THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Oct 19 2022
S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2018-CP-40-2998

Randall Gadson, #360616, Appellant,

v.

State of South Carolina, Respondent,

NOTICE OF APPEAL

Randall Gadson appeals the Order of the Honorable George M. McFaddin, Jr. dated September 19, 2022, a copy of which is attached. Appellant received written notice of entry of this Order on October 4, 2022.

October 19, 2022

s/ Nancy C. Fennell
Nancy C. Fennell
SC Bar No. 69729
Post Office Box 2176
Irmo, South Carolina 29063
(803) 553-1772
Attorney for Appellant

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Randall Gadson, #360616, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2018–CP–40–2998 **ORDER OF DISMISSAL**

The matter before the Court is an action for post-conviction relief (PCR) commenced by Randall Gadson (Applicant) on June 7, 2018, asserting various allegations of ineffective assistance of counsel. The State submitted its return on August 22, 2018, requesting an evidentiary hearing.

Before this Court, an evidentiary hearing was convened on May 23, 2022, at the Richland County Courthouse. Applicant was present and represented by Nancy C. Fennell, Esquire, and Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant, Rasheid Schoclet, and Stephen Krzyston, Esquire (Plea Counsel), testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In February 2016, the Richland County Grand Jury indicted Applicant for murder (2016-GS-40-0734). Stephen Krzyston, Esquire, represented Applicant. Fifth Circuit Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case on behalf of the State. On March 14, 2018, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter before the Honorable DeAndrea Benjamin. Pursuant to a negotiated

sentence between the State and Applicant, Judge Benjamin sentenced Applicant to a term of imprisonment of seventeen years. Applicant did not appeal his conviction or sentence.

Applicant timely commenced this PCR action on June 7, 2018.

SUMMARY OF RELEVANT FACTS[1]

The shooting occurred at Hunter's Way Apartments outside of Building 311 off Percival Road in Richland County on September 18, 2015. The victim, in this case, was Paul Coleman. Victim was twenty-one years old at the time of his death and was living in Charlotte, North Carolina, where his family lived. Victim came to Columbia on the afternoon of September 18th and was on Benedict College's campus waiting for his friend, Devon Owens, to finish with classes. Victim's friend Devon drove him to the apartment complex around 7:00 p.m. that evening where the shooting occurred a short time later.

Investigator Carwell learned through his investigation that Victim was actually in-town to purchase a gun for his cousin. Victim was planning on buying it from a person named Steven Carswell; however, Mr. Carswell was unable to sell him one. Victim was eventually connected to DaJuan Minson, who provided Victim with the Applicant's telephone number. A short time after Victim arrived at the apartments, he was shot. Richland County Sheriff's Department was immediately dispatched to the scene. Victim was found lying in the breezeway of Building 311 with a gunshot wound to his face, which was the cause of death. Victim died at the hospital shortly after arrival.

Several neighbors relayed to law enforcement on the scene that they saw Begoon, which is the Applicant's nickname, and another individual, who was never identified, running away from

---

[1] The summary of fact were taken directly from the Plea Transcript with minor edits. (Plea Tr. pp. 5, l. 12 – 10, l. 8).

the scene immediately after they heard shots. Some neighbors said that they heard one shot. Some neighbors said they heard two. Applicant was identified in a photo lineup by two individuals as one of the people they saw running. They did mention that Applicant hangs out in the area frequently, but they had never seen the victim at the apartment complex. Devon Owens (Owens), the victim's friend, was still on the scene. Owens had driven his car across the street and was parked there when deputies arrived. Owens told law enforcement that he thought the victim was meeting a girl at these apartments and has never relayed anything different.

Sergeant Carwell obtained Applicant's phone records. At the time of the shooting, the Applicant's phone was hitting off towers close to the apartments. Investigator Carwell identified DaJuan Minson (Minson) as the person the Applicant called right after the shooting. Minson was not truthful initially. Minson was subsequently charged with obstruction of justice in this case but did admit in his second statement, when confronted with the phone records, that the Applicant called him afterward and said RIP, in reference to the victim. Minson said Applicant told him that he shot him because Victim reached for a gun, so he shot him. Minson also identified Applicant in a photo lineup.

On October 14th, approximately a month later, law enforcement sought and obtained an arrest warrant for Applicant. Following his arrest, law enforcement advised Applicant of his rights, and Applicant waived these rights and gave an initial statement to Investigator Carwell where he denied being present. Applicant said he left Columbia earlier in the afternoon with a girl to go to Charleston. Applicant was confronted with the phone records placing him at the scene, and he subsequently confessed to shooting the victim. Applicant said he was at Hunter's Way apartment complex when he saw the Victim and his friend. They asked him for marijuana. He said he went to get the marijuana, and when he returned to the apartment, Victim was outside of the car. Minson

said in his statement that the Victim started laughing and said that he didn't have any money and he wasn't going to pay for the marijuana, and that is when Victim's friend came around the corner and started shooting at him.

Applicant said when Owens came from the left side, he shot Victim, who was standing in front of him. When asked why he would shoot in front when the shots were coming from the left, Applicant said he just shot and then ran. This was inconsistent with what he was telling other lay witnesses that were interviewed during the course of the investigation. Applicant had told at least two individuals that Victim reached for his gun, so he shot him. The crime scene investigators and deputies searched the entire area that night and the next day, including Victim's friend's car, which was still at the scene, and the immediate area. There were no additional shell casings located or any other weapon located. Owens said that he never got out of the car.

Owens, who Applicant claimed shot at him first, was tested for gunshot residue twice and no gunshot residue was found on his hands. Victim did have one particle of gunshot residue, which was explained by being in proximity to a gun being fired. Applicant never said in any of the statements that the victim actually shot a gun.

