

STATE OF SOUTH CAROLINA )  
COUNTY OF LAURENS )

IN THE COURT OF COMMON PLEAS )  
FOR THE EIGHTH JUDICIAL CIRCUIT )

Ronald Duyane Davis, #272165 )

Case No.: 2020-CP-30-00643 )

Applicant, )

**RECEIVED**

JUL 17 2023

v. )

**ORDER OF DISMISSAL** )

**S.C. SUPREME COURT**

State of South Carolina, )

Respondent. )

K. MICHELLE SIMMONS  
2023 JUN 26 A 11:05  
LAURENS COUNTY  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Ronald Duyane Davis (“Applicant”) on June 24, 2020, and amended on July 15, 2022. The Court convened an evidentiary hearing into the matter on August 2, 2022, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Don A. Thompson, Esq. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Chelsea McNeill, Esq., and Tristan Shaffer, Esq., also testified. After reviewing all records and evidence before the 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. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is currently confined in the South Carolina Department of Corrections. During its September 2016 term, the Laurens County Grand Jury indicted Applicant for murder (2016-GS-30-1382) and possession of a firearm during the commission of a violent crime (2016-GS-30-

1383). On March 26, 2018, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. Applicant was represented by Chelsea McNeill, Esq., and Tristan Shaffer, Esq. The case was prosecuted by Deputy Solicitor O. Warren Mowry, Jr., and Assistant Solicitor Jared Simmons of the Eighth Circuit Solicitor's Office. On March 28, 2018, Applicant elected to forego his jury trial and enter guilty pleas to the lesser-included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime. Pursuant to the State's recommendation, Judge Hocker sentenced Applicant to twenty-five years' imprisonment for voluntary manslaughter and a concurrent term of five years for possession of a firearm during the commission of a violent crime.

Thereafter, Applicant filed a motion to withdraw his guilty plea on April 4, 2018. Following a hearing on the motion on April 19, 2018, Judge Hocker denied Applicant's motion and issued a formal order on April 30, 2018.

Applicant filed a notice of appeal on April 11, 2018. On appeal, Applicant was represented by Appellate Defender Joanna K. Delaney, who filed an *Anders* brief and petition to be relieved as counsel on June 6, 2019. On April 29, 2020, the South Carolina Court of Appeals dismissed the appeal and granted appellate counsel's petition to be relieved. *State v. Davis*, 2020-UP-112 (S.C. Ct. App. filed April 29, 2020). The Remittitur was issued on June 10, 2020.

### **Factual Summary**

On July 3, 2016, Applicant returned to the home he shared with his girlfriend, Shana Prophet. (Tr. 230). In his police statement, Applicant alleged that an altercation occurred between the victim and Applicant and that the victim pulled out a handgun and fired at Applicant. (Tr. 231). Applicant claimed he took the handgun from the victim and then shot her with it. (Tr. 231). Around 1:30 a.m., neighbors heard multiple gunshots in rapid succession. (Tr. 151). Applicant



shot the victim five times, fatally piercing the victim's heart. (Tr. 195–96). The victim died at the scene. (Tr. 196). Applicant fled the scene after calling 911. (Tr. 232). Applicant fled to Newberry County. (Tr. 218).

Applicant was contacted by police following his 911 call and claimed that he was contemplating suicide. (Tr. 213–14). He claimed he disposed of the gun on the side of I-26. (Tr. 254). Applicant eventually turned himself in at the Laurens County Detention Center, where he was taken into police custody and advised of his rights. (Tr. 218–25). Applicant provided police with a voluntary statement of the events that lead to the shooting. (Tr. 225–26).

### **Present Application**

On July 29, 2020, Applicant filed his initial PCR application, raising the following allegations:

1. "Prosecutorial Misconduct"
  - a. "The Solicitor failed disclose possible exculpatory evidence, including handwritten investigation notes, and incident reports."
  - b. "The Solicitor used evidence without establishing the chain of custody because there are discrepancies surrounding the dates that are indicated in the record."
2. "Ineffective Assistance of Counsel"
  - a. "Defense Counsel failed to investigate the case."
  - b. "Defense Counsel did not request a competency hearing prior to trial."
  - c. "Defense Counsel failed to object to the trial judge's denial of his motion to withdraw his plea."
  - d. "Defense Counsel's performance denied defendant of his due process rights."
  - e. "Defense Counsel failed to object to the prosecutor's use of prior bad act evidence."
  - f. "Defense Counsel failed to object to the use of Defendants voluntary statements to the police, because the defendant was not properly informed of his Miranda rights prior to giving the statement."
3. "Involuntary Plea"
  - a. "Defendant did not plea freely, knowingly, and voluntarily."
  - b. "Defendant's plea was coerced by his trial counsel."
  - c. "Defendant alleges he had a sexual relationship with the investigator on his case, and plead guilty because he feared retribution by his trial counsel."

