THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Post Conviction Relief

Robert J. Bonds, Circuit Court Judge

Lower Court Case No.: 2018-CP-18-00337

Tammy G. Harris #371847,.................................... Petitioner

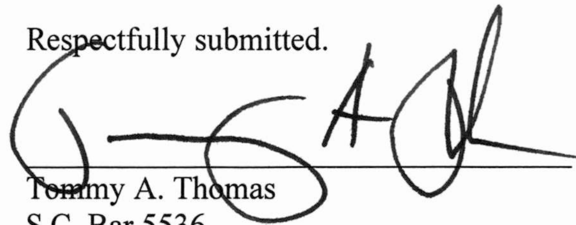
vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Appellant, Tammy G. Harris, appeals the Order Of Dismissal signed by the Honorable Robert J. Bonds on July 29, 2022 and filed on August 1, 2022. Appellant received written notice of entry of this order on August 5, 2022.

Respectfully submitted.



Tommy A. Thomas
S.C. Bar 5536
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Tammy G. Harris, SCDC #371847, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-18-00337 **ORDER OF DISMISSAL**

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This matter comes before this Court by way of post-conviction relief (PCR) action commenced by Tammy G. Harris on February 21, 2018. The State requested an evidentiary hearing through its return filed on June 1, 2018. An evidentiary hearing into the matter convened before the undersigned on May 22, 2022, at the Orangeburg County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on her own behalf at the hearing. Plea counsel, David F. Aylor, Esquire, also testified virtually via Webex.

In addition to the pleadings in this action, this Court had before it a copy of the Dorchester County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcripts from Applicant's underlying general sessions matter including: a pre-trial motions hearing transcript, the plea transcript, and the sentencing transcript; and the records regarding this post-conviction relief action.

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

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. The Dorchester County Grand Jury indicted Applicant for felony driving under the influence with death resulting (2015-GS-18-00617). On March 14, 2017, Applicant pleaded guilty as indicted before the Honorable Diane Schafer Goodstein without recommendation or negotiation. David F. Aylor, Esquire, represented Applicant. Warren Phillip Giese, Esquire, of the First Circuit Solicitor's Office prosecuted the case. Judge Goodstein sentenced Applicant to twelve years' imprisonment for the felony driving under the influence – death results charge. Applicant did not appeal her conviction or sentence.

On February 21, 2018, Applicant filed an application for post-conviction relief (2018-CP-18-00337). Through its return filed June 1, 2018, the State requested an evidentiary hearing. An evidentiary hearing into the matter convened on May 22, 2022. This order follows.

II. Facts Giving Rise to the Plea

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

> This occurred April 22, 2015, on Miles Jamison Road. That's in the Summerville area of Dorchester County. On that night, Trooper Seastrunk and Sergeant Pearson, who are to the Court's left back here, they responded out there in response to a two-vehicle collision. When they arrived on-scene, one of the drivers had already been transported to the hospital due to her injuries. That driver was later identified as Cindy Wolf who is the victim in this case. Ms. Harris was the driver of the other vehicle and was on-scene when they arrived. Trooper Seastrunk as well as Sergeant Pearson had suspected maybe she had some alcohol that night so they performed field sobriety tests on her – or she performed field sobriety tests for them.
>
> Her performance on that resulted in them charging her and arresting her for driving under the influence. She's then transported with Trooper Seastrunk to the breathalyzer center, which she submits to a breathalyzer test and the results of that test were a .14, obviously above the .08 legal limit here in South Carolina. She then goes to the hospital where she consents to a blood draw and blood draw of those results were .146 blood-alcohol level. The MAIT team, which is an investigative team with the highway patrol, basically they reconstruct the accidents, they do an

investigation. One of the troopers talks to Ms. Harrison. She admits to drinking that night. And as a result of their investigation, they determined that Ms. Harris would be the at-fault drive. She came way over into Ms. Wolf's lane. I failed to mention in the mist [*sic*] of all that, Ms. Wolf did succumb to her injuries and passed away very soon after the accident thus, you know, making this a felony DUI with death.

