THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

APPEAL BEAUFORT COUNTY

Court of Common Pleas

Honorable DeAndrea Benjamin, Circuit Judge

Case No.: 2019-CP-07-0173

Henry Edward Pinckney 377144..PETITIONER

V.

State of South Carolina..RESPONDENT

NOTICE OF APPEAL

The Petitioner Justin Watts appeals the Honorable DeAndrea Benjamin's February 16, 2023 Order of Dismissal. Undersigned counsel received notice of entry of the order on March 3 2023. A copy of the order on appeal is attached hereto.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

Mach ~~6~~ 7, 2023

Danielle Dixon, Esq
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Beaufort County Circuit Court Clerk
PO Box 1128
Beaufort, SC 29901

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Henry Edward Pinckney, #377144, Applicant,	)	Case No.: 2019-CP-07-00173
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

2023 FEB 23 AM 11: 57
JERRI ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY S.C.

In response to Henry Edward Pinckney's (Applicant) action for post-conviction relief (PCR) commenced January 25, 2019. The State made its return on March 18, 2020. The Court convened an evidentiary hearing into the matter on November 3, 2021, at the Beaufort County Courthouse in Beaufort, South Carolina. Applicant was present at the hearing and represented by James Falk, Esq. Assistant Attorney General Lauren Mims of the South Carolina Attorney General's Office, represented the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Jeffrey Stephens, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the May 2017 term of the Beaufort County Grand Jury for Applicant for possession with intent to distribute marijuana, second offense (2017-GS-07-01026), possession with intent to distribute cocaine base, first offense (2017-GS-07-01027), and felony hit and run with death resulting (2017-GS-07-01123).

Applicant was represented by Jeffrey Stephens, Esquire, of the Fourteenth Circuit Public Defender's Office. Assistant Solicitor Leigh Staggs, of the Fourteenth Circuit Solicitor's Office, prosecuted the case.

On July 24, 2018, Applicant appeared before the Honorable Perry M. Buckner and pled guilty as indicted, with a negotiated plea of 15 years incarceration. Judge Buckner went along with the negotiated plea and sentenced Applicant to a term of imprisonment of 10 years for PWID marijuana, second offense; 15 years for PWID cocaine base, first offense; 15 years for hit and run, death resulting; with all sentences to run concurrent. Applicant did not appeal his plea or sentence.

II. CURRENT APPLICATION

Applicant timely commenced this PCR action on January 25, 2019. Applicant alleges[1] that he is being held in custody unlawfully for the following reasons:

1. Defense counsel was ineffective for failing to properly advise the applicant of the full scope of appellate review from an appeal of a guilty plea.
2. Plea counsel failed to object to the sentence imposed by the court, which exceeded the duration of the negotiated sentence of ten (10) years that Applicant had agreed to.
3. Plea counsel failed to timely seek leave of court to withdraw Applicant's guilty plea on the basis that the court-imposed sentence exceeded the duration of the sentence of a plea bargain to which Applicant had agreed.
4. Applicant would otherwise have proceeded to trial and not have pled guilty had he known the sentence would or could have exceeded the ten (10) year cap that was promised as part of his plea bargain.
5. Applicant's guilty plea was involuntary as it was induced by an unfulfilled plea bargain that Applicant would not be sentenced concurrently to more than ten (10) years.
   a. June 6 2018 Letter:
      i. "As we discussed, the prosecutor in your case is asking you to plead guilty to some minor drug offenses and the charged leaving the scene of an accident with death charge in return for her recommendation of a 10-year jail sentence. I would be arguing for the judge to sentence you to a much lower jail sentence."

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[1] These allegations were excerpted from Applicant's application for clarity and brevity.

6. Plea counsel was ineffective for failing to properly advise Applicant of his right to a direct appeal following his guilty plea.
    a. Plea counsel did not properly advise Applicant of the full scope of appellate review of an appeal from a guilty plea. "As defense counsel was required to do so, but failed in this duty, the defendant was entitled to relief on this ground."
7. Plea counsel failed to investigate both factual and legal matters in order to develop potential defenses.
8. (P. 23) Illegal search warrant
9. Chain of custody
10. Due process
11. Indictment Violation
12. SMJ

As relief, Applicant requests "a new trial and any other relief allowed under statutes and case law".