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of counsel
   a. "At all relevant times he was under advice of counsel to answer 'yes' to any and all questions presented by the plea judge throughout the guilty plea stage and that as such his knowledge of the law was limited to what little his plea attorney informed and/or advised him and that as such his constitutional rights on the law or legal jurisprudence was constricted to his lawyer's advice and instruction and thus he trusted and greatly depended on plea attorneys advice to be just and true at all relevant times during and prior to entry of plea on March 14, 2018."

b. "That when he read over some of the police reports and findings he discovered as he had informed his attorney that the victim had a gun and GSR was found on victim's hands demonstrating victim fired a weapon. To applicant Gadson's surprise and shock and dismay his attorney said it didn't matter nor was it significant to take the case to trial or to negotiate a sentence of 20 years or an open plea with a cap of only 10 years which would have meant the plea judge couldn't sentence him above 10 years. From the very beginning counsel knew or should have known to move to vacate the charge of murder even prior to the negotiated plea since the elements amount to murder under South Carolina statutory code 16-3-10. The Attorney was ineffective for failing to file preemptive motions or motions in general to alleviate the indictment for murder against me. Applicant Gadson also states for the record that his plea attorney was ineffective and created a significant conflict of interest when he was knowingly representing someone he knew or should have known wrote statement against me in the case working with the prosecution. Counsel was ineffective for failure to file an appeal or motion to reconsider a lower sentence than the 17 years I was given, especially since voluntary manslaughter carries 2-30 years and I could have very well gotten less than 17 years or even a 5 year sentence for it."

c. "Counsel was ineffective for failure to file an appeal or motion to reconsider a lower sentence than the seventeen (17) years I was given, especially since voluntary [sic] manslaughter [sic] carries 2-30 years and I could have very well gotten less than 17 years or even a 5 year sentence for it."

2. "Violation of Fourteenth Amendment right to Due Process and Equal Protection."
3. "Fourth Amend. Right to unlawful seizure in false arrest since GSR report and testing failed to confirm I fired weapon."
4. "Conflict of Interest by Attorney and due to representing party making statement against Applicant."

On October 29, 2019, Applicant, through PCR counsel, amended his application as follows:

1. Ineffective Assistance of Counsel:
   a. Failure to request a competency evaluation.

At the evidentiary hearing, PCR Counsel stated that the amendments were in addition to the original PCR allegations, and they intended to move forward on those.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

Applicant testified that Steven Krzyston (Plea Counsel) was appointed in 2015 when he first got to the county jail. Applicant testified that he found out Plea Counsel was representing him when he came to visit him at the detention center and told him. Applicant testified that he was in pre-trial detention for three years and that Plea Counsel represented him the entire time. Applicant testified that Plea Counsel met with him in person seven times over those three years. Applicant testified that he and Plea Counsel discussed what was going on in his case and that Plea Counsel brought him some of the documents but not all the documents from his discovery. Applicant testified that four statements were given to police and that Plea Counsel didn't bring all of them at once. Applicant testified that the first documents he received were at his preliminary hearing six to seven months after detention.

Applicant testified that he received discovery, including negative results from a GSR kit, pictures, medical records, and pictures of the victim, and he was given a personal copy of this discovery. Applicant testified that DeShawn Davis gave a statement to police that he was a "piece of shit" who didn't "show everything." Applicant testified that he was never shown the text messages and that once he was in jail, Plea Counsel did no more investigations; it was over. Applicant testified that Plea Counsel would tell him, "They said this...." Applicant testified Plea Counsel told him that if he went to trial, he would probably receive a sentence of thirty to forty years.

Applicant testified that he never saw the statement regarding Steven Carswell. Applicant testified that he got his entire discovery file during COVID, and there was stuff that he had never seen. Applicant testified he had not seen text messages between the victim and Steven Carswell.

Applicant testified that Steven Carswell was "a white or Asian dude" in his case, and he was charged with conspiracy to murder. Applicant testified that he did not know what conflict of interest was. Applicant testified that Plea Counsel previously represented Carswell in an armed robbery charge. Applicant testified that Plea Counsel never discussed that with him. Applicant testified that he told Plea Counsel that he thought Plea Counsel was working against him. Applicant testified he never saw any statement Carswell provided.

Regarding Facebook messages between Paul Coleman and Carswell, Applicant testified that it said different stuff that he had no part of and didn't know about those things. Applicant testified that he recently saw the Facebook communications for the first time. Applicant testified that he recently saw Facebook pictures of people and never received Facebook evidence when he pled out.

Applicant testified that Devon Owens was with the victim on the night of the shooting. Applicant testified that Owens's statement confirmed everything Applicant was saying that the victim "jumps in car drives across the street jumps back in the car, and it doesn't make sense." Applicant testified that he was in the area where the murder occurred every day. Applicant testified that he did not know the victim. Applicant testified that the victim had money in his pocket, and all Applicant had in his pocket was "$32." Applicant testified he met the victim walking down the street because he is there every day and saw the victim standing at the car. Applicant testified that the victim asked him if he sold weed, and Applicant replied, "I sell it." Applicant testified that the driver pulled up the victim pulled up his hand, and Applicant had a gun, reacted, and ran off. Applicant testified that Plea Counsel had the GSR kit, that there were no burn marks on the victim's face, and that this was a "self-defense shot." Applicant testified that the solicitors stated that Applicant's version of facts was the reason for a negotiated sentence.

Applicant testified that Plea Counsel never asked witnesses about their statements. Applicant testified that Plea Counsel told him he was a "black man with tattoos and he won't get a fair trial." Applicant testified that he would not be here disrespecting the court if he knew he did something. Applicant testified that in May 2017, an updated GSR kit became available. Applicant testified that there was no GSR present in the first GSR kit. Applicant testified that in the 2nd GSR kit, the victim had GSR on his hand, and it was retested because the SLED employee didn't follow the protocol. Applicant testified that Plea Counsel told him that they could get a better plea. Applicant testified that he felt Plea Counsel would sit with him but would lose at trial. Applicant testified that he never signed a conflict waiver. Applicant testified that he didn't go to trial because he might get thirty to forty years, one hundred years, or life. Applicant testified. Plea Counsel told him that they would convict him once he went to trial.