(Plea Tr. 21-22).

III. Issues Before This Court

In her original application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on:

1. Ineffective assistance of counsel and
2. Involuntary guilty plea.

Pursuant to Rule 71.1, SCRCP, on February 24, 2020, Applicant, through PCR counsel, filed an amendment to her application to include the following allegations:

1. "Applicant and her family requested that Trial Counsel file a Direct Appeal. Trial Counsel told the family that she was not eligible for a Direct Appeal and did not file an appeal on her behalf. The Applicant is informed and believes that she is entitled to a belated direct appeal" and
2. "That Trial Counsel was ineffective for his failure to object to and/or authenticate a copy of the VHS recording containing the advisement at her Miranda rights. The Applicant is informed and believes that the original VHS was destroyed. The DVD copy was produced at the last minute".

Pursuant to Rule 71.1, SCRCP, on August 27, 2021, Applicant, through PCR counsel, filed a second amendment to her application to include the following allegations:

1. "Trial Counsel was ineffective for his failure to adequately advise the Applicant regarding her plea, creating a plea that was not freely and voluntarily given";
2. "Trial Counsel was ineffective for his failure to adequately advise the Applicant and pursue an accident reconstruction";
3. "Trial Counsel was ineffective for his failure to adequately communicate with the Applicant during the course of representation"; and
4. "Trial Counsel was ineffective for his failure to adequately investigate the facts of Applicant's case".

To the extent the allegations set forth in Applicant's original application and amended applications can be construed as separate grounds for relief from the grounds stated at the PCR

hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. Testimony Presented at Evidentiary Hearing

Applicant's Testimony

At the evidentiary hearing, Applicant testified she pleaded guilty to felony driving under the influence in 2017 and was sentenced to twelve years' imprisonment as a result of her plea. Applicant testified that prior to retaining attorney David Aylor (Counsel) to represent her, she had another attorney; Applicant stated she hired Counsel while she was out on bond, approximately a year after her arrest.

Regarding her communications with Counsel during his representation of her, Applicant testified she discussed with Counsel and informed Counsel she wanted to proceed to trial; Applicant opined she did not believe Counsel adequately put her case together in preparation for trial and submitted she never wished to plead guilty. Applicant testified she met with Counsel three times between August 2016 and her plea in March 2017. Applicant stated her first meeting with Counsel lasted approximately 45 minutes; her second meeting with Counsel lasted approximately 45 minutes to an hour; and her third meeting with Counsel lasted 20 minutes. Applicant stated that during one of her meetings with Counsel they discussed taking her case to trial and during another meeting with Counsel they discussed having an accident reconstruction of the scene of the incident completed[1].

Applicant testified Counsel provided her with the discovery materials in her case but did not review discovery with her. Applicant also alleged Counsel did not discuss any possible

[1] Though Applicant testified Counsel and her discussed having an accident reconstruction done, she further asserted she had not been provided paperwork or reports to confirm Counsel had had the reconstruction completed.

defenses with her. Applicant testified most of her meetings with Counsel were to discuss money (payment for Counsel's representation) – adding, payments made to Counsel were made with the belief she would proceed to a jury trial. Applicant testified she also communicated with Counsel via telephone a few times. Specifically, Applicant testified that as her trial date approached, Counsel's paralegal called and informed her they were going to plead guilty. Following this phone call from Counsel's paralegal, Applicant alleged she attempted to set up a meeting with Counsel and testified she was shocked to learn they were going to plead.

Applicant tesified that prior to pleading guilty, she spoke with Counsel who told her she would receive a single digit sentence. Regarding her motivation for pleading guilty, Applicant testified that during her plea she was afraid and wanted to avoid a ten year sentence. When asked whether Counsel told her what to say during her plea, Applicant testified Counsel did not tell her what to say; rather, Applicant submitted that the testimony she gave during her plea was what she believed was the right thing to say.

