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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

2020-CP-37-0807

Edna J. Sluder, ... Appellant,
v.
The State, ... Respondent.

NOTICE OF APPEAL

Edna J. Sluder appeals the Honorable Perry H. Gravely's Order of Dismissal filed June 12, 2023.

This 21 day of June, 2023.

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STATE OF SOUTH CAROLINA COUNTY OF OCONEE	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
Edna J. Sluder, #382012, Applicant, v. State of South Carolina, Respondent.	CASE NO. 2020–CP–37–0807 **ORDER OF DISMISSAL**

This matter comes before the Court by way of Edna J. Sluder's (Applicant) application for post-conviction relief (PCR). Respondent made its Return on March 8, 2021. On February 22, 2023, Applicant amended her PCR application.

An evidentiary hearing was convened on February 27, 2023, at the Anderson County Courthouse before the Honorable Perry H. Gravely. Applicant was present and represented by Susannah C. Ross, Esquire. D. Russell Barlow, II, Esquire, represented Respondent. Applicant and Elizabeth J. Byford (Plea Counsel) testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. On December 18, 2019, Applicant appeared before the Honorable J. Cordell Maddox, Jr., and waived presentment of her indictments to the Oconee County Grand Jury. Applicant was indicted for five counts of Criminal Sexual Conduct with a Minor—2nd Degree (2019-GS-37-1783) and five counts of Incest (2019-

GS-37-1784).[1] Assistant Solicitor Lindsey Simmons prosecuted the case. Applicant pled guilty as indicted. Judge Maddox sentenced Applicant to concurrent terms of twenty years for Criminal Sexual Conduct with a Minor—2nd degree and ten years for Incest.

Applicant did not appeal.

SUMMARY OF RELEVANT FACTS

Applicant was arrested on January 15, 2019, following an investigation into allegations of sexual abuse involving her biological son (Victim). Specifically, the Victim stated that his father, Applicant's co-defendant, and Applicant sexually abused him from the time he was seven or eight up until he turned eighteen. (Plea Tr. 12). The Victim and his brother would be forced to allow Applicant to perform oral sex on them for not completing household chores, such as cleaning their room and picking up clothes. (Plea Tr. 12).

As time went on, the punishment evolved into any other form of sex with Applicant. (Plea Tr. 12). The Victim also recounted that he was told by his father that most boys his age dream of sleeping with their mother, and his mother liked it when he had sex with her. (Plea Tr. 12). The Victim also stated that at one time, he was confused about his sexuality and told his parents. (Plea Tr. 12). His parents then forced him to perform oral sex on his father. (Plea Tr. 12).

The Solicitor and the investigating officer both recommended Applicant receive a harsher sentence than her husband. (Plea Tr. 17–18, 19–20). They believed Applicant was more culpable than her husband, and that she was the primary perpetrator. (Plea Tr. 18–19).

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[1] Applicant's husband and co-defendant, Anthony Sluder, appeared before Judge Maddox two days prior, on December 16, 2019. He also waived presentment to the grand jury, and pleaded guilty straight up to five counts of second-degree criminal sexual conduct (CSC) with a minor (2019-GS-37-1780) and five counts of incest (2019-GS-37-1781). Judge Maddox sentenced him to consecutive terms of fifteen years' imprisonment on the second-degree CSC with a minor indictment, which encompassed all five counts, and ten years on the incest indictment, which also encompassed all five counts.

ISSUES BEFORE THIS COURT

In her application for post-conviction relief, Applicant alleged she is being held in custody unlawfully based on the following (verbatim):