Applicant testified that he only had 8th-grade education and understood Plea Counsel to a certain extent but didn't understand most of it at times. Applicant testified that he thought he needed a competency evaluation because he didn't understand things like a GSR kit. Applicant testified that he did not know he had rights. Applicant testified that he does not think Plea Counsel conducted an investigation other than the gun analysis. Applicant testified that the gun analysis person said it would have to be a self-defense shot because no GSR was found on the victim's face. Also, Applicant testified that there was no weapon found. Applicant testified that the victim had a wallet with $300 and a cell phone, and he told Plea Counsel to find out. Applicant testified that Plea Counsel told him that Carswell would testify against him and that Carswell was indicted for conspiracy and murder.

Applicant testified that Plea Counsel did not file an appeal, but he did ask Plea Counsel about an appeal, and Plea Counsel told him he would have to file a PCR application. Applicant

testified that he wanted a belated appeal. Applicant testified that he would not have pled if he had seen the entire discovery file. Applicant testified that at that point, he thought Plea Counsel was a great lawyer and a great person.

On cross-examination, Applicant testified that he met with Plea Counsel seven times. Applicant testified that he and Plea Counsel had trouble communicating a couple of times and got into it. Applicant testified that, at the time, he didn't understand. Applicant testified that Plea Counsel discussed the charges and the elements and that a sentence of thirty years to life was possible. Applicant testified that Plea Counsel did not discuss any defenses other than self-defense. Applicant testified that Plea Counsel let him look through discovery, they discussed for statements, discussed his statements where he eventually admitted to the shooting, discussed the GSR kit, and that it was positive on the victim's hand palm side.

Applicant testified that Plea Counsel always told him it was going to be a "plea plea plea." Applicant testified that he told Plea Counsel to investigate witnesses, but Plea Counsel never investigated those witnesses. Applicant testified that after the GSR kit discussion, it was six to seven months, and Plea Counsel came with a plea and said it was the best you would get. Applicant testified that the plea offer was a negotiated sentence of seventeen years. Applicant testified and agreed that he avoided the risk of murder and thirty years to life. However, Applicant testified that he did not understand what he was doing. Specifically, Applicant testified that he was "going through the motions," and Plea Counsel said, "just say yes to everything."

Applicant testified that he did not know his rights at the time but was also satisfied with the Plea Counsel. Applicant testified that he remembered telling the court that he was pleading freely and voluntarily. Applicant testified that he remembered telling the court that he agreed with the facts but "didn't know nothing." He just told the judge he wanted to plea. Applicant testified

that he recalled the court informing him of his right to appeal. Applicant testified that he wanted to appeal because "it didn't sit right."

On redirect examination, Applicant testified that the State's first plea offer was for a forty-year term of imprisonment, and he got mad and said, "are you crazy." Applicant testified that Plea Counsel returned three weeks later, and Applicant informed Plea Counsel that he wanted to go to trial. Applicant testified that Plea Counsel never discussed the elements of his crime. Specifically, he never broke down what they would have to prove, and he only broke down the potential sentences and didn't know he had rights. Again, Applicant testified that Plea Counsel told him to "just say yes to everything." Applicant testified that Plea Counsel's defense theory didn't make sense.

RASHEID SCHOCLET'S TESTIMONY

Rasheid testified that he and Applicant had been lifelong friends since daycare. Rasheid testified that law enforcement approached him and asked him if he knew the victim. Rasheid testified that Carswell used his phone to speak with the victim, which is why the victim's number was on his phone. Rasheid testified that he went to the police station two times to give statements. Rasheid testified that he had known Carswell for about three months and that he did not know and had never met the victim. Rasheid testified that he was never shown the photo lineup with DeJuan Minson and that that was not his signature on it. Rasheid testified that he never gave the police DNA. Rasheid testified that when the investigator showed him text messages regarding the gun transaction, he replied, "this is not my doing."

Rasheid testified that he gave police statements on September 22, 2015, and September 24, 2015. Rasheid testified that law enforcement told him he could get accessory to murder Rasheid testified that he contacted law enforcement regarding his concerns about his statements and the

dispute surrounding his statements. Rasheid testified that Plea Counsel never reached out to him. Rasheid testified that he did not sign the statements that law enforcement turned over. Rasheid clarified that one of the signatures was his and the other was not. Specifically, Rasheid testified that the signature on the September 22, 2015, statement was his and that the signature on the September 24, 2015, statement was not his signature.

On cross-examination, Rasheid was given one page from each of the statements he gave to law enforcement on September 22, 2015, and September 24, 2015. Rasheid was then asked to verify which page contained his signature, thereby eliminating the other one. Notably, Rasheid chose the signature from the page from the September 24, 2015, statement, which he said was not his signature on direct examination, and did not choose the September 22, 2015, statement, which he said was his signature on direct examination.

PLEA COUNSEL'S TESTIMONY

On direct examination, Plea Counsel testified that per his notes, he met a minimum of 12 times with Applicant and at a rate of about every 90 days. Plea Counsel testified that, on average, he met with Applicant 20 to 40 minutes each time. Plea Counsel testified that while Applicant initially distrusted him, he was cooperative overall during the process. Plea Counsel testified that after the first 2 to 3 meetings, he felt he could communicate and work with Applicant. Plea Counsel testified that he did not recall getting into it with Applicant, but that would not be out of the ordinary for counsel and a defendant. Plea Counsel testified that ultimately he felt like Applicant was willing to work with him. Plea Counsel testified that other than their initial meeting, communications in their subsequent meetings were fine.

Plea Counsel testified that Applicant spoke coherently and seemed to understand their discussions. Plea Counsel testified that he had no concerns regarding Applicant's ability to

understand. Plea Counsel testified that he knew that Applicant had attained a ninth-grade education from Eau Claire. Plea Counsel testified that he had no mental health issues; if he did, he would have petitioned for a competency evaluation. Still, there were no indications that Applicant had capacity issues. Plea Counsel testified that there were several bond hearings that he went to, and he had an open line of communication with the Applicant's mother. Plea Counsel testified that no family members raised competency concerns.

