motion under the PPP Act is a direct appeal issue that is not a cognizable claim for post-conviction relief. *See, e.g., Drayton*, 312 S.C. at 8, 430 S.E.2d at 520 (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *Wolfe v. State*, 326 S.C. 158, 162 n.2, 485 S.E.2d 367, 369 n.2 (1997) (noting that “trial court error does not constitute an appropriate basis for a finding of ineffective assistance of counsel”).

Accordingly, this Court **GRANTS** the State’s motion to dismiss Applicant’s claims 1, 2, 4, 7, 9, 10, 11, and 12, alleging he was entitled to immunity from prosecution under the PPP Act and claims challenging the relevancy and sufficiency of the evidence against him.

B. Motion to Dismiss Claims of Ineffective Assistance of Standby Counsel¹³

This Court further finds Applicant’s allegations of ineffective assistance of standby counsel must be summarily dismissed for failure to state a *prima facie* claim of ineffective assistance of

¹³ Claim 3

counsel. The Sixth Amendment provides both the right to counsel and the right to self-representation. *Faretta*, 422 U.S. at 807. Those rights are mutually exclusive—“assertion of one constitutes a de facto waiver of the other.” *United States v. Singleton*, 107 F.3d 1091, 1096 (4th Cir. 1997). Here, Applicant waived his Sixth Amendment right to counsel and chose to represent himself during his criminal proceedings. *See Faretta*, 422 U.S. at 836. When a defendant does so, the trial court—as it did for Applicant—may appoint standby counsel to assist the *pro se* defendant. *Id.*

However, “[t]he Sixth Amendment does not *require* a court to grant advisory counsel to a criminal defendant who chooses to exercise his right to self-representation by proceeding *pro se*.” *U.S. v. Lawrence*, 161 F.3d 250, 253 (4th Cir. 1998) (emphasis added); *see United States v. Windsor*, 981 F.2d 943, 947 (7th Cir. 1992) (“This court knows of no constitutional right to effective assistance of standby counsel.”); *see also McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (rejecting a Sixth Amendment guaranteed right to “‘hybrid’ representation”); *accord. State v. Stuckey*, 333 S.C. 56, 57–58, 508 S.E.2d 564, 564 (1998) (noting that there is no right to “hybrid representation” under either the United States or South Carolina Constitutions).

Without a constitutional right to standby counsel, a defendant generally cannot prove standby counsel was ineffective. *See United States v. Morrison*, 153 F.3d 34, 55 (2d Cir. 1998) (noting that “without a constitutional right to standby counsel, a defendant is not entitled to relief for ineffectiveness of standby counsel”) (citing *United States v. Schmidt*, 105 F.3d 82, 90 (2d Cir. 1997)); *United States v. Mikolajczyk*, 137 F.3d 237, 246 (5th Cir. 1998) (noting that “a defendant’s statutory right to choose *pro se* or attorney representation is ‘disjunctive’ [—] a defendant has a right to one or the other, but not a combination of the two” and because the *pro se* defendant “had no right to standby counsel, it seems unlikely that standby counsel’s failure to assist could be a

violation of his Sixth Amendment rights”); *Windsor*, 981 F.2d at 947 (rejecting the *pro se* defendant’s assertion that standby counsel was ineffective because a “defendant who has elected to represent himself ‘cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel.’”) (quoting *Faretta*, 422 U.S. at 834 n.46).

“Therefore, the inadequacy of standby counsel’s performance, without the defendant’s relinquishment of his *Faretta* right, cannot give rise to an ineffective assistance of counsel claim under the Sixth Amendment.” *Simpson v. Battaglia*, 458 F.3d 585, 597 (7th Cir. 2006); see *Singleton*, 107 F.3d at 1101 (finding that *Faretta*, by implication, “indicates a waiver of the right to ‘effective assistance’ by assertion of the right to self-representation”); cf. *Wainwright v. Torna*, 455 U.S. 586, 587–88 (1982) (citations omitted) (holding no deprivation of effective assistance was possible where there was no constitutional right to counsel); *Coleman v. Thompson*, 501 U.S. 722, 752 (1991) (citations omitted) (Because “[t]here is no constitutional right to an attorney in state post-conviction proceedings[,] . . . a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings.”).