When questioned about an affidavit signed by her on March 13, 2017, Applicant testified she remembered signing the document[2]. However, Applicant asserted Counsel did not review the Affidavit with her and she signed the Affidavit without understanding what she was signing. Applicant submitted to this Court she did not read the Affidavit prior to signing because she did not have her glasses with her when it was presented to her. When asked whether she reviewed the Affidavit or read it at anytime prior to her plea, Applicant testified she did not. Applicant further

[2] In summation, the "Affidavit of Tammy Harris" (Exhibit #1), signed by Applicant and notarized by a notary public for the State of South Carolina, includes the following: acknowledges Applicant understands she has a right to a jury trial, acknowledges Counsel thoroughly explained to Applicant any defense strategies related to her case, and acknowledges Counsel reviewed all evidence with Applicant. The Affidavit further states it is Applicant's wish to enter a guilty plea and acknowledges Applicant is aware the plea judge can impose a sentence consistent with the statutory punishment for felony driving under the influence with death. Moreover, the Affidavit states Applicant is confident and satisfied that all her questions and concerns have been addressed by Counsel. (Exhibit #1 – "Affidavit of Tammy Harris").

testified that on the day of her plea she did not speak to Counsel and Counsel had acted as though he was upset with her but did not tell Applicant why. Applicant opined she felt her plea was not entered voluntarily, that she was scared, and had no confidence in Counsel.

When questioned about her pre-trial motions hearing on February 13, 2017, occurring approximately one month prior to her plea, Applicant stated Counsel made a motion to supress the video recording of her *Miranda*[3] rights being read to her at the time of her arrest. Specifically, Applicant testified the video recording containing her *Miranda* warnings had skipped and the full reading of her *Miranda* warnings was not captured on video. Applicant testified she discussed this issue with Counsel prior to her plea and had sent an e-mail regarding the law on *Miranda* to Counsel. Applicant testified a complete video containing her *Miranda* warnings was discovered five minutes before the motions hearing. Applicant testified that though the original VHS containing her *Miranda* warnings had been destroyed, a DVD copy containing the full reading of her rights had been found and presented to the court.

Applicant testified she was present at the motions hearing, but was confused because she had not watched the video with Counsel prior to the hearing. Applicant testified she did not believe Counsel had made sufficient arguments at the motions hearing, testified the video was not viewed by the court during the motions hearing, and testified she did not believe Judge Goodstein had ruled on the motion. Applicant testified she pleaded guilty a month after the motions hearing. During the time between the motions hearing and the plea hearing, Applicant stated she text Counsel repeatedly. Applicant testified Counsel was mostly unresponsive and unprofessional in those conversations.

Regarding Applicant's allegation Counsel failed to retain an expert to complete an accident

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

reconstuction, Applicant testified Counsel never provided her with an accident reconstruction report. Applicant opined she felt Counsel did not have the accident reconstruction analysis done because she did not pay him for it. Applicant further testified she believed, if completed, the accident reconstruction report would have shown she was not the at fault party in this incident. Applicant testified she never visited the scene and did not believe Counsel had visited the scene.

Regarding Applicant's allegation Counsel failed to file an appeal from her guilty plea, Applicant testified her husband spoke to Counsel following the plea and Counsel told him she did not qualify for an appeal. Applicant testified she did not personally speak with Counsel following her plea and felt as though Counsel had tricked her.

On cross-examination, the State inquired whether Applicant recalled testifying at her guilty plea she had met with Counsel nine times during the course of his representation. Applicant stated that she did not recall testifying to that. Applicant further testified she did not recall telling the plea court Counsel had adequately represented her. Applicant testified she did remember the Solicitor asking her about the facts of the case and agreeing to the facts of the case at her plea hearing. Applicant stated that everything during her plea was a blur and again testified she was trying to get the best sentence possible. When asked whether she recalled testifying to the truthfulness of her answers at the plea hearing, Applicant stated she did. When asked whether statements made during Applicant's sentencing hearing were truthful[4], Applicant stated she was trying to get a lighter sentence opining – she had not lied to the plea court. When asked whether anyone had threated or coerced her into pleading, Applicant testified she felt as though she was scared into pleading guilty.

