THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

G. D. Morgan, Circuit Court Judge

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2019-CP-42-03334

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Donald Partaka ..... Appellant,
v.
The State, ..... Respondent.

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NOTICE OF APPEAL

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Donald Partaka appeals the Honorable G. D. Morgan's Order of Dismissal filed September 15, 2022.

This 19 day of Sept, 2022.

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| STATE OF SOUTH CAROLINA<br>COUNTY OF SPARTANBURG | IN THE COURT OF COMMON PLEAS<br>FOR THE SEVENTH JUDICIAL CIRCUIT |
| Donald Partaka, #379920,<br>Applicant,<br><br>v.<br><br>State of South Carolina,<br>Respondent. | Case No.: 2019-CP-42-03334<br><br>**ORDER OF DISMISSAL** |



This matter comes before this Court by way of Applicant's post-conviction relief application filed September 18, 2019. Respondent made its return on November 20, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 20, 2022, at the Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

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

## Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the December 2017 term of the Spartanburg County Grand Jury for murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2017-GS-42-06105). Ryan Beasley, Esquire, represented Applicant, and Derrick Bulsa, Esquire, of the Seventh Circuit Solicitor's Office, prosecuted the case. On April 22, 2019, Applicant pled guilty to the lesser-included offense

of voluntary manslaughter, and as indicted for the weapon. The Honorable J. Derham Cole, circuit court judge, sentenced Applicant to twenty-four years' imprisonment for voluntary manslaughter, and five years' imprisonment for the weapons charge. Applicant did not appeal his plea or his sentence.

**Summary of Relevant Facts**

On October 11, 2017, a 911 call was placed by Applicant, who stated he shot an intruder. (Tr. 19-20). Applicant claimed he had woken up and found someone on his couch. (Tr. 20). He stated he confronted and shot that person, thinking he called him. (Tr. 20). In the background of the 911 call, the victim woke up and began talking to Applicant. (Tr. 20). She stated she loved him, and Applicant stated he did not. (Tr. 20). The last time Applicant went to the victim he shot her between the eyes with a .22 rifle. (Tr. 20). Applicant knew the victim because they worked together. (Tr. 20). The victim got into a fight with her boyfriend the night of the incident and was picked up and taken to Applicant's home. (Tr. 20-21). Applicant seemingly did not realize he shot his friend Ashley until confronted by the police for shooting a woman. (Tr. 21-22). DNA swabs for a potential sexual assault were inconclusive. (Tr. 22).

**Current Action Before this Court**

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

1. Ineffective assistance of plea counsel, in that:
    a. "My Counsel Ryan L. Beasley told me that he was not filing a direct appeal. Mr. Beasley did have a number of procedural abnormalities including failure to adequately file direct appeal brief, and passing the buck to me when he had his employee bring me the notice that I had 10 days from the day of sentencing to file an appeal of my conviction and sentences if I choose to do so. Mr. Beasleys' employee brought his letter the following day which left me 9 days to file appeal. Mr. Beasley did not give me any legal paper or the address to the South Carolina Appellate Court."

b. "I'm being held in custody unlawfully on a Plea offer on advise of Counsel Ryan L. Beasley that I would receive no more than (10) Ten to (15) fifteen years if I plea to the charges."
c. Counsel "did not obtain, or if he did obtain, the defendant's right to recorded proceedings and testimony before the state grand jury in preparing his defense which right is subject to [limitations][1] imposed by Statute and rule necessarily [illegible] Post-indictment, although secrecy is essential [while] a matter is under deliberation by The grand jury, such concerns diminish following issuance of a True Bill of indictment and Thus a defendant is allowed to obtain and use the [empanelment] documents in Preparing a defense, and ensuring protection of his due process rights."
d. Counsel "did not investigate the Spartanburg Sheriff's Office when Petitioner was in an alcoholic state of mind 'when the coerced confession' was given, 'Thus caused the deprivation on my/Partakas Fifth Amendment right against compulsory self-incrimination,' based on the alcoholic state coerced confession."
e. Counsel failed to present "mitigating social history evidence to the Court[.]"
f. Counsel "had a conflict on the money issue, Counsel had no honor, and should have been more assistance to his client whom paid and I feel that his role as advocate required him to support his client's appeal to the best of his ability, or should so advise the Court and request permission to withdraw. His request should be accompanied by a brief referring to anything in my record that could arguably support the appeal."
g. Counsel "failed to furnish a brief to his paid client and time allowed me to raise any points that I so choose[.]"
h. Counsel was ineffective in sentencing "for failing to present evidence of the defendant's mental illness caused by alcoholic state of mind when he was startled by victim's presence in home[.]"