Plea Counsel testified that he filed a Brady motion for discovery, reviewed the evidence, and discussed that with Applicant. Plea Counsel testified that he discussed his case's strengths and weaknesses with Applicant. Plea Counsel testified that he did not withhold discovery from Applicant. Plea Counsel testified that the evidence was witness statements, GSR kit and tests, issues regarding the DNA, cell phone extractions, and cell phone tower information. Plea Counsel testified that there was a GSR testing conflict where the state crime lab had issues with a lab technician. Plea Counsel testified that the first lab technician said no GSR was on the victim's hands. Plea Counsel testified that he confronted the prosecutor with the negative test because it contained some GSR particles. Another GSR test confirmed that there was GSR on the victim, but that was not surprising. Plea Counsel testified that it was an indeterminate to non-determinate range in the autopsy report.

Plea Counsel was asked if Applicant made incriminating statements, to which he did not answer. Plea Counsel was asked whether there was any evidence to help to which he replied that the elements cut both ways and it was a triable case. Still, it was within the outer limits of what the jury would accept regarding the Applicant's story.

Plea Counsel testified that he evaluated to the extent possible what SLED had done. Plea Counsel testified that Suzanne Bell, a forensic scientist at SLED, reviewed the corrective reports

and audits and confirmed that SLED was doing its part correctly. Plea Counsel testified that he discussed this with Applicant on April 24, 2017. Plea Counsel testified that he objected to the state wanting to go to trial before the audit was complete. Plea Counsel testified that he hired two investigators to investigate this case. Plea Counsel testified that the subpoena would be in the file and would show his request. Plea Counsel testified that the Applicant wanted them to include: Abanish(sp?) Belton, Rosalynn Davis, and Latoya Brown. Plea Counsel testified that there was nothing else he needed to do to investigate for trial.

Plea Counsel testified that there was a realistic possibility of conviction if the state defendant did not properly assess the credibility issues and could have obtained an acquittal. Plea Counsel testified that he told Applicant this was a triable case. Plea Counsel testified that both the Applicant and the victim had prior robbery charges. Plea Counsel testified that Applicant never had to ask him to engage in plea negotiations because he would do that as a matter of calls. Plea Counsel testified that there were at least three plea offers. The first was on October 21, 2016, for 40 years which is what Applicant could get at trial. Plea Counsel testified that he relayed that offer to Applicant on October 23, 2016, and Applicant rejected that offer without hesitation. The 2nd offer was in the 15 to 20-year range, and the 3rd offer was in the 10 to 25-year range. Plea Counsel testified that the last was a negotiated term of 17 years.

Plea Counsel testified that he spoke with the solicitors regarding Applicant's case, and they planned to try it. Plea Counsel testified at some point; the solicitors told him to stop screwing around and tell them what the defendant would take. Plea Counsel testified regarding the 17-year offer that he had seen worse offers, but Applicant would be out of SCDC before his 40th birthday. Plea Counsel opined those 30 to 40 years would be akin to a natural life sentence. Plea Counsel testified that when he first met with Applicant to discuss the negotiated 17-year sentence,

Applicant conveyed that a fifteen-year sentence is what he would accept. Plea Counsel testified that he discussed the difference between murder and manslaughter and that it was a day-for-day and up-to-life. Plea Counsel testified that Applicant appeared to understand.

Plea Counsel testified that Applicant understood his constitutional rights because they discussed them and that he understood he waived his right to jury trial and confrontation. Plea Counsel testified that Applicant understood everything conveyed in the colloquy with the plea court. Plea Counsel testified that Applicant decided to plead and did not force them because he was prepared to proceed at trial.

Plea Counsel testified that after Applicant accepted the plea offer, he asked him to file a PCR and expressly indicated he did not want to appeal. Plea Counsel testified that he did not instruct Applicant to answer yes to all of the questions, and he explained to Applicant the gravity of his answers. Plea Counsel testified that he told Applicant to let him know if he had any concerns and would never instruct a client just to answer yes. Plea Counsel testified that Applicant appeared to understand everything regarding his plea. Plea counsel testified that he thought Applicant's decision to the plea was an intelligent move.

Plea Counsel testified that regarding his prior representation of Carswell, he did not recall when the case was resolved prior to Applicant's issue. Plea Counsel testified that the standard of care and the public defender's office is that he would submit a memo regarding the conflict. They found that the only potential conflict was his duty of loyalty to Carswell. Plea Counsel testified that to absolve this issue was to have someone else cross Carswell during the trial. Plea Counsel testified he also advised Applicant of the conflict and obtained his consent however, while Plea Counsel recalls the meeting, he does not recall if Applicant signed a waiver. Plea Counsel testified that he doesn't think he had divided loyalty.

Plea Counsel testified that it wasn't material how Applicant ended up with the victim because there was no indication that this was planned homicide. Plea Counsel testified that he indeed discussed the potential conflict with Applicant and that Applicant would have had the option to get a new attorney, but Applicant never expressed concerns regarding Plea Counsel's representation. Plea Counsel testified that he and Applicant discussed a right to appeal; however, he saw no grounds for an appeal. Plea Counsel further testified from his notes that the defendant appealed. Plea Counsel testified that there was no viable motion because the sentence was negotiated.

On cross-examination, Plea Counsel testified that he received discovery on December 11, 2015. Plea Counsel testified that he allows clients to keep their discovery in jail but advises against it. Plea Counsel testified that he did not recall if Applicant kept discovery, but he knows he discussed discovery with Applicant several times. Plea Counsel testified that Applicant was most interested in the statements and GSR. Plea Counsel testified that Applicant's statement was the most concerning because Applicant's statement helps get the plea, but there was concern that Applicant initially lied to law enforcement. Plea Counsel testified that he did not recall when he received the 2nd GSR kit but learned about it and Fits News that there was one fuse particle that could be GSR.