[4] During Applicant's sentencing hearing, Applicant stated: "I had been drinking before getting into the car and [victim's] death was my fault. I'm here to say that I accept full responsibility for this terrible event, for her death. I do not have any excuses for my actions because there are none." (Sentencing Hearing Tr. p. 26).

When questioned by the State about the Affidavit she signed one day prior to her plea, Applicant testified she did not meet with Counsel on March 13, 2017, and had not signed the Affidavit until the date of her plea. Applicant further asserted she believed the Affidavit had been incorrectly dated.

Regarding Applicant's allegation Counsel was ineffective for failing to have an accident reconstruction completed, the State asked Applicant why she pled guilty if she believed the accident report would absolve her of this crime. Applicant did not provide a reason; rather, Applicant stated Counsel did not provide an accident reconstruction report to her and again testified she did not believe he had one conducted. Applicant testified that if Counsel had had the accident reconstruction completed, she would have been found not guilty at trial.

On re-direct examination, Applicant again opined she was scared during her plea because she was facing a serious charge. Applicant testified she believed Counsel's behavior was instrumental in her decision to plead guilty. Applicant testified she believes Counsel could have reviewed discovery better with her and met with her more than three times. Lastly, Applicant offered she felt Counsel and her could have had a better relationship.

Plea Counsel David F. Aylor Testimony

At the evidentiary hearing, Counsel testified he has his own defense practice and practices as a prosecutor part time in Hanahan, South Carolina. Counsel testified he has a good memory of Applicant's case and has been counsel of record for hundreds of DUI cases. Regarding Applicant's case, Counsel testified Applicant originally informed him she had not had that much to drink the night of the incident. However, Counsel recalled testing of Applicant's blood showed she not only had alcohol in her system at the time of her arrest, but other illegal drugs as well.

Regarding his communications with Applicant prior to her plea, Counsel testified he

received constant calls and texts from Applicant regarding her case. Counsel testified Applicant had his personal telephone number. When asked how many times Counsel met with Applicant, Counsel stated he met with her a number of times, noting – Applicant had a lot to lose and was facing a significant amount of time. Counsel testified he had reviewed discovery with Applicant and indicated he believed Applicant understood all of their conversations. Counsel further testified he walked through the case from top to bottom with Applicant. Counsel stated that while this case had the potential to proceed to trial, it also had a high potential to be a plea. Counsel stated Applicant was very worried about the exposure of this crime. On cross-examination, Counsel testified Applicant was a demanding client that he had spent a lot of time with.

Counsel testified he believed the strongest and only argument Applicant had to this charge pertained to the missing audio on the video containing Applicant's advisement of her *Miranda* rights. Counsel testified that upon review and in response to the audio issue in the video, he filed a motion to dismiss. During cross-examination by Applicant's counsel, Counsel again testified he filed the motion because a complete copy of the video was not received during discovery. Counsel testified that at the motions hearing, the State produced a copy of the video, with full audio, containing Applicant's *Miranda* warnings. Counsel testified that upon production of the full video he believed Applicant's motion to dismiss was moot and the argument he had prepared for the motions hearing no longer made sense. On cross-examination, Counsel testified he was disappointed when the video copy showed up at the motions hearing; however, after watching the video with Judge Goodstein, Counsel testified Applicant had proceed forward to trial or a plea. Counsel testified on cross-examination he did not believe the video had been altered. However, the unique way the evidence appeared did concern counsel.

When questioned on cross-examination as to whether Counsel believed he could have

made an objection to the video based on the best-evidence rule, Counsel testified that once he viewed the video, he realized the State had reached its *Miranda* requirement. Though the testimony at the motions hearing confirmed Applicant's *Miranda* warnings were originally captured on VHS video, Counsel testified he did not challenge the introduction of the DVD upon which the warnings had been copied and found on because it was provided to him by the Solicitor's office, because Counsel had reviewed the video, and because Counsel did not believe there was a motion to made. Counsel testified that because the State can turn over supplemental discovery at any time he did not make an objection.