2. Applicant asserts he should be entitled to the presumption of prejudice under *United States v. Cronic*, 466 U.S. 648, 658 (1984).

By amendment dated April 8, 2022, Applicant, through PCR Counsel, alleged:

1. Ineffective assistance of counsel for:
   a. Failure to request a change of venue.
   b. Failure to conduct neurological testing to determine the extent of his dementia; and
   c. Failure to pursue a plea to guilty but mentally ill when the Applicant lacked the capacity to conform his actions due to dementia.

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

1. Ineffective assistance of counsel for:

[1] Portions of the handwritten attachments to the application are obscured by the file clock stamp and this is Respondent's best effort to read through said stamp.

a. Brevity of time spent in consultation and preparing the case.
b. Failure to file/handle his appeal.
c. Failure to pursue defense that Applicant thought he was protecting himself and his domain from an intruder.
d. Failure to move for change of venue.
e. Failure to conduct neurological testing.
f. Failure to pursue plea of guilty but mentally ill.
g. Failure to mitigate the sentence.

2. Invalid plea:
   a. Counsel informed Applicant he would serve between ten- and fifteen-years' imprisonment if he pled.
   b. Applicant had issues with dementia, which prevented him from fully understanding the plea.

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

## Summary of the Testimony

### *Applicant Testimony*

Applicant stated he understood the purpose of the PCR hearing. He stated he has dementia. He stated that Counsel was his second attorney. He stated he put little work into the case and did not fight for him at all. He stated that Counsel's office informed him that Counsel does not handle appeals. He stated that the Court told him he could receive up to thirty years' imprisonment, but Counsel told him he would be sentenced between ten and fifteen years. He stated that he was confused throughout the plea proceedings, but Counsel told him not to worry. He stated he would have gone to trial but for Counsel being ineffective.

On cross-examination, Applicant stated that he did not recall Dr. Donna Maddox becoming involved in his case and submitting a report at the plea. He stated that he told the Court he wanted to plead and that he made the decision for himself. He stated that the Court told him he could be sentenced to thirty years' imprisonment. He stated that Counsel told him to take the plea.

***Sister Testimony***

Applicant's sister testified that she hired the first attorney for Applicant. She testified that she would never have hired Counsel. She stated they were never in that position before. She stated that Applicant committed the crime and Applicant did not know the victim. She testified she was present for the plea hearing. She testified that Counsel did not thoroughly explain to the plea court that her brother had health issues, specifically dementia. She stated that Applicant had dementia problems even when he was not drinking. She stated that she did not think Applicant understood the plea process. She testified that Counsel told her that Applicant would be sentenced between ten and fifteen years. She stated she contacted Counsel's office and was told that he does not handle appeals.

On cross-examination, she testified that Applicant answered affirmatively to most questions at his hearing. She stated that she would have rather Applicant went to trial, even though she stated he acknowledged his guilt, though she stated he did it to protect his domain. She stated she filed a notice of appeal personally in the circuit court, not the appellate courts.

***Counsel Testimony***

Counsel testified that he met with Applicant multiple times. He stated they talked about potential defenses. He stated he pleaded to the prosecutor that Applicant did not know the victim was Ashley at the time. He stated that the issue was that Applicant was on the phone with 911 and that he thought the victim was an intruder, but that he went back and shot her again. He stated he thought that a trial would have resulted in a murder or voluntary manslaughter instruction. He stated that Applicant would be serving more time if he went to trial. He stated he never promised Applicant a specific sentence would be imposed. He stated that Applicant seemingly understood the proceedings and the rights waived. He stated that he helped draft some appeal material but told

Applicant he would be appointed an appellate attorney. He stated that Dr. Maddox and Applicant's sister spoke in mitigation of the sentence. He stated Dr. Maddox generated a report that was entered at the plea hearing. He stated he thought that the plea was in Applicant's best interest. He stated that he did not see a reason to change venues.

On cross-examination, Counsel stated he assisted in helping draft materials for an appeal, but that he did not handle the appeal itself. On re-direct, Counsel testified that he did everything in his professional judgement to help Applicant.