1. My lawyer did not request a preliminary hearing.
   a. It was 3 months after arrest before I learned the preliminary hearing was to review evidence for proof of enough against me to convict. It was too late for me to ask it be filed.
2. At bond hearing, the solicitor said I was an extreme danger to society with minimum rebuttal from my lawyer.
   a. The 'crime' was committed 12 years before arrest. There was not further 'crime' repeated. In the time frame after DSS approved guardianship of a minor, I held a job as church pianist and organist and was a respected, honest, tax paying business owner.
3. My lawyer did not negotiate for house arrest instead of no bond.
   a. I was not a flight risk I was seeking house arrest with my father who requires 24 hour supervision for dementia. My mother has back problems that interfere with mobility.
4. Lawyer missed appointments with me.
   a. After each bond hearing the lawyer said she would see me next week to being the next step. She did not talk to me until months later or the week before court.
5. My lawyer did not interview the witnesses.
   a. The lawyer set up multiple appointments to meet with the witnesses but she cancelled each time.
6. In court no character references were given.
   a. I gave the lawyer a list of character witnesses but was given no sign she had contacted them. I did not know their phone numbers but told her where they worked or retired from Oconee County public offices.
7. Lawyer said I was guilty of the[*sic*] violent crime when I asked for the official definition of what actions constitute the crime.
   a. The lawyer had only the written police statement. I was scared when writing it and used general terms. She never let me tell her the circumstances or details of what happened.
8. I was not allowed to see or read the motion of discovery before I made a plea.
   a. I understand there was no safe place for a copy of my motion of discovery in jail. After I signed the plea, the lawyer let me see the papers in the 'Motion of Discovery' file but did not let me read it. She said there was not enough time she had other inmates to see.
9. My lawyer told me to plead guilty because a trial would be too

traumatic for me.

a. My lawyer said that if I went to trial they would ruin my good standing in the community by dragging up dirt on me. The solicitor made sure information was given to media to air what they thought I did.

10. My lawyer said I must plea[*sic*] guilty to both charges even though they are the versions of the same crime.
    a. The charges are violent nonviolent versions of the same type of crime. I was not told I could plea[*sic*] to the nonviolent form and have them provide it should be escalated to the violent form.

Applicant requests relief as follows:

> "I would like the charges to be dropped or a reduced sentence, the chance to go to trial, and/or transfer the sentence to house arrest at my parent's address."

In response to question nine as to why she did not pursue a direct appeal, Applicant states (verbatim):

1. Lawyer said she would come visit me downstairs after sentencing. She did not appear before I went to jail.
2. I set up a call in SCDC R&E. When we spoke she agreed to file
3. Requested appeal myself and was told too late
4. I mailed a letter to my lawyer using the name and address given to me by the Oconee Public Defenders Office. It was returned unknown. The second attempt which included the firm name received a response from a new address.
5. The response did not answer any questions. It only contained the tracking and sentencing sheets.

Based on these responses, Respondent interpreted Applicant's answers to question nine as Applicant sought a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

On February 21, 2023, Applicant amended her APCR to allege the following:

1. failing to visit and review discovery with Applicant;

2. failing to contact and present character witnesses at the plea;
3. failing to adequately explain the elements of the charges prior to the plea;
4. failing to appeal the plea; and

5. failing to move to reconsider the sentence when the co-defendant received a lesser sentence which appears not to be the intended outcome

Applicant proceeded with her amended allegations at the PCR hearing.

SUMMARY OF EVIDENTIARY HEARING TESTIMONY

APPLICANT'S TESTIMONY

Direct Examination

On direct examination, Applicant testified that Plea Counsel missed appointments and would say that she would see her next week but would never show. Applicant testified that Plea Counsel did not contact any of the character references. Applicant testified that her character witnesses would have shown she was a good citizen. Applicant testified that one of her character witnesses was the former school district superintendent, James Singleton. Another character witness was the sheriff, and she went to church with him and his family, and he could have testified about her behavior in the community.

When asked to explain the delays at the plea hearing, Applicant testified that she wanted to know what the terms meant. Applicant testified she did not understand what being convicted of "CSC" meant. Applicant testified that she had to say yes to the questions. Applicant testified that she gave a statement. Applicant testified that Plea Counsel did not discuss the elements of the crimes, and she had no access to documentation. Applicant testified that when she got to the facility and into the population, she was able to look things up in the law library.

Applicant testified that when she asked Plea Counsel what CSC meant, Plea Counsel would say it was what she did. Applicant testified that she wanted to know what she did that constituted CSC, but she never got that answer from Plea Counsel. Applicant testified that if she had known what she was pleading to, that would have helped her understand. Applicant testified that she did not understand how serious her charges were because she did not know the law. Applicant testified

that she had been the recipient of abuse, so she did not understand. Applicant testified that she did not know any difference because that was what happened to her when she grew up.