Regarding the plea acknowledgement form Counsel had Applicant sign, Counsel stated he verbally explained to Applicant what she was signing and everything she was waiving by pleading guilty. Counsel testified he discussed the elements of the crimes with Applicant markedly because Applicant did not have a lot of experience in criminal law. Counsel testified he explained to Applicant the outcomes that were and were not realistic based on the evidence the State had against her. Again, Counsel opined he believed Applicant had a case prior to the production of the full video – stating, once the Solicitor's Office turned over the video, it was over. Other than the video, Counsel testified he believed the case to be open and shut.

In response to questioning regarding whether counsel had had an accident reconstruction completed, Counsel testified he had. Counsel stated the reconstruction he had completed showed Applicant had swerved into victim's lane while driving and that Applicant was the at fault party in the accident. Counsel testified he did not have a written report produced as he would have had to turn it over to the State and the findings were harmful to Applicant. On cross-examination, Counsel stated Richard Kimbell had performed the accident reconstruction. Counsel testified the purpose of having the accident reconstruction completed was to see if Applicant, as the State

posited, was the at fault party in the accident. Counsel testified that if they could prove Applicant was not at fault, he believed it would have limited her exposure.

Regarding plea negotiations, Counsel testified the State refused to offer any formal plea offers. To his recollection, Counsel testified that off the record, the State had offered a plea offer of seventeen to twenty years. Counsel stated Applicant did not discuss or indicate she wished to go to trial, but if Applicant had wished to proceed to trial, he would have been prepared to try this matter. Counsel further testified he did advise Applicant this was not a case that should go to trial. Counsel testified he believes if they would have proceeded to trial, Applicant would have been found guilty and received a greater sentence.

With respect to Applicant's allegation she requested an appeal, Counsel testified he did not tell Applicant's husband she did not qualify for an appeal. Though Counsel stated he recalled Applicant requesting a copy of her defense file at some point, Applicant had not asked him to appeal on her behalf. Counsel testified that when her file was requested from him, he forwarded her file to another attorney. On cross-examination, Counsel again testified Applicant did not contact him about an appeal. Additionally, when contacted by Applicant's husband, Counsel testified he told him he did not believe Applicant had any appealable issues.

V. Standard of Review

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction

or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof

of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an

applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. Findings of Fact & Conclusions of Law

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsels, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised at the evidentiary and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issue before this Court is whether Applicant received ineffective assistance of counsel, rendering her guilty plea involuntary and unintelligently entered. This Court disagrees, and finds the combined record from the plea hearing and the evidentiary hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

Allegation Counsel was Ineffective for Failing to Argue Best-Evidence Rule at Applicant's Motion to Dismiss Hearing

Applicant's allegation Counsel was ineffective for failing to argue the best-evidence rule at her pre-trial motion to dismiss hearing is without merit. Specifically, Applicant alleged Counsel was ineffective for failing to argue the best-evidence rule after learning the VHS in which Applicant's *Miranda* warnings were originally captured had been destroyed and the only remaining video was a copy made when the VHS footage had been burned onto a DVD.

At Applicant's evidentiary hearing, Applicant testified Counsel moved to have her case dismissed because the DVD provided in discovery did not contain the full recording of her *Miranda* warnings. Applicant testified a copy of the video containing a full reading of her *Miranda* warnings was discovered five minutes before the motions hearing. Though the original VHS containing Applicant's *Miranda* warnings had been destroyed, a DVD copy containing the full reading of Applicant's rights was produced to the court during the motions hearing.

At Applicant's evidentiary hearing, Counsel testified he believed Applicant's strongest argument in defense of her charge was that the video containing Applicant's advisement of her *Miranda* rights was incomplete. Counsel testified that at Applicant's motion to dismiss hearing, the State produced a video containing the full video and audio recording of Applicant being advised of her *Miranda* rights; Counsel stated the video was provided immediately prior to the motions hearing. Counsel testified the production of a complete recording of Applicant being advised of her rights pursuant to *Miranda* rendered his motion to dismiss moot. Counsel further testified he believed the argument he had regarding the motion did not make sense once a complete video was found and produced.