At the evidentiary hearing, Applicant proceeded forward on the allegations of ineffective assistance of counsel, involuntary guilty plea and failure to file an appeal.

III. RELEVANT TESTIMONY

Applicant's Testimony

At the evidentiary hearing, Applicant testified Jeffrey Stephens represented him in this case and was appointed to him. He further testified that he had conversations with plea counsel at the detention center where he was housed. It is Applicant's testimony that plea counsel only came to the detention center one time and that he sent an assistant another time. During the meeting with plea counsel's assistant, Applicant testified that he watched videos. He further testified that his family tried to contact plea counsel on several occasions.

He further testified that he received a written letter from plea counsel that was hand delivered to him by a representative from the Fourteenth Circuit Public Defender's Office. Applicant testified that he believed everything was going to be "alright" because there were plea negotiations that were mentioned in the letter. After receiving the letter, Applicant stated he would

be willing to take a ten-year plea offer. Applicant further testified that plea counsel corrected the offer of ten years to fifteen years after the letter was received by Applicant. Applicant further testified that plea counsel advised him should be proceed to trial, he would be tried separately and would have consecutive sentences. It is Applicant's contention that no one met with him or discussed his matter with him between the time he received the letter on June 6, 2018 and the time of the plea. He further testified that he went to Court one week before his plea and did not take the offer of fifteen years at that time. Applicant further testified that there was no one in his family to testify on his behalf at his sentencing hearing because his attorney did not inform him that he was going back to court the following week to plead guilty.

On cross-examination, Applicant stated that he did not remember discussing elements of the crime with his attorney before he pled, but remembered after his recollection was refreshed. Applicant testified that he recalled discussing possible defenses with his attorney, but did not give his attorney any leads to investigate. Furthermore, Applicant testified that he remembered Judge Buckner explaining that he had several rights that he would be giving up, including: right to jury trial, right to remain silent and right to challenge the facts alleged against him. Applicant could not recall offering any complaints to the Court with his lawyer. Applicant further reiterated that plea counsel did not speak with Applicant before taking the fifteen-year plea, but would have accepted a ten-year plea. On re-direct examination, Applicant testified that he remembers telling the court he was satisfied with his lawyer, but he was not satisfied with his lawyer. On re-cross, Applicant

testified that he remembered telling the Court that he did not need more time with his attorney and that he understood her questions.

Plea Counsel Jeffrey Stephens' Testimony

Plea counsel, Jeffrey Stephens, testified he was appointed in this case. It is his testimony that he spoke with Applicant twice by telephone and physically spoke with him at the detention center twice. During these meetings, Mr. Stephens says he showed Applicant the evidence against him and personally reviewed it with him, as he remembers it was his first time entering the detention center with a laptop.

Mr. Matthews further testified that he had someone from his office walk over the letter conveying the plea offer to Applicant. After the letter was sent, he realized that there was an e-mail from the Solicitor Leigh Staggs, who was handling Applicant's plea. The offer in the e-mail was ten years imprisonment if Applicant was to plea to the charges in this plea as well as a charge that he could not recall. Mr. Stephens stated that offer was different than he believed at the first plea hearing. He testified that when he discussed the plea offer and preparing for the plea colloquy, that he emphasized that this was negotiated. Mr. Stephens did not dispute that he was told in letter that there was a ten-year plea offer, but testified that he went over in detail that the offer was actually fifteen years. Plea counsel felt that Applicant would have pled to the ten-year offer, but it was concerning because the Solicitor could try these matters separately. He further explained that the hit and run charges and drug charges were not related, but could have been tried in separate trials, exposing Applicant to a large amount of time. Plea counsel was then asked "What is the practice in Beaufort County about getting a signature on a plea sheet?" Plea counsel responded, stating that the practice was to put sentencing range on the top of the sentencing sheet so the presiding judge and defendant could see. He further testified that he usually hands sentencing

sheets, indictments and statutory codes to Applicant and explains various classifications, including serious and most serious and violent and nonviolent classifications. Plea counsel states that he told Applicant that the plea was going to be for fifteen years.