Applicant testified that she believes that her husband (co-defendant) is the leader of the home, and she was supposed to be obedient and submit to whatever he wants her to do. Applicant testified that she did not instigate the abuse and would say that she did not want to do it, but her co-defendant would say that she had to. Applicant testified that she tried to do what she could to avoid the abuse. Applicant testified that she was confused by her son's (Victim) version of abuse at the plea hearing because it did not match how she remembered the abuse happened. Applicant testified that it is individual perception, and what she saw and thought was happening may not have been how Victim perceived it.

Applicant testified that after the guilty plea, her sentencing sheet was changed from fifteen to twenty years. Applicant testified that her co-defendant's sentence was fifteen years for CSC and fifteen years for incest. Applicant testified that her co-defendant received less time because her sentence was changed. Applicant testified that she did not think the statements were fair that she was the instigator when she never instigated anything. Applicant testified that Dr. Price indicated that she was scared of sex and that it is part of life, but she can go without it. Applicant testified that she was surprised when Victim said that she was the instigator because she had not heard that before.

Applicant testified that she thought she told Plea Counsel that she wanted to appeal. Applicant testified that Plea Counsel said that they would meet downstairs, but she never showed up. Applicant testified that she wanted to appeal or have her sentence reconsidered. Applicant testified that she had hoped her sentence would be along the same lines as her co-defendant's sentence, maybe less, but did not expect to have more.

Applicant testified that after she read the motion for discovery, she learned more about what the Victim had disclosed, but she did not know that before pleading. Applicant testified that there was no preliminary hearing, and she did not know about it until it was too late to ask for one. Applicant testified that she never saw all of the discovery and evidence.

Cross-Examination

On cross-examination, Applicant testified that the fact that she followed her co-defendant's demands came out at the plea hearing. Applicant testified that a psychologist evaluated her, and the psychologist testified at the plea hearing. Applicant testified that the Victim's statements were after she had pled guilty, which did not interfere with her entering her guilty plea.

Applicant testified that the abuse started when Victim was about twelve or thirteen years old. Applicant testified that it was not when Victim was eight years old, as he told the court at the plea hearing. Applicant testified that it ended before Victim learned to drive, contrary to Victim's statement at the plea hearing indicating it stopped at eighteen years of age when he moved out of the home.

Applicant testified that Plea Counsel visited her but would say that she was coming and then not show up. Applicant testified that Plea Counsel missed visits they had scheduled and would only quickly show the discovery but would not let Applicant read it. Applicant testified that Plea Counsel visited her about three times.

Applicant testified that she did not know if the character witnesses had been present and whether that would have affected her decision to plead guilty and instead go to trial. Applicant testified that the character witnesses would have been something for the judge to consider when he was evaluating what sentence to issue. Applicant testified that she pled guilty even though the character witnesses were not there.

Applicant testified that the plea court named the charges but did not tell her what kind of

actions were criminal sexual conduct. Applicant testified that she did not ask the plea court what actions were criminal sexual conduct, but she did ask her lawyer. Applicant testified that she thought about asking the plea court what CSC meant but could not remember if she asked what the terms were, but she did ask what she was pleading to. Applicant testified that she knew what incest was and was only confused about CSC with a minor.

Applicant testified that she asked Plea Counsel to file an appeal a couple of months before she pled guilty. Applicant testified that she asked Plea Counsel questions about the steps to an appeal. Applicant testified that she told Plea Counsel that she would want to appeal if she went to jail. However, Applicant testified that she knew she was going to jail because she was pleading. Applicant testified that she knew the sentence. Applicant testified that her sentencing range was zero to something, but she figured she would get some kind of punishment, whether jail or house arrest. Applicant testified that her basis for an appeal would have been to ask for leniency, understanding that she got a higher sentence than her co-defendant.