Plea Counsel testified that he met with Applicant multiple times and that there are visits that are not in his notes that he did not account for. Plea Counsel testified that the public defender's office standard of care was to visit a client at least every ninety days. Plea Counsel testified that he would have provided any information that Applicant requested. Plea Counsel testified that the total amount of time visiting with Applicant was at least 10 hours, and they had substantive discussions regarding self-defense. Plea Counsel testified that he would have visited for as long

as he felt Applicant needed to understand the issues. Plea Counsel testified that when law enforcement confronted Applicant regarding his first statement using triangulation, Applicant of their self-defense.

Plea Counsel testified that he recalls the difficulty in speaking to witnesses, but he does not talk to direct witnesses directly; that is what the investigators are for. Plea Counsel testified that he disagreed that his advice to Applicant could be construed as "say yes to Judge." Plea Counsel further testified that he would never instruct Applicant on any specific answer to any question from the court. Plea Counsel testified that it was a general issue of fact regarding whether this was a justified homicide.

Plea Counsel testified that in his meeting notes, he noted that Applicant did not desire a direct appeal and that Applicant asked about a PCR, and Plea Counsel informed him he would have to ask the Department of Corrections. Plea Counsel testified that he informed Applicant that if he filed a notice of appeal, Applicant would receive a letter regarding a more definite statement. Plea Counsel testified that he would've filed a notice of appeal if Applicant had asked him to.

Plea Counsel testified that he did not recall when he represented Carswell and that he advised Applicant of the potential conflict. Plea Counsel testified that he recalls completing conflict waivers, but it is within the realm of possibility that they did not do that. Plea Counsel testified that he reviewed all evidence when he represented the Applicant. Plea Counsel testified that he met with a crime scene reconstruction expert named Gary Reed and consulted with him regarding the viability of a self-defense claim. Plea Counsel testified that the expert felt that it could probably be a self-defense shooting and that other experts may as well. Plea Counsel testified that he discussed with Applicant specifically concerning the viability of self-defense. Plea Counsel testified that juries are skeptical of experts and want to hear from the Applicant per

research. Plea Counsel testified that they did not go to trial because the client didn't have a risk assessment.

Plea Counsel testified that there were some beneficial and harmful facts. Plea Counsel testified that he discussed this with Applicant and that there was a colorable path to acquittal if the jury believed. Plea Counsel testified that there were no outward difficulties after the first 2 to 3 visits, and his impression was that Applicant was young. Plea Counsel testified that he never thought Applicant had an emotionally visceral response, and they had no fundamental disagreements, breakdowns, or communications; however, they may have sometimes disputed factual analyses. Plea Counsel testified that he got the sense that Applicant was not happy with the situation, but they had an amicable relationship. Plea Counsel testified that he would never withhold information from an Applicant.

Plea Counsel testified that the letter, which he had no independent recall but akin to Applicant's writing with a date of February 28, 2018, in which it expressed views that Applicant believed Plea Counsel was working both sides and that would have prompted a visit or discussion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript, and the testimony and evidence presented at the evidentiary hearing establish Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "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.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

"Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect."

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C] ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions' more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters' only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires

the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the 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 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 decision making" 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).

Surmounting the high bar of Strickland 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. 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 plea and the evidence presented at the PCR hearing. Harris, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of plea counsel. The specific claim is addressed below:

Allegation 1(a): Involuntary Guilty Plea

Applicant alleges Plea Counsel was ineffective for advising him to only answer yes to the plea judge's questions rendering his guilty plea involuntary. This Court finds this allegation is without merit.

"[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). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). 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. 29, 34, 528 S.E.2d 418, 421 (2000) (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 v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harres, 282 S.C. at 133, 318 S.E.2d at 361. However, statements 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. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

On cross-examination, Applicant testified that the plea offer was a negotiated sentence of seventeen years of imprisonment. Applicant testified and agreed that he avoided the risk of a conviction for murder and a mandatory minimum sentence of thirty years of imprisonment to life. However, Applicant testified that he did not understand what he was doing. Specifically, Applicant testified that he was "going through the motions," and Plea Counsel said, "just say yes to everything."

On redirect-examination, Applicant testified that Plea Counsel told him to "just say yes to everything."

On direct-examination, Plea Counsel testified that he did not instruct Applicant to answer yes to all of the questions, and he explained to Applicant the gravity of his answers. Plea Counsel testified that he told Applicant to let him know if he had any concerns and would never instruct a client just to answer yes. Plea Counsel testified that Applicant appeared to understand everything regarding his plea.

On cross-examination, Plea Counsel testified that he disagreed that his advice to Applicant could be construed as "say yes to Judge." Plea Counsel further testified that he would never instruct Applicant on any specific answer to any question from the court.

At Applicant's plea hearing, the following colloquy occurred between the court and Applicant:

THE COURT:	All right. And you are Randall Gadson, Jr.?
THE DEFENDANT:	Yes, ma'am.
THE COURT:	And, sir, you are pleading guilty to voluntary manslaughter; is that correct?
THE DEFENDANT:	Yes, ma'am.
THE COURT:	And, sir, how old are you?
THE DEFENDANT:	Twenty-five.
THE COURT:	How far did you go in school?
THE DEFENDANT:	Tenth grade.
THE COURT:	Are you married?
THE DEFENDANT:	No, ma'am.
THE COURT:	Do you have children?
THE DEFENDANT:	Yes, ma'am.
THE COURT:	Their ages?
THE DEFENDANT:	Five and two.
THE COURT:	Are you on probation or parole?
THE DEFENDANT:	No, ma'am.
THE COURT:	And within the last 24 hours, have you taken any medication, drugs, or alcohol?
THE DEFENDANT:	No, ma'am.
THE COURT:	All right. Listen closely to the Solicitor as she states the facts.
(Solicitor's facts omitted)	
THE COURT:	All right. Mr. Gadson, you have heard the State's statements of the allegations by the Solicitor. Do you agree with the facts as stated by the Solicitor?
THE DEFENDANT:	Yes, ma'am.
THE COURT:	All right. And is there any portion of that you do not agree with?
THE DEFENDANT:	No, ma'am.
THE COURT:	And, sir, you understand that when you plead guilty you give up certain important constitutional rights. You have the right to a jury trial. At a jury trial the State would have to prove you guilty beyond a reasonable