**Findings of Fact and Conclusions of Law**

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

***Ineffective Assistance of Counsel***

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

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A 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 the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea 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.'" *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

***Invalid Plea – Dementia***

Despite Applicant's struggles with dementia, Applicant seemingly entered a free, voluntary, intelligent, and knowing plea. As a preliminary matter, this Court finds that the plea court was fully aware of Applicant's dementia when it accepted the plea. (Tr. 30). At the plea, Applicant confirmed he understood he was pleading to the lesser-included offense of voluntary manslaughter. (Tr. 6). He stated he understood the potential sentencing ranges, and that voluntary manslaughter is a violent crime. (Tr. 6). He stated he wanted to plead and that he had plenty of time to discuss the plea with Counsel, who informed him of the allegations, the State's burden of proof, and what the State would have to prove concerning the voluntary charge at trial. (Tr. 6-7). He stated that they discussed any possible defenses and the facts. (Tr. 8). Applicant stated he was unaware of any defense available to him. (Tr. 9). He stated that Counsel explained his rights to him, including the right to remain silent, call and confront witnesses, and the right to a jury trial.

(Tr. 9-13). He stated that no promises beyond the ability to plead to the lesser-included offense were available to him and that he was pleading freely and voluntarily. (Tr. 13-14). He stated he understood voluntary manslaughter is a violent and most serious offense and that he understood the consequences of those distinctions. (Tr. 14-15). He stated that he understood he was not entitled to parole. (Tr. 15). He stated he was pleading because he is guilty and thinks that the jury could find him guilty of murder or voluntary. (Tr. 15). He stated he understood the negotiations and stated that they are preferred over trial. (Tr. 16). He stated that he does not have any substance abuse issues or mental health issues impacting his ability to understand what he was doing. (Tr. 16-19). Applicant agreed to the facts as stated by the State. He again confirmed that Counsel explained his right to remain silent, to present evidence, to a *Jackson v. Denno* hearing, the right to assert a defense. He stated that he discussed with Counsel how the plea was free and voluntary. He confirmed his intent to plead again. Thereafter, the plea was accepted. Applicant's dementia did not seem to impact his understanding of the plea process based upon this Court's review of the plea transcript. Additionally, at the PCR hearing, Counsel credibly testified that Applicant seemingly understood the proceedings and the rights waived. Thus, this Court finds the plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn.

***Brevity of Time***

Applicant alleges Counsel was ineffective for brevity of time spent in consultation. "[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 claims that Counsel did not speak with him about the case enough. However, at the plea hearing, Applicant stated that he was satisfied with Counsel and that he had enough time to talk to Counsel and that Counsel explained the allegations to him, what the State would have to prove at trial, including what the State would have to prove to secure a conviction for the lesser-included charge. (Tr. 6-7). Applicant stated that Counsel explained all his rights to him. (Tr. 9-13). Additionally, Counsel credibly testified at the PCR hearing that he met with Applicant multiple times to discuss the case. Beyond that, Applicant has failed to show how this brevity of time spent in consultation impacted Counsel's representation of Applicant. There is no indication that the results of the proceedings or the decision to plead would have been different had Counsel conferred with him more. Accordingly, Applicant has failed to establish ineffective assistance of counsel and this Court declines to grant relief.

***Failure to File/Handle Appeal***

Applicant claimed Counsel was ineffective for failure to file and handle his direct 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).

Applicant testified that Counsel informed him that he did not handle appeals. Applicant's sister stated she attempted to handle the notice of appeal on her own but filed it in the wrong jurisdiction. Counsel credibly testified that he helped draft some appeal material but told Applicant he would be appointed an appellate attorney. Thus, this Court finds that Applicant was informed of his appeal and took the responsibility of filing the appeal on his own. This Court also finds that no extraordinary circumstances justifying filing an appeal exist in this case. Accordingly, relief is denied on this ground.

***Failure to Pursue Defense – Intruder***

Applicant claims Counsel was ineffective for failure to pursue a defense that Applicant thought that the person Applicant shot and killed was an intruder. However, the right to assert a defense was waived at the plea hearing after the Court explained what a defense is, and Applicant informed the Court that he was unaware of a tenable trial defense. (Tr. 5-6). Thus, the right to assert a defense was waived with the entry of an otherwise valid plea. Accordingly, this claim is dismissed without merit and relief denied.

***Change of Venue***

Applicant claims Counsel was ineffective for failure to request a change of venue. However, no reason for requesting a change of venue or why a change of venue would have changed the outcome was ever provided to the Court. Further, Counsel credibly testified he did not see a reason for a change of venue. Accordingly, relief is denied on this ground.