The question of whether to admit evidence under the best evidence rule is addressed to the discretion of the trial court. *State v. Halcomb*, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct. App. 2009). The preliminary question is whether "there has been sufficient evidence to prove loss, destruction or unavailability of an original document so as to justify the admission of secondary evidence . . . ." The question of the adequacy of this showing is also within the discretion of the trial court. *Id.* at 443, 676 S.E.2d at 154-55. Rule 1002 SCRE, otherwise known as the best evidence rule, reads as follows:

> To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

Rule 1002 SCRE. Rule 1003 SCRE provides a duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1003 SCRE.

In the instant case, the State proffered at the pre-trial motion hearing, a glitch existed in the video provided during discovery containing Applicant's *Miranda* warnings and 19 seconds of audio was missing. (Motions Hearing Tr. 3-4). The prosecutor at the motions hearing stated he met with Highway Patrol in an attempt to find a complete copy of the disc. (Motions Hearing Tr. 4). At the motions hearing, the State called Trooper Seastrunk, the lead investigator in this matter, to testify. (Motions Hearing Tr. 13-14). Trooper Seastrunk testified he was unaware where the copy of the video containing Applicant's *Miranda* warnings came from, but surmised it was one of multiple copies made for multiple people who reviewed the collision. (Motions Hearing Tr. 22-23).

At the motions hearing, Judge Goodstein further inquired about the process of how and why copies are made by Highway Patrol. (Motions Hearing Tr. 24). In response to the court's inquiry, Trooper Seastrunk testified the original copy was,

> "actually a VHS tape because it was an older car. At that point when there is a fatality and believe that alcohol is involved that's when our MAIT team comes out to investigate. Per their investigation, so they can fully understand what happened, they require a copy of my video so they can see what happened as I arrived on-scene, the evidence that I gather on-scene. Also, with our agency, the supervisors that are above me, such lieutenants and the captain who are concerned especially with an incident of this proportion, they also want to see a copy of the video to review. But everything was done correctly and by our policy and guidelines. So at that point at copy is actually made from the VHS to a DVD."

(Motions Hearing Tr. 24-25). Trooper Seastrunk further testified the original VHS tape is normally stored in pending cases such as this; however, in this case, the original VHS was errantly destroyed. (Motions Hearing Tr. 28). Trooper Seastrunk testified he mistakenly submitted the VHS for destruction, explaining the collision occurred early in his career and he made an error. (Motions Hearing Tr. 28). However, Trooper Seastrunk testified he was 100 percent sure he was the individual who had created the DVD copies from the original VHS. (Motions Hearing Tr. 29).

Sergeant Pearson of the South Carolina Highway Patrol also testified at the motions hearing. Sergeant Pearson testified that as the liaison of his team, he had made efforts to track down the original video. (Motions Hearing Tr. 34). Specifically, Sergeant Pearson testified:

> "My first thought was that it – that the glitch was probably what happens on VHS tapes. I mean, they're old system and they glitch some. So that was my first thought is it probably just is what it is, a glitch. But still in hopes of getting the original and maybe it not glitching from the original, the first thing I did was check the video cabinet for stored DVDs that we have, and it was not in there. So then I went to – I have a file for every trooper of videos that they've disposed of. And I pulled David's file, Trooper Seastrunk, I pulled his file. And in that file was the chain of custody from the original VHS tape in this collision and found that it had in fact been destroyed."

(Motions Hearing Tr. 34). Sergeant Pearson further testified he looked in the Highway Patrol's general sessions file and did not find a disc. (Motions Hearing Tr. 35). At that point Sergeant Pearson indicated he did not believe there were any other options to obtain copies. (Motions Hearing Tr. 35).