Here, Applicant contends standby counsel was ineffective because she violated her purported “duty to collect/obtain all evidence exculpatory (to applicant) when/while preparing for trial and/or investigating case/charge(s)” and “to ensure the exculpatory evidence was not disregarded/deleted (by holder).” As discussed above, this allegation is facially invalid and offers him no grounds for relief. See *United States v. Roof*, 225 F. Supp. 3d 394, 397 (D.S.C. 2016) (“A *pro se* defendant has no right to standby counsel, and, consequently, no right to have standby counsel perform any particular function on his behalf.”) (citing *Singleton*, 107 F.3d at 1100–01).

Applicant cannot insist on self-representation at his trial and then later place the blame of his conviction on the attorney whose representation he refused. Accordingly, this Court GRANTS the State's motion to dismiss Applicant's allegations of ineffective assistance of standby counsel.

C. Motion to Dismiss Claim of Incompetency and Claim Regarding Safeguard Standards¹⁴

The State further moved to summarily dismiss Applicant's claims he was incompetent to stand trial and claim he did not receive a fair trial under the "safeguard standards."

As to claim 5, the State noted that Judge McMahon heard extensive testimony at trial regarding Applicant's mental health and competency, and found Applicant was competent. (R. 5-10; 210-46; 835-48; 854-92; 1175-85). Judge McMahon additionally relied on a pre-trial finding of competence by Judge Griffith. (R. 12-13). Specifically, Judge McMahon referenced our Supreme Court's opinion in *State v. Barnes*, 407 S.C. 27, 453 S.E.2d 545 (2014), wherein he was reversed for applying a higher standard for competence for a criminal defendant to represent himself than the standard in *Faretta v. California*, 422 U.S. 806 (1975). (R. 869-871; 891-92). Thus, the State argued this claim was a direct appeal issue that was additionally barred by the doctrine of *res judicata*.

As to claim 8, that Applicant was entitled to a fair trial under the safeguard standards, Applicant explained that this allegation is cumulative to claim 5, where he alleges he was incompetent to stand trial. Applicant explained that the "safeguard stands" are "the law of everything dealing with a fair trial." He further claimed that his standby counsel allowed evidence to spoil. In response, the State argued that, again the competency issue was a direct appeal issue, and that ineffective assistance of standby counsel is non-cognizable because there is no constitutional right to standby counsel.

¹⁴ Claims 5 and 8

Accordingly, the court grants the state's motion to dismiss claim 5 as being a direct appeal issue and claim 8 as being non-cognizable.

D. Motion to Dismiss Claim of Lack of Subject Matter Jurisdiction¹⁵

This Court finds Applicant's allegation that defects in his indictments deprived the trial court of subject matter jurisdiction must be summarily dismissed. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Defects in an indictment do not affect subject matter jurisdiction—which is "the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *Id.* at 100, 610 S.E.2d at 498 (citing *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000)). "Circuit courts obviously have subject matter jurisdiction to try criminal matters." *Id.* at 101, 610 S.E.2d at 499; *see also* S.C. Const. art. V, § 11 ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases . . ."). The regularity of proceedings in a court of general jurisdiction "will be assumed" absent evidence to the contrary. *Pringle v. State*, 287 S.C. 409, 410–11, 339 S.E.2d 127, 128 (1986). Thus, Applicant must present evidence his case is of some class over which the circuit court does not have the authority to preside.

An indictment, on the other hand, is a mere notice document, and the indictment in this case was certainly sufficient to give Applicant notice of the charges against him. Applicant's indictment is facially valid because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. *Costello v. United States*, 350 U.S. 359, 363 (1956); S.C. Code Ann. §§ 17-19-20, -30. It was true billed and signed by the foreman of the grand jury.