doubt. You and your attorney would have the opportunity to cross-examine any witnesses that they would present. You would not have to testify. The burden would be on the State to prove you guilty beyond a reasonable doubt. If you gave any incriminating statements, you would have the right to challenge the admission of those statements. Sir, you would have an opportunity to present any defenses that you and your attorney may have. However, the burden would be on the State to prove you guilty. And if you decided not to present any defenses and you decided not to testify, I would inform the jurors that they could not hold that against you. The burden is upon the State to prove you guilty beyond a reasonable doubt, but by pleading guilty, sir, you waive your right to have this presented in front of the jury. Is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And you give up those other important constitutional rights; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And, sir, you understand that voluntary manslaughter carries a minimum of two years and a maximum of 30 years? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You understand that it is classified as a violent most serious offense? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: More serious means under our two-strike law that you would be looking at, if you were to get another most serious offense, you would be looking at life without parole. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Do you understand violent means you have to serve 85 percent of any sentence that you get today; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And, sir, you have been represented by Mr. Krzyston. Are you satisfied with his representation?

THE DEFENDANT: Yes, ma'am.
THE COURT: And has he done everything for you that you feel he could have done or should have done?
THE DEFENDANT: Yes, ma'am.
THE COURT: And have you met with him for as long as possible and necessary for him to properly represent you?
THE DEFENDANT: Yes, ma'am.
THE COURT: And are you completely satisfied with his services?
THE DEFENDANT: Yes, ma'am.
THE COURT: All right. And, sir, are you pleading guilty today freely and voluntarily?
THE DEFENDANT: Yes, ma'am.
THE COURT: Is anyone forcing you to plead guilty?
THE DEFENDANT: No, ma'am.
THE COURT: Has anyone offered you anything -- I understand that you all have negotiated a plea -- has anyone offered you anything in exchange for your plea this morning, or today?
THE DEFENDANT: No, ma'am.
THE COURT: And has anyone threatened you or coerced you into pleading guilty today?
THE DEFENDANT: No, ma'am.
THE COURT: And are you pleading guilty of your own free will?
THE DEFENDANT: Yes, ma'am.
THE COURT: And, sir, have you understood my questions?
THE DEFENDANT: Yes, ma'am.
THE COURT: Have you answered them truthfully?
THE DEFENDANT: Yes, ma'am.
THE COURT: And the answers that you have given today have been your answers; is that correct?
THE DEFENDANT: Yes, ma'am.
THE COURT: All right. And you understand you have the right to appeal the guilty plea and the sentence of this Court within ten days of today's date? Do you understand that?
THE DEFENDANT: Yes, ma'am.
THE COURT: All right, sir. Do you have any questions of me?
THE DEFENDANT: No, ma'am.
THE COURT: All right. And, sir, and you wish for me to accept your plea to voluntary manslaughter today; is that correct?

THE DEFENDANT: Yes, ma'am.
THE COURT: All right. I find that there is a substantial factual basis for this plea. I also find that the Defendant's decision to plead guilty is freely, voluntarily, knowingly, and intelligently made; that he is represented by counsel to whom he indicates to me he is completely satisfied with. I will accept your plea.

(Plea Tr. pp. 4, l. 14 – 15, l. 1) (Solicitor's facts omitted).

The plea transcript reflects Applicant informed the plea court that he was clearheaded and understood what he was doing in entering the guilty plea. The plea court clearly explained Applicant's right to a jury trial, the State's burden of proof, and Applicant's right to present evidence in his defense. Applicant further admitted his guilt by agreeing with the Solicitor's accounting of the facts. The plea court explained in detail the requirements for Applicant to waive his right to an appeal and to parole eligibility, and Applicant told the plea court he understood the waiver, had made the decision to do so of his own free will and did not have any questions of his Plea Counsel or the court. Finally, Applicant stated he was fully satisfied with Plea Counsel, he had enough time to meet with him to discuss his options and make up his mind about what he wanted to do, and there was nothing else he wanted Plea Counsel to do for him on this case.

Accordingly, this Court finds Applicant pleaded guilty freely and voluntarily after discussing his options with Plea Counsel to avoid a trial and avail himself of a lower sentence than he might receive if convicted at trial. This Court further finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. The plea transcript reflects Applicant understood the terms of the plea agreement and chose to waive his rights and plead guilty. Notably, this Court finds Plea Counsel did not instruct Applicant to only answer yes to the plea judge's questions.

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(b): Failure to File Preemptive Motions or Motions to Alleviate the Indictment for Murder[2]

Applicant alleges Plea Counsel was ineffective for failing to file preemptive motions or motions to alleviate the indictment for murder. The Court finds this allegation lacks merit.

Initially, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Applicant presented no evidence or testimony at the PCR evidentiary hearing regarding this allegation. Therefore, whether pretrial motions would have changed the Applicant's decision to plead and instead go to trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(c): Failure to File an Appeal or Motion to Reconsider

Applicant alleges Plea Counsel was ineffective for failing to file an appeal or motion to reconsider. The Court finds this allegation lacks merit.

To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Counsel has a constitutionally imposed duty to consult with a

---

[2] This Court is only addressing the failure to file motions claim in Applicant's allegations 1(b) because this Court has addressed the other issues claimed in 1(b) in other sections. Applicant's GSR allegation is addressed in the Allegation 3 section. Applicant's conflict of interest allegation is addressed in the Allegation 4 section. Applicant's failure to file an appeal allegation is addressed in the Allegation 1(c) section.

defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000).