Sergeant Pearson testified that after speaking with the solicitor regarding not being able to locate the original recording, he called the coastal MAIT (Multidisciplinary Accident Investigation Team) team to inquire whether they had a copy of the video. (Motions Hearing Tr. 36-37). Sergeant Pearson indicated the MAIT team located a copy of the video from their files and turned the video over to Trooper Ford who turned the DVD over to him. (Motions Hearing Tr. 36). Sergeant

Pearson testified he then viewed the video with Trooper Seastrunk and provided the DVD to the solicitor. (Motions Hearing Tr. 37).

This Court finds Counsel was not deficient for failing to argue the best-evidence rule at Applicant's motions hearing because the copy of the video was admissible under Rule 1003, SCRE. This Court finds there was ample testimony presented at the motions hearing to support the DVD copy containing Applicant's *Miranda* warnings was a duplicate of the original VHS. Additionally, this Court finds Counsel credibly testified he filed the motion to dismiss because a complete copy of the video containing Applicant's *Miranda* warnings was not provided during discovery. This Court finds that once the State had produced a full and complete copy of the video containing Applicant's *Miranda* warnings and once Counsel had examined the DVD copy, examined the State's witnesses at the motions hearing, and realized the State had reached its *Miranda* requirement, it was reasonable for Counsel to withdraw Applicant's motion to dismiss.

Therefore, this Court finds Applicant has failed to meet her burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

Allegation Counsel was Ineffective for Failing to Have an Accident Reconstruction Report Produced and Failing to Properly Investigate

Applicant's allegations Counsel was ineffective for failing to retain the assistance of an accident reconstruction expert, for failing to obtain an accident reconstruction report prior to Applicant's guilty plea, and for failing to properly investigate are without merit. At Applicant's evidentiary hearing, Applicant testified she spoke with Counsel and requested he have an accident reconstruction done. Applicant testified Counsel did not provide her with an accident reconstruction report and felt Counsel did not have the reconstruction done because she did not pay him to do so. At the evidentiary hearing, Counsel credibly testified Richard Kimbell had

performed an accident reconstruction. Counsel testified he did not have a written report produced as the findings were harmful to Applicant's case. Counsel stated the reconstruction showed Applicant had swerved into victim's lane while driving and that Applicant was the at fault party in the accident. Counsel further testified testing of Applicant's blood showed she was intoxicated with alcohol and illegal drugs at the time of the incident.

Counsel testified he reviewed all discovery with Applicant. After reviewing discovery, Counsel testified he formulated the strongest and only argument he believed Applicant had to the charge – there was missing audio on the recording containing Applicant's advisement of her *Miranda* rights. In response, Counsel filed a motion to dismiss; however, a copy of the recording was produced to Applicant and Counsel prior to the motions hearing. Counsel testified he walked Applicant through the case from top to bottom.

Moreover, through Applicant's own testimony at her plea hearing, Applicant indicated Counsel had investigated her case, had spoken with all persons Applicant wished him to speak with, had reviewed all evidence the State had available to present at trial, and provided any copies of information Applicant had wanted. (Plea Hearing Tr. 24-25).

As an initial matter, this Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 596. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. at 46, 661 S.E.2d at 360. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent

investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). Essentially, trial "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690–91; *see id.* ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

Regarding Applicant's allegation that Counsel failed to hire expert witnesses, Applicant has failed to establish Counsel was ineffective for failing to hire an expert witness for accident reconstruction. Though Applicant claims the accident reconstruction, if completed, would have shown she was not the at fault party in the underlying incident, Counsel credibly testified he had an accident reconstruction completed that showed Applicant was the at fault party, rendering the informal report harmful to Applicant's case. This Court notes experts are often consulted informally and finds Counsel's strategy for not having a written report produced was reasonable

as he would have had to provide the State with a copy of the report.

Regarding Applicant's allegation Counsel failed to adequately investigate, this Court finds Counsel reviewed at all evidence – noting, Counsel pursued a motion to dismiss based on the State's failure to provide a complete recording of Applicant's *Miranda* warnings. This Court further finds Counsel reviewed all discovery with Applicant, had an accident reconstruction of the incident conducted, and thoroughly discussed the incident with Applicant. Additionally, through Applicant's own testimony at her plea hearing, Applicant indicated Counsel had investigated her case and spoken with all persons Applicant wished Counsel to speak with.

