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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

Brian M. Gibbons, Circuit Court Judge

2020-CP-42-01279

Robert L. Moore..... Appellant,

v.

The State, ... Respondent.

NOTICE OF APPEAL

Robert L. Moore appeals the Honorable Brian M. Gibbons' Order of Dismissal filed March 29, 2023.

This 10 day of April, 2023.

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Robert L. Moore, #320303, Applicant,	)	Case No.: 2020-CP-42-01279
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before this Court by way of Applicant's post-conviction relief application filed April 9, 2020. Respondent made its return on July 27, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on February 15, 2023, at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Counsel Andrew Johnston, Esquire, 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 June 2013 term, the Spartanburg County Grand Jury indicted Applicant for Attempted Murder (2013-GS-42-2965). Applicant was represented by Andrew Johnston, Esquire. Deputy Solicitor Derrick Bulsa of the Seventh Circuit Solicitor's Office prosecuted the case. On July 21-23, 2014, Applicant proceeded to trial before the Honorable R. Keith Kelly, circuit court judge, and a jury. Judge Kelly sentenced Applicant to thirty years' imprisonment.

Applicant filed a timely Notice of Appeal that was perfected by Robert M. Dudek, Esquire, through filing a brief. The South Carolina Court of Appeals affirmed the conviction by written order. *State v. Moore*, Op. No. 5512 (S.C. Ct. App. filed Aug. 30, 2017). On September 14, 2017, the State made a petition for rehearing, asking the court to grant a petition for rehearing and find in accordance with the trial court judge that no violation of the Fourth Amendment occurred, and affirm Applicant's conviction and sentence. Alternatively, the State requested the Court-de-publish the opinions because "three vastly different opinions are likely to cause confusion on the issues involved. On September 14, 2017, Applicant made a petition for rehearing, requesting the court reconsider its finding and conclude the warrantless search of the cell phone was unconstitutional. The South Carolina Court of Appeals denied both petitions for rehearing on November 2, 2017. This decision was appealed to the South Carolina Supreme Court. Our Supreme Court affirmed, with modifications. *State v. Moore*, Op. No. 27948 (S.C. S.C. filed Feb. 19, 2020). The remittitur was issued on March 6, 2020.

Summary of Relevant Facts

On February 25, 2013, several officers responded to a shooting at a Taco Bell in Spartanburg. (Tr. 110, 125). The victim was found, shot in the left side of the head, hanging out of the victim's vehicle, and hung up in the seatbelt. (Tr.115). A bystander was frantically yelling how the victim had been shot. (Tr. 127). The victim was barely breathing, unresponsive, and had blood draining out of his mouth. (Tr. 116, 119). EMS arrived to render aid and transport the victim. (Tr. 116-17). The victim was in the ICU for over a month and spent about two or three months in the hospital, but ultimately survived the incident. (Tr. 104-05). The victim suffered permanent injuries that require around the clock care. (Tr. 105).

Current Action Before this Court

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

1. "Trial Counsel failed to request a mental competency hearing / evaluation pursuant to the Due Process Clause."
2. "Trial Counsel failed to challenge a pre-arranged plea agreement with my alleged codefendant."
3. "Trial Counsel [was] ineffective for failure to request a lesser-included offense instruction."
4. "Trial Counsel was ineffective for giving applicant erroneous advice on which he based his decision not to testify."
5. "Trial counsel was ineffective for denying applicant's right to an impartial jury as guaranteed by the South Carolina Constitution and by the 6th and 14th amendment of the United States Constitution."
6. "Trial Counsel was ineffective for conceding guilt on applicant['s] behalf."
7. "Trial Counsel violated applicant's due process rights by not objecting to the trial court's erroneous jury charge on 'hand of one, hand of all' theory."
8. "Trial Counsel ineffective for failure to object to the burden-shifting instruction which shifted the burden of proof."
9. "Trial Counsel denied applicant's confrontation rights and compulsory process of 6th amendment and hearsay assertions."
10. "Trial Counsel was ineffective for failure to argue in suppression hearing he had a reasonable expectation of privacy in the data contained on his cell phone."
11. "Trial Counsel was ineffective for failure to request a directed verdict."
12. "Trial Counsel failed to object to reference of surety bond prior bad act evidence, and failed to request curative instruction in reference of surety bond. (Prior bad act evidence)."
13. "Trial Counsel failed to investigate and interview the victim and the State's witnesses prior to trial."
14. "Trial counsel was ineffective for failing to object to solicitor's improper comment during closing arguments."
15. "[Trial Counsel was] ineffective for failing to request mistrial/improper burden shifting."