¹⁵ Claim 14

Moreover, any “challenge to the indictment on the ground of insufficiency must be made before the jury is sworn,” *Gentry*, 363 S.C. at 102, 610 S.E.2d at 500 (citing S.C. Code Ann. § 17-19-90).

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel—basically alleging his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Because Applicant represented himself at trial and he failed to raise any issue pertaining to the allegedly defective indictment before the jury was sworn, this Court **GRANTS** the State’s motion to dismiss this allegation.

E. Motion for Competency Evaluation

As to Applicant’s claims he was incompetent to stand trial,¹⁶ Applicant explained that two doctors attended his trial to ensure he was competent. Specifically, he referred to Dr. Maddox stating that, although he was competent at the time, he could lose competency at any time. In response, the State moved for a competency evaluation because Applicant is representing himself in the instant PCR action. Applicant stated he was now competent and that his competency issue is limited to his trial in 2017. Further, applicant failed to present any evidence of his incompetence before or during his trial in 2017. Accordingly, the court denies Applicant’s claim to incompetency in 2017 and further denies the state’s motion for a competency evaluation for the reason that his competency was addressed in the 2017 case. Therefore, there is no need for another competency evaluation.

¹⁶ Claims 5 and 8

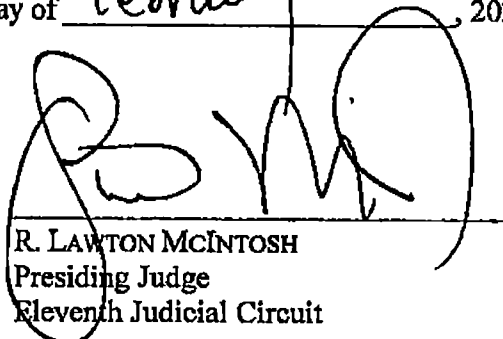
V. CONCLUSION

Based on all the foregoing, this Court finds an evidentiary hearing shall convene on Applicant's of ineffective assistance of appellate counsel.¹⁷

IT IS THEREFORE ORDERED:

1. That Applicant's motions to relieve counsel and proceed *pro se* are **GRANTED** Applicant's motion requesting appointment of standby counsel is **DENIED**;
2. That Applicant's motion to amend his PCR application is **GRANTED**;
3. That Applicant's request to obtain all exhibits from trial is **DENIED WITHOUT PREJUDICE**;
4. That Applicant's motions for discovery and motion for funding for a private investigator are **DENIED**;
5. That Applicant's request to subpoena Gmail and Facebook messages between himself and the victim is **DENIED**;
6. That the State's motion to dismiss Applicant's claims 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 14 are **GRANTED**;
7. That the State's motion for a competency evaluation is **DENIED**; and
8. That an evidentiary hearing be convened solely on the matter of ineffective assistance of appellate counsel.

AND IT IS SO ORDERED this 7 day of February, 2022.


R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

¹⁷ Claims 6 and 13

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JUN 28 2022

S.C. SUPREME COURT

2021-CP-32-1726

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COUNTY OF LEXINGTON)

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ORDER DENYING APPLICANT'S)
MOTION TO ALTER, AMEND, AND)
RECONSIDER PURSUANT TO)
RULE 59(E), SCRCF)

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Respondent.)

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2022 JUN -6 AM 10: 05

FILED

I. INTRODUCTION

This matter comes before this Court by way of an application for post-conviction relief (PCR) action commenced by David Richard Walker, Jr. (Applicant) on May 21, 2021. Ashley A. McMahan, Esquire, was appointed to represent him. On June 18, 2021, Applicant filed the following *pro se* motions:

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A hearing into the matter convened before the undersigned on December 14, 2021, at the

Lexington County Judicial Center. Assistant Attorney General Lillian L. Meadows appeared on behalf of the State. Applicant was present and initially represented by Ms. McMahan; however, this Court relieved Ms. McMahan at the start of the hearing and Applicant appeared *pro se* for the remainder of the hearing. By Order filed February 17, 2022, and served on Applicant February 18, 2022, this Court ordered the following:

