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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE G.D. MORGAN

2020-CP-42-02241

STEVEN SCRUGGS, SCDC# 381275

APPELLANT,

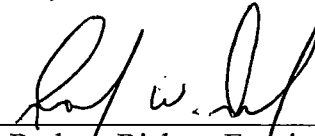
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Steven Scruggs appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G.D. Morgan, Circuit Judge on August 8, 2022 an Order issued on March 3, 2023 and filed on March 9, 2023. The Appellant received notice of the judgment on March 13, 2023.



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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)
)
Steven Scruggs, #381275,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT MAR 22 2023

Case No.: 2020-CP-42-02241

S.C. SUPREME COURT

ORDER OF DISMISSAL

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SPARTANBURG COUNTY
AMY W. O'NEILL

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This matter comes before this Court by way of Applicant's post-conviction relief application filed July 16, 2020. Respondent made its return filed on February 14, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 8, 2022, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

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

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its August 2018 term, the Spartanburg County Grand Jury indicted Applicant for failure to stop for a motor vehicle (2018-GS-42-4365), possession of a stolen vehicle (2018-GS-42-4366), distribution or possession with intent to distribute methamphetamine (2018-GS-42-4369), first degree burglary (2018-GS-42-4371), attempted grand larceny (2018-GS-42-4372), and murder (2018-GS-42-

4373). Applicant was represented by Richard W. Vieth, Esquire. Deputy Solicitor Derrick Bulsa of the Seventh Circuit Solicitor's Office prosecuted the case. On August 27, 2019, Applicant appeared before the Honorable J. Mark Hayes, II, circuit court judge, and pled pursuant *Alford*¹ on the murder charge and pled as guilty on all other charges. As a part of plea negotiations, Applicant pled to the lesser-included offense of voluntary manslaughter on the murder indictment, to the lesser-included offense of non-violent, second-degree burglary on the first-degree burglary indictment, and to possession of methamphetamine on the distribution or possession with intent to distribute methamphetamine. Judge Hayes sentenced Applicant to thirty years' imprisonment for voluntary manslaughter, three years' imprisonment on the meth possession charge, five years on the grand larceny charge, ten years on the second-degree burglary charge, five years on possession of a stolen vehicle, and three years on failure to stop for a blue light, all sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On June 13, 2018, the victim, Jamie Lee Miller, was staying with his grandmother, who was taken to the hospital. (Tr. 9). The victim stayed at the house. (Tr. 9). The neighbor remembers an altercation happening outside of the trailer that night. (Tr. 9). The neighbor stated that on June 14, 2018, he did not see the victim anymore. (Tr. 9). Also on June 13, the neighbor saw three vehicles outside the trailer, belonging to the mother or grandmother, the victim's uncle, and the victim's father, respectively. (Tr. 9). The neighbor stated that he did not see the vehicles at the home June 14. (Tr. 9).

On June 15, Joel Thomas, the grandmother's son, drove by the home and saw the door broken in, the house ransacked, and two missing vehicles. (Tr. 10). The victim was not there.

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

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(Tr. 10). He called the police and the deputy said they could not do anything about the house because of the victim's absence. (Tr. 10). On June 16, one of the vehicles was located three miles down the road. (Tr. 10). Neighbors stated the car started smoking and was pulled over and was being driven by a white man. (Tr. 10-11).