Applicant testified that she got a higher sentence than her co-defendant when it "calculates out." Applicant testified that she agreed that her co-defendant got fifteen years and ten years to be served consecutively, an aggregate sentence of 25 years. Applicant testified that her co-defendant will be released earlier by SCDC because of the parole calculation. Applicant testified that "in theory," her co-defendant got a higher sentence because her co-defendant has the opportunity for parole, and she does not. Applicant testified that she recalled the Solicitor requesting that she receive a higher sentence than her co-defendant.

Redirect Examination

On redirect examination, Applicant testified that the record shows on pages 8-9 of the plea transcript that she began questioning the facts as presented because they used terms she was not expecting to hear. Applicant testified that she did not expect Victim to say what he said because

her co-defendant had always said that he had come up with the idea. Applicant testified that her statement said that she was following her co-defendant's direction.

MARILYN GREEN'S TESTIMONY

Direct Examination

Marilyn Green[2] (Green) testified that she was familiar with this situation because she was very close to Victim when he was younger. Green testified that Victim came over to her house when he was sixteen and said some things. Green testified that she understood Applicant was not the instigator.

Green testified that Victim made statements at the plea hearing that did not match what he told her about the instigation. Green testified that Applicant is sensitive, and she could see that Applicant was being forced to do things. Green testified that Applicant's co-defendant is bigger than Applicant.

PLEA COUNSEL'S TESTIMONY

Direct Examination

On direct examination, Plea Counsel testified that she had been practicing law for twenty-one years, almost all of which had been in criminal law. Plea Counsel testified that she was appointed to represent Applicant about eleven months before the plea hearing. Plea Counsel testified that she reviewed discovery with Applicant.

Plea Counsel testified that the State's evidence was simple. Plea Counsel testified that the older son made a statement to law enforcement that Applicant and her co-defendant performed sexual acts with him when he was younger. Plea Counsel testified that Investigators talked to Applicant and her co-defendant, and they both gave statements admitting that it happened at home.

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[2] Applicant's sister.

Plea Counsel testified that the interview at the law enforcement center was recorded, and they both gave written statements.

Plea Counsel testified that after meeting with Applicant and some of the family, their defense strategy was to blame the co-defendant if they went to trial. Plea Counsel testified that Applicant told her about their religious background and that she was required to do what her co-defendant said. Plea Counsel testified that she hired Dr. Price to do an evaluation. Plea Counsel testified that she hoped they would get a guilty but mentally ill. Plea Counsel testified that after several meetings, Dr. Price did not think that guilty but mentally ill applied, but he testified at the plea hearing that he believed that she believed that she had to obey her co-defendant.

Plea Counsel testified that she and Applicant discussed battery when reviewing the indictments. Plea Counsel testified that they reviewed the language of each indictment and how they fit the facts before the hearing. Plea Counsel testified that Applicant's big complaint was that the acts that they performed with the Victim were not for sexual gratification but were for punishment only. Plea Counsel testified that the plea judge was told that during the plea hearing. Plea Counsel testified that Applicant argued that it was not for sex. Plea Counsel testified that she explained that the acts were considered sexual acts and that the motivation would not be a defense to those actions. Plea Counsel testified that she understood what Applicant was saying, but that did not make it not a sex act. Plea Counsel testified that she explained that to Applicant numerous times.

Plea Counsel testified that she met with Applicant eight times before the plea hearing. Plea Counsel testified that their first meeting was forty-five minutes, and they briefly reviewed Victim's statement during the second meeting. Plea Counsel testified that they met for forty-five minutes at the third meeting in June and reviewed discovery in detail. Plea Counsel testified that then they

met for thirty minutes and maybe another time for a second bond hearing. Plea Counsel testified that she met with the Solicitor's office many times to try to make some headway.

Plea Counsel testified that Applicant gave her eight or nine names that were character witnesses. Plea Counsel testified that she called them all and left messages. Plea Counsel testified that she called them back later, and only two would speak with her. Plea Counsel testified that neither was willing to come to court. Plea Counsel testified that one said that she was not physically able and declined to provide a letter.

Plea Counsel testified that she went over the indictments that would be read at trial and that those were the elements that would have to be proved at trial, and that was what she would have had to admit to at the guilty plea hearing. Plea Counsel testified that they went over the indictments more than once because Applicant needed some things repeated. Plea Counsel testified that that was part of why she hired Dr. Price.