***Failure to Properly Mitigate the Sentence***

Applicant claims Counsel was ineffective for failing to mitigate the sentence. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

This Court finds Counsel's mitigation strategy reasonable. At the plea hearing, Counsel stated that Applicant has been honest throughout the proceedings, that Applicant consistently held that he fired the gun because he thought he had an intruder in the home, and that Applicant suffered from dementia. (Tr. 29-30). Counsel also stated that Applicant loved the victim, was in disbelief over what happened, and was broken up about what happened. (Tr. 30-31). Applicant's sister also spoke in mitigation, stating that Applicant's health is poor, that he truly thought it was an intruder in the home, and that alcohol played a part in what happened. (Tr. 31-33). Dr. Maddox stated that she evaluated Applicant and diagnosed him with alcohol dementia and that he has a longstanding history of alcohol abuse. (Tr. 33-34). She stated Applicant has worked his own life, but that alcohol has ravaged his brain and led to a steady decline. (Tr. 34). She stated that he was very cooperative

with her and clearly has cognitive deficits. (Tr. 34). She stated that she thought he was competent, despite his dementia. (Tr. 34). She stated that she conducted neurological testing and some neurological psychology screening tests, which he did poorly on. (Tr. 34). She stated he was referred to a neuropsychologist, who tested him, and he came out with dementia. (Tr. 35-36). Counsel again spoke in mitigation, stating that there was never any evidence that Applicant thought the person was someone other than an intruder and that Applicant was seemingly so intoxicated that night he gave 911 the wrong address. (Tr. 37). He then read a statement Applicant prepared, apologizing to the victim's family, stating he thought she was a migrant worker breaking into his house, and making clear how distraught he was over killing his friend. (Tr. 38). Thus, this Court finds the mitigation strategy reasonable. Additionally, the only subject specifically stated at the PCR hearing as something that should have been raised in mitigation was Applicant's dementia, alcoholism, and cognitive issues, which were clearly exhausted. This Court has not been presented with anything substantive that would have led to a lesser sentence if raised. Accordingly, relief is denied on this ground.

***Failure to Conduct Neurological Testing***

Applicant claims Counsel was ineffective for failure to conduct neurological testing. However, as stated above, Dr. Maddox conducted neurological testing and neurological psychology screening tests. (Tr. 34). He was also referred to a neuropsychologist for additional testing and was diagnosed with dementia. (Tr. 35-36). Counsel was not ineffective on this ground because he did ensure neurological testing occurred and used this in mitigation of the sentence. Additionally, because Counsel was not deficient on this ground, there is no prejudice. Accordingly, relief is denied on this ground.

***Failure to Pursue Guilty but Mentally Ill Plea***

Applicant claims Counsel was ineffective for failure to pursue a guilty but mentally ill plea. A defendant is guilty but mentally ill when "at the time of the commission of the act constituting the offense, he has the capacity to distinguish right from wrong . . . but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law." S.C. Code Ann. § 17-24-20 (2014). Voluntary intoxication or drug use can be used to support a finding of guilty but mentally ill if the drug or alcohol use causes "permanent and irreversible brain damage which manifests itself in a mental illness." *State v. Hartfield*, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990).

According to the record, applicant's alcohol abuse caused his dementia. However, there is no indication that his impairment or mental illness caused him to lack the capacity to conform. Instead, Applicant repeatedly showed he intended to fire the weapon, but that he did not know the person he was shooting was his friend. He stated he thought he was shooting a migrant farmworker instead. (Tr. 29-30). Additionally, Dr. Maddox credibly stated at the plea that she thought Applicant was competent. (Tr. 34). At the PCR hearing, Applicant did not present any credible evidence, in the form of mental health or competency evaluations or reports to challenge this understanding. Thus, this Court finds Applicant was not entitled to enter a guilty but mentally ill plea, and that Counsel was not deficient for failing to ensure Applicant could plead guilty but mentally ill when that was improper in the case. The Court finds no prejudice because Applicant could not have secured such a plea. Thus, relief is denied on this ground.

***Ten- to Fifteen-Year Sentence***

Applicant testified that his plea was entered involuntarily because Counsel told him that if he pled, he would receive a ten- to fifteen-year sentence. However, Counsel credibly testified that

he never promised Applicant a certain sentence if he pled. Additionally, at the plea hearing, Applicant stated he wanted to plead to voluntary manslaughter while knowing what it carries. (Tr. 6). Thus, this Court finds Applicant to not be credible concerning this allegation and that he was not promised a certain sentence. This Court denies relief on this ground accordingly.

**Conclusion**

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

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

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 8th day of September, 2022.

G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.