On cross-examination, Plea counsel testified that he showed Applicant the three sentencing sheets to the holding area and showed him the three indictments that were *nolle prossed.* He further testified that at the time of the plea, he believed Applicant understood what was taking place at that second plea hearing. He testified at the first plea, Applicant stopped the proceedings and did not go forward, but instead had more discussions surrounding the plea. When asked whether or not he had conducted investigations, Plea counsel testified that he had done most of his investigation on hit and run because it was going to be called for trial. Specifically, Plea counsel testified he called the medical examiner who examined the victim, discussed victim's toxicology report and reviewed the video of Applicant at a club shortly before the hit and run. Plea counsel also recalled a conversation between Applicant and himself where they discussed the difference between actually hitting the victim and leaving the scene of the accident. Plea counsel further testified that he was concerned with the possibility that Applicant could have multiple trials exposing him to a large amount of time. Plea counsel also expressed concerns that there were individuals who alleged that Applicant has possibly provided victim with the narcotics in her system, and that Applicant had a possible personal or sexual relationship with the victim. Plea counsel testified that Applicant did not want to plead guilty at first, but he was also facing up to 100 years if convicted consecutively.

When asked what was his conversation about Applicant's drug charges, plea counsel testified that the negotiations were more focused on the hit and run charge because it carried the highest sentence. He further testified that the drugs were not as significant and that the maximums

of those chargers were contained within the maximum sentence of hit and run. It was plea counsel's contention that Applicant understood the risks associated and that the Solicitor would be dropping some of his drug charges in exchange for his plea of guilty. Plea counsel further testified that he would have been ready to proceed to trial on the hit and run, but it would have been a difficult defense based on the facts of the case. When asked whether he felt Applicant needed additional time, he testified that he did not believe and had no inclination at the plea hearing that he needed more time. Regarding his appeal, plea counsel stated Applicant never indicated that he wished to appeal. He further testified that he tried to send a letter about an appeal but was never told by Applicant that he wished to go forward on an appeal.

On re-direct examination, plea counsel testified that he doesn't remember if there was any actual Rule 5 discovery evidence to support that Applicant may have had a relationship with the victim.

IV. Findings Of Fact And Conclusions Of Law

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to Section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

Ineffective Assistance of 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. 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)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *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."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his

statements. *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)).

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.

Applicant contends that counsel was ineffective for failing to enforce a ten-year plea offer that counsel presented to Applicant by letter and allowing Applicant to plead to a fifteen-year sentence. This Court finds that Applicant has failed to prove that counsel was constitutionally ineffective.

Here, there was testimony from Applicant and plea counsel that there was letter given to Applicant that conveyed that there was an offer from the Solicitor for a ten-year plea offer in exchange for drug offenses, as well as the hit and run that he was charged with. However, Applicant contended that he was unaware and did not understand that he was going to be pleading to a negotiated fifteen-year sentence before he pled. This Court finds Applicant's contention to be in direct contradiction with the record below and the credible testimony of plea counsel. Specifically, Applicant affirmed his understanding in the following colloquy with Judge Buckner where he said:

> THE COURT: Now, you heard the Solicitor tell me at the outside of this hearing and it was confirmed to me by your attorney, Mr. Stephens, that there are negotiations in regards to your plea/ You've signed the plea sheets where all three indicated negotiated plea. Do you understand that negotiations were published to me as a sentence of 15 years imprisonment

> and sentences are to run concurrent to each other is that your understanding of the negotiations?
>
> DEFENDANT: Yes, sir.

Plea Tr. p. 16.

Furthermore, this Court finds credible the testimony of plea counsel, Mr. Stephens, that he took the sentencing sheets to a holding area for Applicant to review and that he understood that he would be pleading to a negotiated fifteen-year sentence. This Court also finds credible the testimony of plea counsel that he explained to Applicant in detail that he would be pleading to a negotiated fifteen-year sentence before he entered into is plea. Additionally, during the plea, Applicant testified to the plea judge that he understood what a negotiated sentence was and the ramifications to pleading to a negotiated sentence. Further, Applicant denied during the plea proceeding that anyone had threatened, coerced into taking the plea and expressed that he was satisfied with his counsel's representation. Applicant also testified that the he understood all of the talks with his lawyer as well as plea judge's questions. He further indicated that he answered all of the judge's questions truthfully.