Applicant, through PCR Counsel, filed an amendment on December 9, 2022, alleging:

1. Ineffective assistance of counsel:
    a. Failure to request a mistrial after the State's burden-shifting comment in closing;
    b. Failing to object to the State's improper comment in asking the jury to convict for the community;
    c. Failing to object or take exception to the trial judge's jury instructions on attempted murder, implied malice, and accomplice liability which was especially prejudicial after the State argued it did not matter who pulled the

trigger because of the hand of one hand of all;

d. Failing to investigate and interview victim Travis Wayne Hall or argue Applicant's right to confrontation required the State to call victim unless the Court made a finding on the competency of a witness;
e. Failing to move for a directed verdict;
f. Failing to request a curative instruction after reference to a surety bond.

Applicant proceeded forward on the allegations raised in his amended application, as well as:

1. Ineffective assistance of Counsel for:
    a. Failing to request a competency evaluation or hearing;
    b. Failure to procure a plea offer;
    c. Failure to raise a *Batson* issue;
    d. Failure to argue the cell phone issue effectively;
    e. For erroneously telling Applicant not to testify.

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 Counsel's Testimony

Counsel testified that he saw no issues with Applicant's competence. He stated that Applicant was rational and assisted in his defense. He stated he had no recollection about a plea offer. He stated that the co-defendant cooperated to get a better deal. He stated the co-defendant got a ten-year sentence. He stated that he would have talked to Applicant about a plea offer if one was offered. He stated that the State did not give a favorable offer because one of the defendants was already cooperating.

He stated that he did not think the victim would be a favorable witness to the defense but that they were available to testify if he wanted. He stated that the victim was stuck in a wheelchair with a bullet in his head. He stated that he did not think he tried contacting the victim.

He stated that Applicant was worried about testifying because of his prior record. He stated that not everything on Applicant's record was impeachment material. He stated he raised

the issue of the cell phone search at trial.

He stated he was unsure what the racial composition of the jury was. He stated he did not pursue a *Batson* challenge because he did not think he would win one.

He stated he did not object to the Court charging that specific intent is not an element of attempted murder because it was not settled law at the time. He stated that he did not object to a hand of one hand of all charge being given because he thought it was proper. He stated he did not object to burden shifting because he did not think it was objectionable.

He stated that he did not object to the State telling the jury to convict Applicant for Spartanburg. He stated he should have objected in retrospect, but it would not have changed the outcome at trial. He stated that he did not pursue a directed verdict motion because he did not think there was a good basis for the motion.

He stated that mention of a surety bond was brought up at trial. He stated that he asked for the Court to explain to the jury what the surety bond means, and the Court only offered a curative instruction. Counsel declined the curative instruction because he did not want to bring more attention to the issue.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, direct appeal records, the trial transcript, and the current PCR application. 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. S*ee also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong

presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland.* 466 U.S. at 688-89.

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

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

Mistrial

Applicant claims Counsel was ineffective for failure to move for a mistrial. This Court finds that even if Counsel moved for a mistrial, one would not be granted. Accordingly, Applicant has not met his burden of proving prejudice and relief is denied.

Object to State's Closing

Applicant claims Counsel was ineffective for failure to object to the State's closing. Whether failure to object constitutes deficient performance generally hinges on whether a valid

trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Counsel testified that he thought that the comment was out there and would have objected in retrospect, but that he did not think it altered the results of the proceedings. Accordingly, Applicant has not proven prejudice and relief is denied.

Object to Jury Instruction – Accomplice Liability

Applicant claims Counsel was ineffective for failure to object to the jury instructions regarding accomplice liability. In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in a way that violates the Constitution. *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 740 (2009). The law to be charged must be determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

These instructions were not improper, and Counsel was not deficient for failure to launch a frivolous objection. Applicant has failed to establish both deficiency and prejudice and relief is denied accordingly.

Object to Jury Instruction – Specific Intent

Applicant claims Counsel was ineffective for failure to object to the jury instructions regarding specific intent and implied malice. Counsel has never been required "to be clairvoyant or anticipate changes in the law which were not existent at the time of trial." *Gilmore v. State*,

314 S.C. 453, 456, 445 S.E.2d 454, 457 (1994), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). *See generally e.g. Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66 (1993) (citations omitted); *Robinson v. State,* 308 S.C. 74, 417 S.E.2d 88 (1992); *Arnette v. State,* 306 S.C. 556, 413 S.E.2d 803 (1992); *Kirkpatrick v. State,* 306 S.C. 359, 412 S.E.2d 389 (1991).

Counsel credibly testified that the law charged at trial was correct at the time and changes to that law which rendered the charge erroneous did not arise until after the trial occurred. Counsel is not responsible for anticipating changes in the law, nor is he deficient for failing to do so. Accordingly, Applicant has failed to meet his burden of proof and relief is denied.

Failure to Investigate and Call Victim/Confrontation Clause

Applicant claims Counsel was ineffective for failure to call and investigate the victim and for failure to argue that his absence was a Confrontation Clause violation. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard. v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State,* 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." *Buckson v. State,* 423 S.C. 313, 320, 815 S.E.2d 436, 440

(2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

This Court declines to find that the victims' absence violated the Confrontation Clause. *See Crawford v. Washington*, 541 U.S. 36, 54 (2004) (finding that a Confrontation Clause violation occurs if there is admission of testimonial hearsay statements admitted, the declarant is

unable to testify, and there was no prior opportunity for cross-examination). The victim's existence and absence from the trial does not, by itself, constitute a Confrontation Clause violation.

Counsel credibly testified that he did not think the victim would help Applicant's case. This Court agrees. Failure to call a witness because he would be harmful to the defense is reasonable and Counsel is not deficient as a result. Further, Applicant has failed to show what victim would have presented that would have changed the results of the proceedings. Accordingly, Applicant has failed to establish prejudice and deficiency and relief is denied.

Directed Verdict

Applicant claims Counsel was ineffective for failing to move for a directed verdict. Applicants are not entitled to directed verdicts as a matter of law, and counsel will not be found ineffective for failure to move for a directed verdict if the motion would have been denied when viewed in the light most favorable to the State. Here, given that ample evidence existed suggesting Applicant's involvement and that the jury ultimately found Applicant guilty, a directed verdict likely would have been denied. *See Teamer v. State*, 416 S.C. 171, 181, 786 S.E.2d 109, 114 (2016) (finding counsel was not ineffective for failing to request a directed verdict when, viewed in the light most favorable to the State, ample evidence of the defendant's guilt was clear). Counsel credibly testified to the same, stating that a motion for a directed verdict would be frivolous in this case. Accordingly, relief is denied.

Surety Bond

Applicant claims Counsel was ineffective for failing to request a curative instruction on the surety bond statement. Counsel raised a matter of law and requested the Court to describe what a surety bond is. (Tr. 201-02). He also moved for a mistrial. (Tr. 202). The Court offered to

give a curative statement, which was declined by Counsel. (Tr. 203). Counsel credibly testified that he did not want a curative instruction because it would draw more attention to the matter. This is reasonable. Applicant has also failed to establish he was prejudiced by the failure to seek a curative instruction. Applicant has failed to establish deficiency and prejudice and relief is denied accordingly.

Competency

Applicant claims Counsel was ineffective for failing to request a competency hearing or evaluation. "Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea." *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). "In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea." *Id* at 458-59, 596 S.E.2d at 50. "In order to find that petitioner's trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner's competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings." *Id.* at 459, 596 S.E.2d 50-51. Prejudice is found when the petitioner shows a "'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

Counsel credibly testified that he saw no signs of Applicant having a competency issue warranting evaluation. Applicant has presented no evidence to dispute this conclusion. Accordingly, relief is denied.

***Batson* Issue**

Applicant claims Counsel was ineffective for failing to raise an issue under *Batson v.*

Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986). "Under *Batson* ... and later decisions applying *Batson*, parties are constitutionally prohibited from exercising peremptory challenges to exclude jurors based on race, ethnicity, or sex." *Rivera v. Illinois*, 556 U.S. 148, 148, 129 S. Ct. 1446, 1447 (2009). *See also Snyder v. Louisiana*, 552 U.S. 472, 128 S.Ct. 1203 (2008); *United States v. Lane*, 866 F.2d 103, 105 (4th Cir. 1989).

Counsel credibly testified that he did not see a legitimate *Batson* issue presented and stated that he does not raise *Batson* motions unless he thinks he can win. This is a reasonable strategy, and he is not deficient as a result. Additionally, Applicant has failed to show how he would have won the *Batson* issue. Accordingly, Applicant has failed to meet his burden of proof concerning both deficiency and prejudice and relief is denied.

Plea Offer

Applicant's allegation that Counsel was ineffective for failure to obtain a plea deal is without merit. "[A] defendant has no constitutional right to plea bargain." *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999). (citing *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)). "Prosecutors have broad powers in the plea bargain process[.]" *Id.* Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." *Id.*, 333 S.C. at 684, 511 S.E.2d at 400-01. "The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor's actions." *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.*

Applicant is not entitled to a plea offer. Counsel credibly testified that the State was unwilling to extend an offer. This claim is dismissed as without merit.

Cell Phone

Applicant claims Counsel was ineffective for failure to successfully argue the motion to suppress the cell phone search. Counsel made a reasonable argument and is not deficient solely based on his inability to reach the desired outcome. This Court declines to find an argument Applicant could have made that would have changed the outcome. Accordingly, relief is denied.

Applicant's Right to Testify

Applicant alleges Counsel was ineffective for telling Applicant not to testify. "The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. However, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." *Id.* "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." *Id.*

Applicant waived his right to testify after a thorough colloquy with the Court. (Tr. 300-04). This decision was seemingly made voluntarily and intelligently, regardless of Counsel's advice. Accordingly, relief is denied on this ground.

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 Applicant that he must file and serve a notice of appeal within thirty

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this _____ day of 3/21, 2023.

BRIAN M. GIBBONS
Presiding Judge
Seventh Judicial Circuit

_____, South Carolina.