Therefore, this Court finds Applicant has failed to meet her burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

Allegation Counsel was Ineffective for Failure to Communicate

Applicant's allegation Counsel was ineffective for failure to adequately communicate with her during the course of representation is without merit. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant's allegation Counsel did not sufficiently communicate with her prior to her plea is refuted by both Counsel's testimony at the evidentiary hearing and Applicant's testimony at the plea hearing. Specifically, Counsel testified he spoke with Applicant often, receiving constant calls and texts from Applicant regarding her case. Counsel testified Applicant had his personal telephone number. Counsel further testified he met with Applicant a number of times as she had a lot to lose and was facing a significant amount of time. Additionally, at Applicant's plea hearing, she testified she met with Counsel nine times. (Plea Hearing Tr. 24). Applicant additionally testified at her plea hearing she was completely satisfied with Counsel's representation and testified Counsel had done everything she believed he should have done to properly represent her. (Plea Hearing Tr. 25).

Therefore, this Court finds Applicant has failed to meet her burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

Allegation Counsel was Ineffective for Failure to File an Appeal

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State,* 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist,

or when the defendant reasonably demonstrates an interest in appealing. *Id.; Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

At the evidentiary hearing, Counsel credibly testified Applicant had not requested he file an appeal. Counsel testified Applicant had requested a copy of her defense file. However, Counsel specifically testified Applicant did not contact him regarding an appeal. Additionally, even if Counsel did not inform Applicant of the right to appeal, Applicant has failed to show that there was an appealable basis in this case or that extraordinary circumstances warranting an appeal existed. Thus, this Court finds Applicant is not entitled to relief on this basis and this allegation is **DENIED**.

Involuntary Guilty Plea

Applicant alleges Counsel was ineffective for failing to adequately advise her rendering her plea involuntary. Additionally, at the evidentiary hearing, Applicant contended she felt scared into taking pleading guilty. At the evidentiary hearing, Applicant testified she never wished to plead guilty, she had not reviewed discovery materials with Counsel, Counsel told her she would receive a single digit sentence, she was scared, and had no confidence in Counsel. This Court disagrees, and finds Applicant knew the nature of the charges against her and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman.* The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Moreover, this Court finds Applicant's testimony at the evidentiary hearing not credible and wholly self-serving.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several

constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts

surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (*citing Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant,

his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest

in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

The plea court entered into a thorough colloquy with Applicant. Specifically, Judge Goodstein explained to Applicant the constitutional rights she waived by pleading guilty, including the right to: remain silent, against self-incrimination, challenge the State's evidence, present a defense, and the right to a jury trial. (Plea Tr. 18-20). Applicant informed the plea court she understood she waived those rights and others not enumerated when pleading guilty. (Plea Tr. 20). Applicant also informed the court she understood the charge she was pleading to and indicated she understood the minimum and maximum sentence associated with the charge (Plea Tr. 13).

Judge Goodstein further informed Applicant the offense she pleaded to is classified as violent and most serious. (Plea Tr. 13-18). Applicant again affirmed she wished to plead guilty. (Plea Tr. 18). Applicant advised the court she had not been threatened, pressured, intimidated, or promised anything in exchange for her guilty plea. (Plea Tr. 23). When questioned whether she had been truthful with the court in her answering of the Court's question, Applicant affirmed she had. (Plea Tr. 26). Applicant further indicated all answers had been her own and no one directed her how to answer. (Plea Tr. 26).

This Court finds the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily.

Applicant has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Based on the foregoing, the record contradicts Applicant's assertion her plea was involuntary as a result of ineffective assistance of counsel. Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

VII. Conclusion

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements she made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP,

provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 29 day of July, 2022.

ROBERT J. BONDS
Presiding Circuit Court Judge
First Judicial Circuit

Walterboro, South Carolina

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S.C. SUPREME COURT