4. "Trial Court Errors"
  - a. "The trial judge erred by not giving a self-defense charge to the jury."
5. "Lack of Subject Matter Jurisdiction"
  - a. "The indictment was not stamped and therefore the indictment is illegal and the court should invalidate all judicial proceedings taken in this case."

As relief, Applicant requested that his case be remanded back to the circuit court or that his conviction be reversed.

On July 15, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

1. "Applicant's plea was not freely and voluntarily entered as it was the result of coercion and deception by trial counsel, McNeil [sic] in that:"
  - a. "Trial counsel advised applicant that 'they' had spoken to the trial jury during a break in the trial and the trial jury had indicated that applicant would be convicted of murder if he did not take the plea offer;"
  - b. "Even though applicant wanted to continue with the trial and present a defense of self-defense, and advised trial counsel of this, trial counsel did not seem to be prepared to present a defense of self-defense and advised applicant that if he did not take the plea offer there was nothing further she could do for him;"
  - c. "Trial counsel contacted applicant's ex-wife and applicant's cousin to get them to pressure applicant in to pleading guilty;"
  - d. "Trial counsel told applicant that if he did not plead guilty that she would 'get applicant for sexual harassment.'"
2. "Trial counsel was ineffective during the trial by allowing the introduction, without objection, of shell casings and projectiles without establishing a chain of custody for the same."
3. "Trial counsel did not take seriously and was not prepared to present a defense of self-defense. Applicant believes that trial counsel did not investigate the facts and/or witnesses surrounding the event to develop the defense of self-defense. Applicant believes that trial counsel's actions denied him the right to present a complete defense. Further, trial counsel advised a witness, Stevie Cannon Barksdale, that she was not needed at trial. Ms. Barksdale would have testified that the victim regularly carried a gun, which testimony applicant believes would have been beneficial to applicant's defense of self-defense."
4. "Trial counsel did not fully review and explain discovery with applicant. Applicant was never advised of the results of the gun shot residue tests performed on both he and the victim—which tests applicant believes would show the victim had fired a gun and which would have supported his defense of self-defense."
5. "Applicant believes that a conflict existed, which applicant did not discover until the beginning of the trial. At the beginning of trial applicant discovered that trial counsel's investigator was Nicole Hurley. Applicant and Ms. Hurley had been in a sexual relationship that had ended shortly before the incident, for which applicant was on trial,

- occurred. Applicant would allege that his break-up was not amicable and he believes that said investigator would be against him and should not have been involved in the defense of his case.”
6. “Applicant believes that trial counsel was ineffective in not contesting the admission of his statements to law enforcement. Applicant alleges that he was detained and in custody at the time of the statement but was not given Miranda warnings prior to giving the statement. Applicant believes this ineffective assistance of counsel on the part of trial counsel played a part in coercing applicant’s guilty plea.”
  7. “Applicant told law enforcement that he was suicidal at the time of his arrest and was placed on suicide watch in the detention center, but trial counsel never explored applicant’s mental health and did not request a mental health evaluation.”
  8. “During applicant’s jury trial, trial counsel kept applicant’s family out of the courtroom thereby isolating applicant and increasing pressure on him to enter a guilty plea.”
  9. “Pending trial, applicant was assaulted in the detention center by another inmate, Aaron Sanders. He reported this assault and a report was filed, but applicant was advised that the prosecutor, Warren Mowry, refused to bring charges against the inmate. Applicant believes that this created a conflict on the part of the prosecutor and that trial counsel should have raised this issue and attempted to have Mowry removed from the prosecution of applicant’s case.”

At the evidentiary hearing, Applicant proceeded on the allegations raised in his amended application.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant’s records from the South Carolina Department of Corrections, the transcripts of Applicant’s trial and plea proceedings, the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant’s appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

### **Ineffective Assistance of Trial Counsel**

Applicant’s allegations of ineffective assistance of trial counsel are without merit. In a

PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees

reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton*

v. *State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

**Allegation 1: Trial Counsel coerced Applicant into pleading guilty**

Applicant argues Trial Counsel coerced him into pleading guilty. The Court finds this allegation is meritless. The record includes the transcript of Judge Hocker’s thorough plea colloquy with Applicant, including the following exchange:

THE COURT: Has anyone forced you, coerced you, promised you anything, done anything whatsoever to get you to plead guilty today against your will?

THE DEFENDANT: No, sir.

THE COURT: Are you pleading guilty today to these two offenses freely, voluntarily, and intelligently?