Around this time, the police began pursuing the other stolen car, which was being driven by a driver who did not wear a seatbelt and was driving over a hundred miles an hour. (Tr. 12). The passenger, Tabitha Cook, stated they were trying to jump off the car that day before and that she observed the initial altercation, which was an assault. (Tr. 12-13). Applicant told Cook he assaulted the victim, tied him up, and put him in the trunk of the car. (Tr. 13). The car ran out of gas, Cook was left in the car, and Scruggs fled on foot. (Tr. 13). Applicant forced his way into a nearby house where there were two teenagers, one of which was grabbed by the throat by Applicant, while he demanded car keys from the teenager. (Tr. 13-14). Applicant took a set of keys for an inoperable vehicle. (Tr. 14). The officers, seeing this, went in the house, and ultimately Applicant was apprehended by officers. (Tr. 14). 2.46 grams of methamphetamine were found on Applicant. (Tr. 15). On his way to the house, Applicant attempted to break into several storage facilities. (Tr. 15). The victim was ultimately discovered based upon the smell emitting from the vehicle he was hogtied and thrown into. (Tr. 16). The cause of death was asphyxiation with a contributing factor of drugs. (Tr. 17). The victim was recognized as someone with drug problems. (Tr. 17).

Current Action Before this Court

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

1. "failure to object to the plea, once he was informed by his attorney that he would

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- receive only (15) years.”
2. “failure to object to the (lies) and inconsistent statements of co-defendant.”
 3. “failure to inform Applicant of any defense that [was] available to him.”
 4. “failure to discuss with the Applicant the elements of the crime charged.”
 5. “Applicant’s defense attorney failed to oppose the prosecution’s case with any adversarial litigation.”
 6. “because of the Applicant’s defense attorney’s gross neglect and his many legal errors, no defense was raised to put up an issue for him during the Court proceedings.”
 7. “Applicant’s defense attorney did do the necessary legal research.”
 8. “Applicant’s defense attorney failed to give him his complete loyalty.”
 9. “Applicant’s defense attorney did not do the necessary factual investigations on the Applicant’s behalf.”
 10. “Failure to inform the Applicant of his right to appeal.”
 11. “failure to file an appeal for the Applicant.”
 12. “failure to object to the lies and inconsistent statements of the co-defendant.”
 13. “failure to object to the plea, once Applicant was sentenced to more time than he (guilty plea attorney) told the Applicant he would receive which was (15) years.”
 14. “Failure to investigate.”
 15. “failure to object to evidence.”
 16. “failure to request a preliminary hearing.”
 17. “expert witnesses.”
 18. “failure to object to the Solicitor’s comments.”
 19. “failure to investigate the laws and charges. Applicant was charged with before he advised him to plea to the void laws and charges. (Involuntary plea)”
 20. “failure to challenge the probable cause for the Applicant’s arrest, police officers violated Fourth and Fourteenth Amendments when, without probable cause, they seized Applicant and transported him to the police station for interrogation.”
 21. “Counsel was ineffective for failing to object to his client Confrontation Clause which error occurred when Court admitted statement of a non-testifying co-defendant against petitioner.”
 22. “failure to submit exhibits.”
 23. “failure to file motion for reconsideration.”
 24. “failure to correct false and misleading testimony and file pretrial motions.”
 25. “failure to object to the State’s case to adversarial testing.”
 26. “[Counsel] failed to protect constitutional rights of Applicant”.
 27. “Failure to challenge the murder”.
 28. “Misadvising the Applicant that the State had a rock-solid case against him for Burglary First which would carry fifteen to life explaining to the Applicant that he needs to take the plea offer and plead guilty to voluntary manslaughter and burglary second to limit his exposure because he would be convicted of Burglary First and face a greater sentence if he asserted his right to trial”.
 29. “Stating during the *Alford* plea that the Applicant admitted to beating the victim up and knocking the victim’s teeth out and instructing Tabitha Cook to tie him up: See Transcript p.27, line 14”.
 30. “Failure to move to reconsider the case when requested to do so”.

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31. "Failing to appeal the plea and sentence on behalf of the Applicant".

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

1. Ineffective assistance of counsel.
 - a. For erroneously telling Applicant the first-degree burglary charge was a "slam dunk."
 - b. Failure to review discovery.
2. Invalid plea.
 - a. The global plea offer was induced by erroneous advice, by counsel, concerning the strength of the State's first-degree burglary case.