1. That Applicant's motions to relieve counsel and proceed *pro se* are **GRANTED**;
2. That Applicant's motion requesting appointment of standby counsel is **DENIED**;
3. That Applicant's motion to amend his PCR application is **GRANTED**;
4. That Applicant's request to obtain all exhibits from trial is **DENIED WITHOUT PREJUDICE**;
5. That Applicant's motions for discovery and motion for funding for a private investigator are **DENIED**;
6. That Applicant's request to subpoena Gmail and Facebook messages between himself and the victim is **DENIED**;
7. That the State's motion to dismiss Applicant's claims 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, and 14 are **GRANTED**;
8. That the State's motion for a competency evaluation is **DENIED**; and
9. That an evidentiary hearing be convened solely on the matter of ineffective assistance of appellate counsel.

II. MOTION TO ALTER, AMEND, AND RECONSIDER

~~On February 23, 2022, Applicant filed a document titled "Objection(s) to the Proposed Order by the State, which this Court interprets as a motion to alter, amend, and reconsider pursuant to Rule 59(e), SCRCP. Specifically, Applicant contends this Court failed to make "specific findings of fact, and state expressly its conclusions of law, relating to each issue presented" pursuant to S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP.~~

This Court disagrees, and finds its Order adequately and thoroughly addresses each motion based on the arguments set forth by both parties. However, this Court would note that S.C. Code Ann. § 17-27-80 specifically provides that "[t]he court shall make specific findings of fact, and

state expressly its conclusions of law, relating to each issue presented. This order is a *final judgment*." The findings of fact and conclusions of law provision does not apply to any and all rulings and orders issued in a PCR action. Rather, it applies to the final order that ends the case to ensure each properly raised issue is preserved to allow our appellate courts to conduct meaningful appellate review of these issues.

Likewise, pursuant to Rule 52(a), SCRPC, "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion . . ." *See Kinghorn as Tr. for the Mildred Ann Kinghorn Tr. dated 28 Apr. 2004 v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748, 750 (Ct. App. 2019) ("[P]ursuant to Rule 52(a), SCRPC, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal."). Because this Court's Order adequately addressed the *motions* made by both Applicant and the State, Applicant's motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRPC, is **DENIED** as to the objections set forth in pages four through eight of Applicant's February 23, 2022, filing regarding this Court's purported failure to make sufficient findings of fact and conclusions of law. RLM

This Court further adequately addressed the following issues set forth on pages two and three of Applicant's February 23, 2022, filing (excerpted verbatim):

1. "The Honorable McIntosh failed to precisely and specifically his[*sic*] conclusions[s] as to he felt the issue(s) was/is an[*sic*] 'direct-appeal' issue, thereof set law(s) and conclusions(s) on the fact(s) or/and ground(s) litigated on the 2nd AMENDED-PCR APPLICATION. (Per Se)."

This Order adequately sets forth findings of fact and conclusions of law pertaining to the summary dismissal of Applicant's claims 1, 2, 4, 7, 9, 10, 11, and 12, as direct appeal issues that

are non-cognizable under the Uniform Post-Conviction Procedure Act (Act). Each of these claims as set forth by Applicant pertain to trial court error or insufficient evidence. The Act and our caselaw expressly prohibit the litigation of such issues through post-conviction relief. *See, e.g.,* S.C. Code Ann. § 17-27-20(A)(6) (providing that “this section *shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*” (emphasis added); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims). There are no further findings of fact and conclusions of law for this Court to make. Accordingly, Applicant’s motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRPC, is **DENIED** as to this claim.

2. “The Honorable McIntosh failed to state his precise and specific conclusion(s)[sic] for denying applicant’s Motion/-Order to Good or/and Facebook Record(s). The State’s Proposed Order states this issue--but your honor ‘never’ gave any fact or conclusion[sic] for denial(s), per se.”