Plea Counsel testified that she discussed the ten-day window to appeal with Applicant. Plea Counsel testified that they pleaded a few days after the co-defendant and she talked to Applicant about what the co-defendant had received and told her that they would probably get close to him even though they would ask for less. Plea Counsel testified that after Applicant pled, Applicant said she was ok. Plea Counsel testified that they had arranged for Applicant and her co-defendant to say goodbye to each other since they had been married for so long, and that was what Applicant was exclusively concerned about. Plea Counsel testified that she did not think they were able to talk because SCDC picked him up earlier than expected. Plea Counsel testified that she had no indication that Applicant wanted to appeal. Plea Counsel testified that there was no basis for an appeal.

Plea Counsel testified that Judge Maddox said he would not run it consecutive but did not

indicate that he meant to give Applicant less time. Plea Counsel testified that they made their case, Dr. Price spoke, and Victim spoke and said that Applicant was the driving force in all of it. Plea Counsel testified that the investigator said the same thing. Plea Counsel testified that that was the Solicitor's position, too. Plea Counsel testified that there was evidence that Applicant was the instigator. Plea Counsel testified that she did not think the judge intended to give Applicant less than her co-defendant because the plea went south for them. Plea Counsel testified that Judge Maddox issued what he wanted to issue.

Cross-Examination

On cross-examination, Plea Counsel testified that she did see what was changed on the sentencing sheet; however, she could not say what Judge Maddox was thinking. Plea Counsel testified that when they finished speaking and Judge Maddox started talking, she started to get concerned that it would be worse than what it was. Plea Counsel testified that Judge Maddox talked about secondary stress. Plea Counsel testified that she felt that he did not necessarily intend to be more lenient. Plea Counsel testified that she became concerned during the court's question of Applicant and her responses that they were undoing the case of making her out to be the less culpable party. Plea Counsel testified that Judge Maddox pushed back against the defense's presentation.

Plea Counsel testified that she talked to Marilyn, Ruth, and David beforehand. Plea Counsel testified that Green said that David came to her early on and said that it had not happened since he was fourteen. Plea Counsel testified that they brought up other things about Victim but did not think they could attack Victim's credibility when both defendants gave statements admitting to what they had done. Plea Counsel testified that she thought it might put them in a worse position, considering they were asking for mercy. Plea Counsel testified that they wanted to pursue that, but she did not think it would work out well, trying to find an inconsistency in

Victim's statement. Plea Counsel testified that Victim had given a statement that his father was the instigator and not Applicant. However, Plea Counsel testified that Applicant answered questions from Judge Maddox that did not help their position. Plea Counsel testified that she advised Applicant on how to interact with the judge in advance. Plea Counsel testified that it would not have been helpful to pass up Victim's statements at that point.

Plea Counsel testified that she discussed extensively with the Solicitor that they would say that the co-defendant was the instigator and the planner. Plea Counsel testified that the Solicitor did not agree.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of Plea Counsel and asserts that as a result of Plea Counsel's purported errors, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

STANDARD OF REVIEW

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
> 2. That the court was without jurisdiction to impose sentence;
> 3. That the sentence exceeds the maximum authorized by law;
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's

challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the 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. A reasonable

probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." 474 U.S. 52 (1985); cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This

inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective

assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

FINDINGS AS TO SPECIFIC CLAIMS RAISED

Applicant has alleged multiple claims of ineffective assistance of Plea Counsel and asserts that as a result of counsel's purported errors, she is entitled to have her guilty plea vacated. This Court finds Applicant has failed to meet her requisite burden of proof as to each allegation. Each allegation is addressed below:

Failure to Visit and Review Discovery with Applicant

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet and review discovery with her. This Court finds this allegation is without merit.

As an initial matter, this Court finds Applicant's testimony on this issue **not credible** and Plea Counsel's testimony on this issue **credible**.