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

Summary of the Testimony

Applicant Testimony

Applicant claimed he was not effectively represented by Counsel. He stated he was serving a thirty-year sentence. He stated the charges stemmed from two separate incidences and that he entered a global plea. Applicant admitted he was originally charged with murder and planned to proceed to trial. He stated he moved for a speedy trial on the murder charge. He stated he did not want to plead to voluntary manslaughter. Applicant stated that he was later informed by Counsel of his burglary charge from breaking into someone's home in a separate incident. He stated that he thought second-degree burglary was the appropriate charge, but Counsel told him it was a first-degree offense. Applicant testified that he would have plead to first-degree burglary after the murder trial even if he was not convicted at trial for murder. Based upon this information, Applicant elected to enter an *Alford* plea between two and thirty years. Applicant stated that he has letters from Counsel advising him that he would get the same amount of time for burglary as he would for murder, even if he was not convicted of murder at trial. He stated that Counsel told him he could not win at trial on the first-degree burglary charge and that that

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charge was a "slam dunk". Applicant produced an email from Counsel reflecting this. He stated that he would not have pled to voluntary if he thought he could beat the burglary conviction but would have proceeded to trial. Applicant stated that there was no direct evidence, such as fingerprints, connecting him to the murder, beyond a State's witness. Applicant stated that he agreed to enter a plea if Counsel could reduce the first-degree burglary charge. He stated that the prosecutor at the plea hearing stated that the burglary was not a first-degree burglary because officer thought someone was injured when they were not. He stated he did not interrupt the plea proceedings when the State announced they could not prove injury because he was nervous. He stated he erroneously relied on Counsel's assessment of the first-degree burglary offense when he decided to plead. Applicant stated he wants a new trial on the murder charge. Applicant stated he never saw most of the discovery against him, including the thirty-two videos. He stated he decided to plead without reviewing the evidence because Counsel told him it was a slam dunk. He stated he told Counsel he was innocent of the murder. When asked about the fact recitation section where the prosecutor stated that the victim was assaulted, Applicant reiterated that the victim was not injured and that the assault allegation was merely an opinion. Applicant claimed he was overcharged. Applicant testified that the victim's teeth were not knocked out based upon the autopsy.

Counsel Testimony

Counsel testified that Applicant pled guilty to a lot of charges. He stated that the discovery in his file was taken by Applicant's mother years ago and, accordingly, he could not review it in preparation for the PCR hearing. He stated that he thought the State could have met its burden of proof regarding the first-degree burglary charge. He also stated that he was willing to help his client in the PCR action and stated that he should have a new trial if Applicant wants

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one. Counsel testified that the evidence showed that Applicant hit someone and put them in his trunk. He stated there was circumstantial evidence supporting the convictions. Counsel testified that he tried to get the best offer he could and left the decision up to Applicant.

He stated that he did not expect that Judge Hayes would give the maximum sentence for the voluntary manslaughter charge. Counsel testified that Applicant insisted that he was not guilty of murder. Counsel stated that Applicant was facing up to life imprisonment if he was found guilty at trial. He stated that the crux of the negotiations was to get first-degree burglary reduced to second and to get murder reduced to voluntary manslaughter. He stated he tried to get as good of a deal as possible.

On cross-examination, Counsel testified that Applicant was looking at life imprisonment if he went to trial. He stated that he thought that this case was strong in plea negotiations. He stated he tried federal and death penalty cases. He stated he tried to get the best offer and to let the client decide. He stated that the decision to plead was in Applicant's best interest if it was, in fact, a slam dunk case against him. He stated he discussed discovery with Applicant but stated that he may not have been able to take the tapes to the jail. He stated he gave everything in the file to the family after the plea because he knew the appeal and PCR was coming. He stated they reviewed discovery prior to the plea. He stated that the evidence was one of the reasons why Applicant decided to plead. He stated his knowledge that every client has the right to see the evidence. He stated he could not say for sure why Applicant decided to plead. He stated that they discussed the offers together thoroughly before the plea. He stated that this case was based on circumstantial evidence, which he stated is sometimes stronger than direct evidence.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the