In determining whether counsel has a duty to consult his client about an appeal, "[o]ne highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potentially appealable issues and may indicate that the defendant seeks an end to judicial proceedings." Id. at 480. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

> Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

At the evidentiary hearing, Applicant testified that Plea Counsel did not file an appeal and he asked Plea Counsel about an appeal, but he told Applicant he would have to file a PCR application. Applicant testified that he wanted a belated appeal.

On cross-examination, Applicant testified that he recalled the court informing him of his right to appeal. Applicant testified that he wanted to appeal because "it didn't sit right."

Plea Counsel credibly testified that he and Applicant discussed a right to appeal. Plea Counsel further testified from his notes that the defendant did not want to appeal. Again, Plea Counsel testified that in his meeting notes, he noted that Applicant did not desire a direct appeal and that Applicant asked about a PCR. Plea Counsel testified that he informed Applicant that if he filed a notice of appeal, Applicant would receive a letter regarding a more definite statement. Plea Counsel testified that he would have filed a notice of appeal if Applicant had asked him to.

At the plea hearing, the following colloquy occurred between the plea court and Applicant:

> THE COURT: All right. And you understand you have the right to appeal the guilty plea and the sentence of this Court within ten days of today's date? Do you understand that?
>
> THE DEFENDANT: Yes, ma'am.

(Plea Tr. 14, ll. 8 – 12).

The Court finds Applicant has not met his burden of proving that he requested an appeal by a preponderance of the evidence. See Rule 71.1(e), SCRCP. Because Applicant has not shown that he actually requested an appeal, Counsel was not ineffective for failing to file one. See Kinard v. State, 418 S.C. 478, 481, 795 S.E.2d 15, 16 (2016).

Finally, the Court notes the relief requested by Applicant on this ground is "(1) to have [his] conviction for voluntary manslaughter reversed and vacated due to the lack of evidence since no evidence existed Applicant fire weapon that allegedly killed victim. (2) To have an appeal filed on the merits." Neither is appropriate even for a meritorious claim that Applicant was denied his right to a direct appeal. See White, 263 S.C. at 119, 208 S.E.2d at 39 (holding there is no authority for granting either a new trial or a belated appeal as relief for a denial of the right to appeal). The only relief recognized for such a claim is a review of direct appeal issues by the Supreme Court.

See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974); see also Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 2: "Violation of Fourteenth Amendment right to Due Process and Equal Protection."

Applicant alleges for Plea Counsel was ineffective and that his "Fourteenth Amendment right to Due Process and Equal Protection" was violated. This Court finds this allegation is without merit.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). However, Applicant's assertion that he was denied Due Process and Equal Protection in violation of his Fourteenth Amendment fails to set forth with specificity the grounds upon which this constitutional violation is based. The Uniform Post-Conviction Procedure Act requires Applicant must "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (2003). Applicant did not allege any grounds upon which his Fourteenth Amendment violation claim was based, and this claim was not framed as ineffective assistance of counsel.

Here, Applicant had the opportunity to present testimony and evidence regarding this claim, and Applicant failed to do so. Since Applicant has failed to present any testimony or evidence with respect to this allegation, this Court finds this allegation shall be dismissed for failing to frame the Constitutional issue as one of ineffective assistance of counsel.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 3: **"Fourth Amend. Right to unlawful seizure in false arrest since GSR report and testing failed to confirm I fired weapon."**

Applicant alleges his Fourth Amendment rights have been violated and he is unlawfully seized and falsely arrested because the GSR test failed to confirm that he fired a weapon. This Court finds this allegation is without merit.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). Here, Applicant averred that his Fourth Amendment rights are being violated because the GSR test did not prove he shot a weapon. This Court finds that Applicant's negative GSR test is not dispositive of whether Applicant did or did not shoot a weapon. The record shows that Applicant gave a statement to law enforcement indicating he fired a weapon because Owens was allegedly shooting at Applicant.[3] As well, at the plea hearing, Applicant agreed with the facts as presented by the assistant solicitor:

> THE COURT: All right. Mr. Gadson, you have heard the State's statements of the allegations by the Solicitor. Do you agree with the facts as stated by the Solicitor?
> THE DEFENDANT: Yes, ma'am.
> THE COURT: All right. And is there any portion of that that you do not agree with?
> THE DEFENDANT: No, ma'am.

See Plea Tr. pp. 5, l. 13 – 10, l. 19. It is by Applicant's own admissions in the record that this claim fails.

---

[3] This Court notes that Applicant gave statements that Owens came around Applicant's left side and opened fire, so Applicant shot back. Owens remained on scene and was tested for GSR—not once but twice—and no GSR was found on Owens. Applicant was not tested until much later.

Moreover, Applicant had the opportunity to present testimony and evidence regarding this claim and Applicant failed to do so. Since Applicant has failed to present any testimony or evidence with respect to this allegation, this Court finds this allegation shall be dismissed for failing to frame the Constitutional issue as one of ineffective assistance of counsel.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 4: Plea Counsel's Conflict of Interest

Applicant alleges Plea Counsel had a conflict of interest because Plea Counsel once represented a witness in Applicant's case. Specifically, because the witness made a statement against Applicant. This Court finds this allegation is without merit.

Applicant claims he is entitled to relief because Plea Counsel allegedly had a conflict of interest because he once represented a witness in Applicant's case and that witness gave a statement to police. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the applicant's interests. Fuller v. State, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where an applicant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance, prejudice is presumed. Gonzales v. State, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing Strickland, 466 U.S. at 692) (emphasis added). However, "[t]he mere possibility

of a conflict of interest is insufficient to impugn a criminal conviction." Fuller, 347 S.C. at 634, 557 S.E.2d at 665.

"The Sixth Amendment right to conflict-free representation, like the right to counsel itself, may be the subject of a waiver." United States v. Swartz, 975 F.2d 1042, 1048 (4th Cir. 1992). "The state can establish a waiver only by proving an intentional relinquishment or abandonment of the right." Hoffman v. Leeke, 903 F.2d 280, 288 (4th Cir. 1990). "To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently." Thomas, 346 S.C. at 144, 551 S.E.2d at 256 (citing Swartz at 1048-49). "Whether there has been a waiver depends on the particular facts of each case and the court must make as thorough and long an inquiry as necessary to determine whether the accused is voluntarily, knowingly[,] and intelligently waiving his right." Hoffman, 903 F.2d at 288.