Plea Counsel testified that in the approximately eleven months she represented Applicant, she met with Applicant eight times, and they reviewed all the discovery. Plea Counsel testified that the evidence in this case was "simple," that the Victim gave a statement to law enforcement, and Applicant and her co-defendant were brought in for questioning and gave written and recorded statements admitting to the allegations.

Without presenting proof beyond mere speculation of Plea Counsel's alleged failure to review all the discovery with Applicant, Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In addition, Applicant has not presented any new evidence or defenses that could have been discovered by Plea Counsel's further review of the discovery. See Harris v. State, 377 S.C. 66, 75– 76, 659 S.E.2d 140, 145– 46 (2008) (holding an applicant must show what new evidence or other defenses he would have asked counsel to pursue had counsel more thoroughly gone over the discovery materials with him) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836.

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

Failure to Contact and Present Character Witnesses

Applicant alleges Plea Counsel was constitutionally ineffective for failing to call character witnesses and have them present at the plea hearing. This Court finds this allegation is without merit.

This Court finds Plea Counsel **credibly** testified that she called the eight or nine persons provided by Applicant as character witnesses not once but twice. Out of the eight- or nine-persons Plea Counsel called, Plea Counsel **credibly** testified that only two would speak with her, and neither was willing to go to court or provide a letter. Although Applicant mentioned James Singleton and a sheriff she went to school with, Applicant did not present them or any testimony from them at the PCR hearing. Failure to present purportedly favorable witnesses or evidence at the evidentiary hearing precludes a finding of prejudice. See, e.g., Martin v. State, 427 S.C. 450, 455, 832 S.E.2d 277, 279– 80 (2019); Taylor v. State, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972).

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

Failure to Explain the Elements of the Charges Prior to the Plea

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the elements of the charges prior to her pleading guilty. This Court finds this allegation is without merit.

As an initial matter, this Court finds Applicant's testimony on this issue **not credible** and Plea Counsel's testimony on this issue **credible**.

Plea Counsel testified that she explained all the indictments, the elements that would have to be proven if they went to trial, and what Applicant would have to admit guilt to at the plea hearing. Plea Counsel testified that she and Applicant did this more than once because some things had to be explained to Applicant several times. Plea Counsel testified that was part of the reason she had Applicant psychologically evaluated. Based on Plea Counsel's **credible** testimony and the record, this Court finds Plea Counsel explained the elements of the charges to Applicant.

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

Failure to File an Appeal

Applicant alleges Plea Counsel was constitutionally ineffective for failing to file an appeal of her guilty plea. This Court finds this allegation is without merit.

Counsel is required to make sure 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 Plea Counsel's testimony **credible** that she explained the ten-day window to appeal to Applicant, that she had no indication that Applicant wanted to appeal, and that there was no basis to appeal. Therefore, Plea Counsel was not required to file one, barring extraordinary circumstances, which have not been shown here.

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

Failure to Move to Reconsider the Sentence When the Co-defendant Received a Lesser Sentence Which Appears Not to Be the Intended Outcome

Finally, Applicant alleges Plea Counsel was constitutionally ineffective for failing to move to reconsider the sentence because the co-defendant received a lesser sentence, and that was not the intended outcome. This Court finds this allegation is without merit.

This Court finds the record wholly refutes Applicant's allegation. At Applicant's plea hearing, the Solicitor specifically requested that Applicant be given as much time as the co-defendant or more time than the co-defendant. (Plea Tr. p. 18). Also, Applicant testified at the PCR hearing that she recalled the Solicitor requesting Applicant receive more time than her co-defendant.

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency, and even if this Court were to find deficiency in Plea Counsel's failure to move to reconsider the sentence, Applicant cannot satisfy the prejudice prong. Thus, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on the evidence presented at the evidentiary hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet her burden of proof pursuant to Strickland and Hill and Rule 71.1, SCRCP. This Court finds Plea Counsel adequately conferred with Applicant and provided effective and competent representation. Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and

2. Applicant Edna J. Sluder remains remanded in the custody of the State of South Carolina.

AND IT IS SO ORDERED this 6th day of June, 2023.

PERRY H. GRAVELY
Presiding Judge
Tenth Judicial Circuit

Pickens, South Carolina

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MELISSA C. BURTON
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