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

Ineffective Assistance of Counsel

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

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP. The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. Reasonableness is determined by the "variety of circumstances faced by defense counsel on the range of legitimate decisions regarding how to best represent a criminal defendant, and the

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scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

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

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

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability

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

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

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 44, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "The voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138,

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654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea entered was entered freely, voluntarily, knowingly, or intelligently. Applicant stated he did not consume any type of substance that would affect his ability to understand his decision to plead, that he never received treatment for substance abuse issues, that he was satisfied with Counsel's representation of him, that he was not threatened or coerced into pleading, and that his decision to plead was free and voluntary. (Tr. 6-7). Applicant also stated that, to plead he knew he was waiving his right to a jury trial, where the State would have to convince all twelve jurors that he was guilty beyond a reasonable doubt, that he was waiving his right to call and confront witnesses, the right to present evidence, the right to establish a defense, the right to subpoena witnesses, and the right to remain silent. (Tr. 7-8). Additionally, the plea judge laid out the sentencing ranges on every charge and that the manslaughter charge is classified as violent and most serious. (Tr. 19-20). The plea judge also confirmed Applicant knew of the ramifications of the violent and most serious distinction. (Tr. 20). Thus, the plea was entered freely, knowingly, intelligently, and voluntarily and, thus, Applicant should not be allowed to withdraw it now.

Erroneous Advice/Coercion of Plea Regarding First-Degree Burglary Charge

Applicant claims Counsel was ineffective and his plea coerced due to Counsel's allegedly erroneous allegation that the first-degree burglary charge was a "slam dunk." "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . when, in effecting entry or while in the dwelling [he . . .

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causes physical injury to a person who is not a participant in the crime. S.C. Code § 16-11-311 (1995).

The facts presented at the plea hearing showed that Applicant forced himself into the victim's home and grabbed him by the throat, demanding his car keys. (Tr. 13-14). The State stated that they reduced the first-degree burglary offense to a second-degree offense after meeting with the victim who denied being hurt.² Accordingly, the State reduced the charge to the lesser-included offense, while maintaining that the victim "clearly was assaulted." (Tr. 14).

This Court is not convinced that Applicant faced no risk of being found guilty of first-degree burglary, nor that Counsel was incorrect in his assertion that this was a strong first-degree burglary case. Applicant likely could have been tried for first-degree burglary and received a guilty verdict, given that the victim was assaulted. This was substantiated by Counsel's credible testimony that the State could meet their burden of proof on this charge. Thus, this Court finds Counsel was not deficient because advice given was not erroneous and, because of that, it is unlikely Applicant would have proceeded to trial.

Additionally, this Court finds Counsel credible in his assertion that Applicant was willing to plead if both the murder and first-degree burglary charges were dropped to lesser-included offenses. This further undermines Applicant's allegation that if Counsel had informed him, he could succeed at trial on the first-degree burglary charge, he would have proceeded to trial. Accordingly, relief is denied on this ground.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to review most of his discovery with

² The State made clear at the plea hearing that this was seemingly driven more by bravado than the truth of what happened. (Tr. 14).

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him. Counsel credibly testified that he reviewed the discovery with Applicant and that the only discovery he may not have reviewed with Applicant were the videotapes, given Applicant's incarcerated status. He also credibly testified that all discovery was handed over to Applicant's family. Thus, this Court finds this claim is without merit and declines to grant relief as a result.

Conclusion

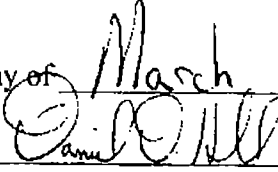
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 3rd day of March, 2023


DANIEL D. HALL
Presiding Judge
Seventh Judicial Circuit

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