On direct-examination, Applicant testified that he did not know what conflict of interest was. Applicant testified that Plea Counsel previously represented Steven Carswell in an armed robbery charge. Applicant testified that Plea Counsel never discussed that with him. Applicant testified that he told Plea Counsel that he thought Plea Counsel was working against him. Applicant testified he never saw any statement Carswell provided. Applicant testified that he never signed a conflict waiver.

On direct-examination, Plea Counsel credibly testified regarding his prior representation of Carswell, that he did not recall when the case was resolved prior to Applicant's issue. Plea Counsel testified that the standard of care and the public defender's office is that he would submit a memo regarding the conflict. They found that the only potential conflict was his duty of loyalty to Carswell. Plea Counsel testified that to absolve this issue was to have someone else cross Carswell during the trial. Plea Counsel testified he also advised Applicant of the conflict and

obtained his consent; however, while Plea Counsel recalls the meeting, he does not recall if Applicant signed a waiver. Plea Counsel testified that he did not think he had divided loyalty. Plea Counsel testified that he indeed discussed the potential conflict with Applicant and that Applicant would have had the option to get a new attorney, but Applicant never expressed concerns regarding Plea Counsel's representation.

On cross-examination, Plea Counsel testified that he did not recall when he represented Carswell and that he advised Applicant of the potential conflict. Plea Counsel testified that he recalls completing conflict waivers, but it is within the realm of possibility that they did not do that.

This Court finds that Applicant is not entitled to relief based upon a conflict of interest. Plea Counsel credibly testified that he informed Applicant of the potential conflict and Applicant never asked for a new attorney. Applicant, knowing that his attorney once represented a potential witness in his case, seemingly waived this potential conflict in entering the plea.

Even if this potential conflict was not waived, Applicant has failed to show any prejudicial effect of the potential conflict. There has been no showing that the potential conflict impacted Plea Counsel's performance or Applicant's decision to plead. Applicant has merely acknowledged a possibility of a conflict existing, which does not warrant relief. Furthermore, this Court finds that there was no *actual* conflict because Applicant chose to plea and did not go to trial. Applicant has failed to meet the burden of showing how he was prejudiced.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 5: Failure to Obtain Competency Evaluation

Applicant alleges Plea Counsel was ineffective for failing to request a competency evaluation. This Court finds this allegation is without merit.

In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (S.C. Ct. App. 2015) (citing Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992)), rev'd on other grounds, Ramirez, at 22, 795 S.E.2d at 845; Dusky v. United States, 362 U.S. 402 (1960) (per curiam) (internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. Jeter, at 233, 417 S.E.2d at 596.

If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. See Ramirez, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial, but another concluded applicant was severally mentally retarded) (citation omitted).

This Court finds Applicant has failed to show any deficiency in Plea Counsel not requesting a mental competency evaluation because Applicant has not introduced evidence that Plea Counsel's decision fell below an objective standard of reasonableness. At the evidentiary hearing, Applicant testified that he only had 8th grade education and understood Plea Counsel to a certain extent but did not understand most of it at times. Applicant testified that he thought he needed a

competency evaluation because he didn't understand things like a GSR kit. Plea Counsel testified that Applicant spoke coherently and seemed to understand. Plea Counsel testified that he had no concerns regarding Applicant's ability to understand. Plea Counsel testified that he knew that Applicant had attained a ninth-grade education from Eau Claire. Plea Counsel testified that he had no mental health issues; if he did, he would have petitioned for a competency evaluation. Still, there were no indications that Applicant had capacity issues. Plea Counsel testified that there were several bond hearings that he went to, and he had an open line of communication with the Applicant's mother. Plea Counsel testified that no family members raised competency concerns.

This Court finds Plea Counsel reasonably relied upon his own perception that Applicant's mental competency was not disputed and did not warrant a request for an evaluation. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (finding that counsel reasonably relied upon his own perceptions of his client's competency because, based on counsel's interactions with his client, he believed that a competency evaluation was not needed, believed that his client was competent, and continued to believe that his client was competent at his plea hearing). Simply put, Applicant has failed to show any deficiency in Plea Counsel's representation because Applicant has provided no evidence Plea Counsel should have questioned his mental competency at the time of his trial.

Furthermore, this Court finds Applicant has failed to show any resulting prejudice from Plea Counsel's not having Applicant's mental competency evaluated. Applicant has not demonstrated that there was a reasonable probability that he would have been found incompetent if his competency had been evaluated before his plea hearing. Applicant's testimony did not establish that he lacked the sufficient ability at the time to consult with Plea Counsel with a reasonable degree of relational understanding about his criminal case or the consequences of

proceeding with his plea hearing. Applicant's assertion that he suffered prejudice from the lack of a competency examination is purely speculative. See Garren, at 13, 813 S.E.2d at 711 (finding that there was no evidence to support the PCR court's finding that Garren suffered prejudice from his defense attorney's failure to have Garren's mental competency evaluated because Garren did not introduce evidence at his PCR hearing that there was a reasonable likelihood that he would have been found incompetent if the evaluation had been conducted).

This Court finds that Applicant has failed to show that Plea Counsel was constitutionally ineffective for not having Applicant's mental competency evaluated because he has failed to show any deficiency in Plea Counsel's performance and resulting prejudice.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

{SPACE LEFT INTENTIONALLY BLANK | SIGNATURE PAGE FOLLOWS}

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **must be DENIED and DISMISSED WITH PREJUDICE.**

The Court notes 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. Post-conviction relief is denied, and the application for post-conviction relief be dismissed with prejudice; and

2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 19th day of September, 2022.

GEORGE M. McFADDEN, JR.
Presiding Judge
Twelfth Judicial Circuit