This Court finds Applicant cannot establish any constitutional ineffectiveness of counsel for allegedly "failing" to enforce the ten-year plea offer and not informing Applicant of the fifteen-year plea offer. Plea counsel was not deficient, as this Court found the testimony of plea counsel credible in that he adequately explained and conveyed the fifteen-year plea offer to Applicant before the plea. Applicant was further apprised of the negotiated fifteen-year plea offer and the ramifications of the negotiated plea by the plea judge. As a result, any misunderstanding or miscommunication that Applicant had about the length of time he was pleading guilty to was effectively cured during the plea colloquy. Furthermore, this Court finds that pleading guilty to a

negotiated fifteen-year sentence when Applicant was facing a substantial amount of time did not prejudice Applicant. Accordingly, this allegation is **DENIED**.

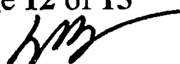
Involuntary Guilty Plea

Applicant further claims his plea was not entered knowingly or voluntarily. The record reflects that Applicant's plea was knowingly and voluntarily entered into, thus Applicant cannot establish his plea was involuntary.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993).

At the plea hearing, Applicant informed the court that he understood the charges against him and their potential sentences. He further explained to the plea court that he was completely



satisfied with the services of counsel and indicated that he had enough time to speak with his lawyer. Applicant affirmed that he had understood all the talks with his lawyer, as well as all of the plea judge's questions and answered them truthfully. Furthermore, at the post-conviction relief hearing, there was no indication that Applicant would have went to trial but for plea counsel's alleged shortcomings as required by *Roscoe* and *Richardson*. He testified that while he did not understand that he was pleading to fifteen years, he testified multiple times that he wished to take a plea deal for ten years.

While Applicant proclaims that he did not understand or was not informed by plea counsel he was entering into a fifteen-year plea, any miscommunication or misunderstanding was effectively cured by the colloquy between Applicant and the plea court. Accordingly, Applicant's allegation of involuntary guilty plea is **DENIED.**

V. FAILURE TO APPEAL SENTENCE OR PLEA

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

This Court finds Counsel credible in his testimony that he never received any inclination or was told by that Applicant wanted to appeal his guilty plea. Further, Applicant was fully apprised of his right to an appeal from the plea judge during the colloquy. Accordingly, Counsel was not required to file an appeal, barring extraordinary circumstances, which have not been shown here. Accordingly, relief on this ground is **DENIED.**

VI. 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 application for post-conviction relief must be denied and dismissed with prejudice.

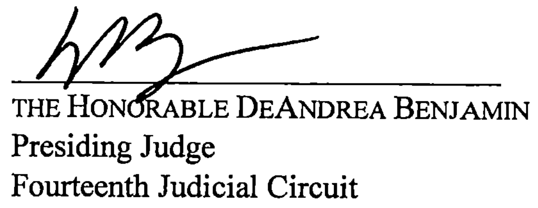
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 305 S.C. 453, 409 S.E.2d 395 (1991). 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 the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

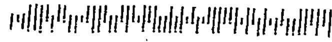
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

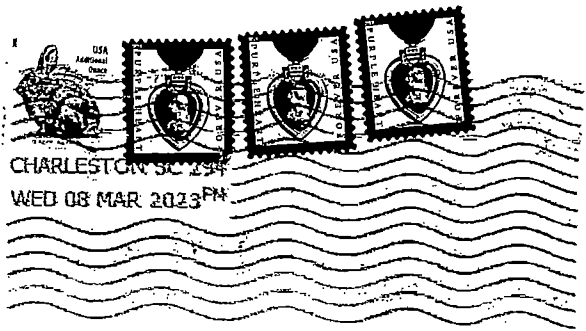
AND IT IS SO ORDERED this 16 **day of** Feb **, 2023.**



THE HONORABLE DEANDREA BENJAMIN
Presiding Judge
Fourteenth Judicial Circuit

Columbia, South Carolina





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MAR 10 2023
S.C. SUPREME COURT

FALK LAW FIRM
P.O. Box 1058
Charleston, SC 29402

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211