This Court finds the Order adequately sets forth findings of fact and conclusions of law pertaining to the denial of Applicant’s request to subpoena Gmail and Facebook for messages between himself and the Victim. Applicant’s stated purpose for issuing these subpoenas is to show that Victim was purportedly threatening him such that he was entitled to immunity from prosecution under the Protection of Persons and Property Act¹ (PPP Act). Because all claims pertaining to the denial of Applicant’s request for immunity pursuant to the PPP Act were summarily dismissed, Applicant failed to show good cause to obtain these messages pursuant to S.C. Code Ann. §17-27-150(A). Again, there are no further findings of fact and conclusions of law

¹ S.C. Code Ann. §§ 16-11-410 to -450.

for this Court to make. Accordingly, Applicant's motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRPC, is DENIED as to this claim.

3. "As Aforesaid, --the '3rd Amended-Application' superseded the '2nd Amended-Application', per se, and thereof-the dismissal according to the grounds set forth in the 2nd AMENDED is not proper and lawful. So Hereof, The Applicant hereby objects to the order prepared by State --in its' entirety (per se)."

As to Applicant's claim regarding the third amended application superseding the second amended application, this Court heard arguments and issued rulings only on the allegations set forth in the initial application filed by Applicant on May 21, 2021, and the amended application filed June 23, 2021. Although Applicant served the State at the start of the hearing with a motion for expert and investigative services; a motion for summary judgment; a second motion for leave to file an amended PCR application; a second amended application for PCR; a reply to the State's return; and memorandum, this Court expressly declined to hear arguments or issue rulings on these motions and pleadings because they were not served on the State prior to the hearing. Nonetheless, Applicant cannot re-raise claims summarily dismissed by this Court by way of any subsequent amended application. Accordingly, Applicant's motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRPC, is DENIED as to this claim.

4. "The states'[sic] Order (prepared) fails to address the 'reply' to the State's 'Motion(s) for Summary Judgment(s)' And the court failed to address or/and knowledge[sic] the 'reply' that was handed up to the Honorable McIntosh within the Motion-Hearing (Herein Hearing), on December 14, 2021 -- to ensure the court knowledged[sic] and ruled on the 'reply' allowed by the Civil Procedure Rules in South Carolina."

As to Applicant's fourth claim pertaining to this Court's failure to acknowledge his reply to the State's motion for summary judgment, it is unclear what Applicant contends this Court failed to rule on. As aforementioned, this Court expressly declined to hear arguments or issue rulings on

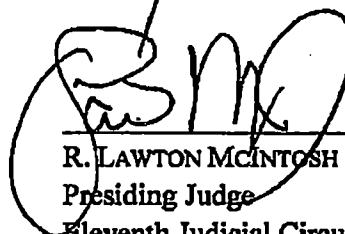
pleadings that were served on the State at the hearing. However, this Court heard arguments from both parties regarding the State's partial motion for summary dismissal and issued its ruling accordingly as set forth in the Order. Accordingly, Applicant's motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRCP, is **DENIED** as to this claim.

Finally, as to Applicant's claim on page nine pertaining to a third amended application, this Court granted Applicant's motion to amend his PCR application. This Court's order to convene an evidentiary hearing solely on the matter of ineffective assistance of appellate counsel is based exclusively on the allegations that were before this Court—i.e., those set forth in the in the initial application filed May 21, 2021, and the amended application filed June 23, 2021. Although Applicant cannot re-raise claims summarily dismissed by this Court by way of any subsequent amended application, any *new* allegations Applicant may raise in a subsequent amended application will be addressed in a future hearing as Applicant appears to request.

III. CONCLUSION

This Court has reviewed its findings set forth in its Order filed February 17, 2022, and finds Applicant failed to raise any issues not previously ruled upon or any claim requiring reconsideration, alteration, or amendment pursuant to Rule 59, SCRCP. **IT IS THEREFORE ORDERED** that Applicant's motion to alter, amend, and reconsider pursuant to Rule 59(e), SCRCP, is **DENIED**.

AND IT IS SO ORDERED this 26 day of May, 2022.



R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina