THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable Debra R McCaslin Circuit Judge

Case No.: 2019-CP-26-4661

Joshua Maiden 370533.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Joshua Maiden 370533 appeals the Honorable Debra R. McCaslin's March 22, 2023 Order of Dismissal. Undersigned counsel received notice of entry of the order on April 4, 2023 A copy of the order on appeal is attached hereto.

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

April 20, 2023

Chelsey F Marto, Esq..
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Horry County Circuit Court Clerk
PO Box 677
Conway, SC 29526

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Joshua Maiden, #370533, Applicant, v. State of South Carolina, Respondent.	Case No.: 2019-CP-26-4661 **ORDER OF DISMISSAL**

This matter comes before the Court on the application for post-conviction relief filed by Joshua Maiden ("Applicant") on July 24, 2019. The State ("Respondent") filed its return on March 2, 2020. An evidentiary hearing in this matter was held before this court at the Horry County Courthouse on January 5, 2023. Applicant was represented by James K. Falk, Esquire and Respondent was represented by Assistant Attorney General Chelsey F. Marto of the South Carolina Attorney General's Office. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief and denies the application with prejudice.

Procedural History

Applicant is confined in the South Carolina Department of Corrections. Applicant was indicted at the August 2016 term of the Horry County Grand Jury for attempted murder (2016-GS-26-3399). J. Eric Fox ("counsel") represented Applicant, and Seth A. Oskin and George H. DeBusk, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 10-12, 2017, Applicant proceeded to trial before the Honorable Larry B. Hyman and was found guilty of the lesser-included charge of assault and battery of a high and aggravated nature (ABHAN). Applicant

was sentenced to twenty years, to be served consecutively to the five-year sentence he was already serving for first-degree assault and battery.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek represented Applicant on appeal and filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). By opinion decided December 5, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and affirmed Applicant's conviction. *State v. Maiden*, Op. No. 2018-UP-442 (S.C. Ct. App. filed December 5, 2018). The remittitur was issued on December 31, 2018.

Summary of Relevant Facts

On May 22, 2016, Applicant was dating Victoria Hubbard. Victoria had a son, who was five months old at the time, with the victim in this case, Alex Miniet (Miniet). (R. 218). Applicant had dated Victoria before her brief relationship with Miniet, but they reconciled after she split up with Miniet. (R. 218).

On the night of the incident at the Boathouse on Highway 501 in Myrtle Beach, Miniet was walking by the volleyball courts when Applicant approached him and "touched me on the shoulder, I looked over and he said, exact words were, 'Are we cool?' And my exact words were to him, 'I have nothing to say to you. Just leave me alone.'" (R. 177). Miniet claimed he was at the Boathouse that night to watch Applicant and Victoria with his five-month-old son. (R. 177).

It was undisputed that Miniet and Applicant fought at one point at the Boathouse that evening, and Applicant hit Miniet with a bottle during the altercation. Miniet admitted he had threatened to kill Applicant in the past, but he claimed he only meant he would harm him if he hit Victoria. (R. 197-98). After the fight inside the Boathouse, both Applicant and Miniet were

escorted from the bar. Miniet testified Applicant then deliberately hit him with his car and ran over him in the parking lot. (R. 198-202). Applicant testified he thought Miniet was approaching him with a gun, so he ducked down behind the steering wheel and inadvertently accelerated. According to Applicant, he did not intend to hit or run over Miniet, and he was very frightened at the time. (R. 236-37).

The judge charged the jury on attempted murder and the lesser-included offense of ABHAN. The jury found Applicant not guilty of attempted murder but guilty of the lesser-included offense of ABHAN. Judge Hyman sentenced Applicant to the maximum sentence of twenty years' imprisonment, based in part on Applicant's history of "vehicular assault." (R. 317).

Current Action Before this Court

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

1. Ineffective Assistance of Counsel
    a. "Counsel was ineffective for failing to inform me of lesser-included charges in a timely manner;"
    b. "Counsel was ineffective for failing share all evidence with me prior to arraignment;"
    c. "Counsel was ineffective for failing to properly prepare [for] trial by contacting witnesses well in advance, obtaining affidavits, and issuing subpoenas as directed;"
    d. "Counsel was ineffective for confusing Defendant and Victim's names several times during trial, showing how unprepared and familiar (sic) with the case he was;"
    e. "Counsel was ineffective for possessing a DVD of "evidence" in my case for 6 months before I had to point out that the State provided a disc to someone else's case, to which Defense Counsel was oblivious."
2. "Prosecutorial Negligence"
    a. "The State was negligent by providing discovery to someone else's case. It was labeled with my name and case number. This prevented me from seeing important evidence and being able to make an informed decision while a plea was still available. When the correct disc was shared with me, the trial was then imminent."

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

1. Ineffective Assistance of Counsel:
    a. Failure to convey to Applicant that he could be convicted of a lesser-included offense.
    b. Failure to call witnesses Aaron Kennedy and Vince Richardson.
    c. Failure to request and obtain a continuance.
    d. Failure to obtain the victim's medical records.
    e. Failure to ensure Applicant was shown all discovery and that all discovery shown pertained to his case.
    f. Failure to cross-examine the victim about his injuries and a picture of him being on the beach.
    g. Failure to enter a picture of the victim on the beach.
    h. Failure to object to the lesser-included offense instructions.
    i. Failure to secure a more favorable plea offer.
2. Prosecutorial misconduct.
    a. Failure to turn over all discovery prior to the arraignment.

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 Presented at Evidentiary Hearing

Applicant Testimony

Applicant stated he was found guilty of the lesser-included offense of ABHAN at trial. He testified he was offered a twelve-year plea to ABHAN, but wanted to proceed to trial because he did not think the State could prove malice. He did not think he could be found guilty of a lesser-included offense at trial.

Applicant testified that he wanted his counsel to call two witnesses on his behalf, Aaron Kennedy and Vince Richardson. Aaron Kennedy was an eyewitness to the fight, heard the victim threaten him, and saw him run out in front of his vehicle. He testified that he told Counsel about this witness and thought he would be helpful. He also wanted witness Vince Richardson called at trial because he was working the front door and could have added that the victim ran in front of the vehicle. Applicant stated that Richardson was on the State's witness list but was not

subpoenaed by the State. He also wanted a continuance because witness Aaron Kennedy was not available.

Applicant stated that he talked to Counsel about the lesser-included offenses and how it depended, in part, on the injuries sustained. Despite that, there was no medical proof presented at trial, but there was lay witness testimony concerning the extent of the injuries. He stated he assumed Counsel would attempt to obtain the medical records, but he did not. Also at trial, Applicant wanted a photograph of the victim on the beach after the incident without a brace introduced, but Counsel did not ask about his injuries or the beach picture.

He also testified that Counsel showed him a video from his discovery, but stated it did not pertain to his case. He stated he needed to make multiple requests to get the correct video. Applicant stated he was provided some discovery after the arraignment.

In retrospect, Applicant stated he wished he had pled. He also testified that he made a counteroffer of ten years to his plea offer. He proceeded to trial because he thought he would be going for an all or nothing strategy. He testified that the parties met with the Judge in chambers and after the in-chambers meeting, the Judge announced he would be charging on ABHAN and second-degree assault and battery.

On cross-examination, Applicant stated that he found out that the lesser-included offense instructions would be charged on the third day of trial. Applicant acknowledged that Richardson was on the State's witness list, but he thought he would be helpful to establish the victim ran out in front of his car. He agreed that the State tried to enter Richardson's witness statement and Counsel objected and the objection was sustained. He acknowledged that his Counsel asked the Court for a continuance which was denied. He stated that he was unsure if the medical records would be helpful but wanted them subpoenaed regardless. Applicant claimed that the two

witnesses that described the victim's injuries provided different injuries when asked to list them. However, he acknowledged that both witnesses described similar injuries and both lists were detailed. Applicant stated he received all discovery before trial, just not all before the arraignment. Applicant asked for a plea deal after the Court announced it would charge the jury on lesser-included instructions, but no plea offers were available at that time. Counsel extensively cross-examined the victim about any alleged threats he made against Applicant. Regarding the discovery mix-up, Applicant acknowledged that he was shown the correct video about a month before trial. Applicant had two different prior incidences where he hit individuals with a car and drove off. Applicant admitted that he got into a fight with the victim, during which he hit the victim in the face with a beer bottle and hit him with his car once and then kept driving forward, rolling on top of him. He stated he drove away because he was drunk and not making good decisions as a result.

Counsel Testimony

Counsel testified he met with Applicant four to five times, including court dates and also communicated with him by mail. He stated that they discussed the discovery, the State's witnesses, the theory of the case, and the extent of the injuries the victim sustained and the lesser-included charge of ABHAN. He testified the Applicant was not interested in a plea unless he was guaranteed time served, a probation-only sentence, or if it ran concurrent to the sentence he was already serving. Applicant rejected an offer for a cap of ten years on ABHAN.

As to the video provided in discovery, counsel testified he was provided with the wrong video but was eventually provided with the correct video after contacting the prosecutor about the mix up. Applicant was able to review the videotape before trial. Counsel has been practicing since 1994 and stated it is not uncommon to receive discovery in batches. He testified that he thought some discovery may not have been turned over before the arraignment, but that is not uncommon.

Counsel testified that he discussed obtaining the medical records with Applicant. He stated it was in Applicant's favor not to produce the medical records because he did not believe the State could prove great bodily injury.

Counsel testified that the picture of the victim on the beach would not be admissible. He stated that he could not authenticate the picture, nor was it date or time stamped.

Counsel and Applicant discussed calling Kennedy as witnesses. Counsel testified that Kennedy always had a reason for not being able to make it to trial. He decided not to call Kennedy to testify because of how his story changed throughout their conversations over time. He stated that his proffered testimony became less favorable to the defense with time and elected not to call him to testify because he thought that the testimony may prove to be detrimental. Additionally, Counsel testified that he was unavailable to testify at the trial because every time he called him, he offered an excuse as to why he could not come to trial. Counsel also testified that he moved for a continuance, but it was denied.

Counsel testified that Richardson was a state's witness and not favorable to the Applicant. He stated he went with an investigator to talk to Richardson, who was uncooperative and no longer worked at the bar. He stated he decided not to subpoena Richardson as a trial strategy because he was an uncooperative witness. Further, he was a listed as a state witness.

He also testified that the jury charge of ABHAN, which was a lesser included offense, was legally justified based on the testimony presented at trial and an objection to this charge would be unsuccessful.

Prosecutor Testimony

Assistant Solicitor, George H. DeBusk also testified at the evidentiary hearing. He testified that discovery was ongoing and he tries to turn discovery around as soon as a request is received and usually provides it to defense counsel within seven to ten days. He testified he did not know why the video disc provided to counsel was mislabeled but provided the correct copy as soon as he was made aware of the mistake. He testified he tried to subpoena Richardson as a State witness, but he could not locate him. He also testified that he did not try to subpoena the victim's medical records and was aware of the beach picture. He stated he would have objected to this picture being entered as evidence as it could not be authenticated. He stated that the Court informed the parties in chambers that he was going to charge the lesser included offense of ABHAN. Applicant never requested a plea offer the State would entertain.

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

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts

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

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

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability

sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Failure to Communicate/Object to Lesser-Included Charges Instructions

Applicant claims Counsel was ineffective for failure to communicate or object to lesser-included offense instructions. Applicant clarified at the PCR hearing, stating that he was familiar with the lesser-included offenses instructions, but that he did not think they would be given. Counsel also credibly testified that he discussed the lesser-included offenses with Applicant prior to trial. Thus, this Court finds that Applicant knew these offenses existed.

Further, both Counsel and Prosecutor acknowledged that the testimony presented supported a lesser-included charge of ABHAN and ultimately the judge would decide. Counsel credibly testified that he did not object to the Judge's decision to charge the lesser-included offense because an objection would not be sustained as the testimony supported the charge. Counsel is not deficient for failure to object on that basis, and because there is no deficiency, there can be no prejudice. Accordingly, relief is denied.

Failure to Call Aaron Kennedy

Applicant claims Counsel was ineffective for failure to call Aaron Kennedy to testify. 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).

On the other hand, 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 have corroborated 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).

Counsel credibly testified he decided not to call Kennedy to testify because of how his story changed throughout their conversations over time. He stated that this proffered testimony became less favorable to the defense with time and elected not to call him to testify because he thought that the testimony may prove to be detrimental. Additionally, Counsel credibly testified that he was unavailable to testify at the trial because every time he was asked, he offered an excuse. Deciding not to call this witness was reasonable and Counsel is not found deficient as a result. Additionally, because there is no deficiency, there is no prejudice. Accordingly, relief is denied.

Failure to Call Vince Richardson

Applicant claims Counsel was ineffective for failure to call Vince Richardson. Prosecutor credibly testified that he sought to subpoena this witness but could not locate him. Counsel credibly testified he located him, but that he was uncooperative, and Counsel did not want to subpoena a hostile witness. This is a reasonable decision, and no prejudice can be found flowing therefrom. Accordingly, relief is denied.

Failure to Obtain a Continuance

Applicant claims Counsel was ineffective for failure to obtain a continuance because Kennedy was not present for trial. However, Counsel did move for a continuance, which was denied. Counsel is not deficient for failure to guarantee a favorable outcome on his client's request. Additionally, there has been no showing that a continuance would have changed the outcome at trial. Accordingly, relief is denied.

Failure to Secure Medical Records

Applicant claims Counsel was ineffective for failure to secure the victim's medical records. However, Counsel articulated a reasonable trial strategy in stating that he did not subpoena the records because it was more favorable to the defense that this evidence was not entered. Specifically, he testified that he did not think the State met its burden of proof in showing great bodily injury. Additionally, there is no showing that the records were in any way favorable to Applicant. Counsel is not deficient for failure to procure evidence suspected to be unfavorable to his client and presenting that evidence in court. Additionally, these records were not sent to the Court, and there has been no showing that these records would have changed the trial outcome. Accordingly, relief is denied.

Failure to Procure and Show all Discovery

Applicant claims Counsel was ineffective for failure to procure and show all discovery. Applicant, Prosecutor, and Counsel all credibly testified that all discovery was shared with the defense prior to trial. Further, they confirmed that the correct video was ultimately shown to Applicant. Applicant's concern is seemingly rooted in the fact that he was not shown every piece of evidence prior to the arraignment. However, as Counsel confirmed, this is not uncommon, and this Court finds it is not a basis for granting relief. Accordingly, because Applicant was shown all

discovery prior to trial the claim is without merit and relief is denied accordingly.

Failure to Enter Beach Picture

Applicant claims Counsel was ineffective for failure to enter a picture of the victim at the beach at trial. Counsel and Prosecutor both credibly testified that this could not be entered because there was no known timeline on when it was taken, and it could not be properly authenticated. Further, Prosecutor credibly testified that he would have objected to the photograph and that objection most likely would have been sustained. Counsel is not deficient for failing to enter an inadmissible piece of evidence and, because the objection would have been sustained, the photograph would not have been entered. Accordingly, there is no prejudice. Thus, relief is denied on this ground.

Failure to Cross-Examine Victim

Applicant claims Counsel was ineffective for failure to cross-examine the victim about the extent of his injuries and the beach picture. As stated above, the picture was not admissible at trial and Counsel is not deficient nor was Applicant prejudiced on this ground. Concerning the injuries, Applicant has failed to show why Counsel was deficient for failure to pursue this line of questioning or how it was preferrable over Counsel questioning the victim about his history with Applicant, their fight, and any threats he may have made toward Applicant. Additionally, Applicant has failed to show how a different cross-examination strategy would have led to a different outcome at trial. Accordingly, relief is denied.

More Favorable Plea Offer

Applicant claims Counsel was ineffective for failure to procure a more favorable plea offer. However, Applicant had no constitutional right to a plea offer, nor was the State required to keep the offer open in this case. "Prosecutors have broad powers in the plea bargain process[.]" *Reed v.*

Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999); *see Collins v. State*, 422 S.C. 250, 261, 810 S.E.2d 871, 877 (2018) ("[T]the decision whether to revive the expired plea offer rested exclusively with the solicitor."); *State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating "[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain"); *see also Weatherford v. Bursey*, 429 U.S. 545, 561 (1977) (finding "there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial").

Here, Counsel credibly testified that Applicant was only open to a plea offer that would not require he serve additional prison time. Additionally, Prosecutor credibly testified that Applicant never indicated he was willing to take a plea deal that the State was willing to consider. Counsel is not deficient for failure to convince the State to change its mind concerning plea offer leniency. Accordingly, relief is denied.

Prosecutorial Misconduct

Applicant claims prosecutorial misconduct for failure to turn over evidence. *Brady*[1] violations occur if four conditions are met: "the evidence was favorable to the accused", "it was in the possession of or known to the prosecution", "it was suppressed by the prosecution", and "it was material to guilt or punishment." *Gibson v. State,* 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Whether a *Brady* violation is material and, thus, sufficient to warrant relief, is contingent on where there is a "reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial." *Id.* at 325. Further, whether a mistrial is warranted remains contingent on "'(1) the cumulative effect

[1] *Brady v. Maryland,* 373 U.S. 83 (1963).

of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court.'" *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) (quoting *United States v. Anwar*, 428 F.3d 1102, 1112 (8th Cir. 2005)).

Applicant acknowledged he received all discovery before trial. This was supported by Counsel's and Prosecutor's testimonies. Applicant claims he was not given some discovery until after the arraignment, but the State is not required to ensure every piece of evidence in a case is turned over before the arraignment. Still, Prosecutor testified that, according to his notes, he turned all discovery in the case over roughly seven to ten days after the request was made. Thus, this Court finds a *Brady* violation did not occur and Applicant is not entitled to relief accordingly.

Conclusion

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22 day of March, 2023.

Debra McCaslin

DEBRA R. MCCASLIN
Presiding Judge
Fifteenth Judicial Circuit

Horry, South Carolina.

FILED
HORRY COUNTY
2023 MAR 27 P 2:18
RENEE N. ELVIS
CLERK OF COURT
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