THE DEFENDANT: Yes.

(Plea Tr. p.4, line 22–p.5, line 4). The court also asked Applicant if he had any complaints against Ms. McNeill, Mr. Shaffer, or anyone in the public defender’s office, and Applicant answered, “No, sir.” (Plea Tr. p.11, lines 2–7). The court again asked if Applicant was pleading guilty freely, voluntarily, and intelligently, and Applicant replied, “Yes, sir.” (Plea Tr. p.11, line 23–p.12, line 2).

Applicant’s sworn statements during the plea colloquy “carry a strong presumption of verity,” and he bears the burden to show valid reasons why he should now be permitted to depart from the truth of those statements. *Blackledge*, 431 U.S. at 73–74; *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874. With this in mind, the Court examines the specific issues raised by Applicant in support of this claim:

*A. Purported discussion with jurors during trial*

Applicant claims that, at some point during his trial, Mr. Shaffer told him he had spoken to the jurors during a break in the trial and learned that Applicant would be found guilty of murder if

he proceeded with the trial. Applicant claims he decided to accept the State's plea offer based on this information. At the evidentiary hearing, however, both Mr. Shaffer and Ms. McNeill denied having any discussions with jurors during the progress of the trial: Mr. Shaffer testified he never spoke to any jurors until after the plea proceeding, and Ms. McNeill testified she had never in her entire career spoken to jurors during a trial. In addition, both attorneys denied telling Applicant that he would be convicted if he did not take the plea offer: Mr. Shaffer testified he felt optimistic about how the murder trial was going, and he told Applicant that the jury might find him not guilty or guilty of voluntary manslaughter rather than murder; Ms. McNeill testified she explained the strengths and weaknesses of the case to Applicant and told there were no guarantees as to what the jury would do.

The Court finds Trial Counsel credible, and Applicant not credible, as to this issue. Mr. Shaffer and Ms. McNeill gave consistent testimony that they never spoke to jurors during the trial and never told Applicant he was certain to be convicted of murder if he did not plead guilty. Applicant, however, presented no evidence apart from his own self-serving testimony in support of this accusation. Therefore, the Court finds Applicant has failed to meet his burden of proof as to this allegation, and this claim is denied and dismissed with prejudice. *See Butler*, 286 S.C. 441, 334 S.E.2d 813 (holding the burden of proof is on the applicant to establish the claims in his PCR application).

*B. Advising Applicant to plead guilty because Trial Counsel was unprepared to argue self-defense*

Applicant claims he told Trial Counsel that he wanted to proceed with the trial and present a defense of self-defense, but Ms. McNeill was not prepared to present self-defense and advised him to plead guilty because "there was nothing further she could do for him." The Court finds this allegation is without merit.

Applicant was already two days into his trial when he decided to accept the State's plea offer; the transcript of the trial clearly shows that Ms. McNeill raised the self-defense claim in her opening statement to the jury and argued that the State could not disprove self-defense based on the facts of the case. (Trial Tr. pp.119–21). Ms. McNeill explained Applicant's version of the confrontation between him and the victim: that she had attacked him first and tried to shoot him, that he had taken the gun away from her, and that he shot her when she "came back at him" a second time. (Trial Tr. p.116, lines 2–16). She pointed out that the room in which the shooting took place bore signs of a scuffle, and she argued against the State's theory that the presence of nine-millimeter ammunition at Applicant's house meant he had planned the shooting in advance. (Trial Tr. p.116, lines 7–12; p.118, line 12–p.119, line 8). This record establishes that, at the time of trial, Ms. McNeill was well-prepared to present Applicant's theory of self-defense. In addition, both Ms. McNeill and Mr. Shaffer testified at the evidentiary hearing that their trial strategy, from the very beginning, was to pursue a defense of self-defense.

The Court finds Applicant has not met his burden of proving this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. Accordingly, this allegation is denied and dismissed with prejudice.

*C. Having Applicant's family pressure Applicant into pleading guilty*

Applicant argues he was coerced into pleading guilty against his will when Trial Counsel arranged for his ex-wife and his cousin to speak to him over the phone and pressure him into pleading guilty. He claims Trial Counsel told his family the jury would convict him if he did not plead guilty. The Court finds this allegation is without merit. Trial Counsel and Applicant testified that Applicant spoke to his family over the phone while he was deliberating over whether to enter a guilty plea, but both Mr. Shaffer and Ms. McNeill testified that Applicant was willing to talk to

his family about the decision because his family had been significantly involved in the preparation of his case. In addition, Ms. McNeill testified that Applicant was the one who wanted to talk to his family, and that he used her cell phone to call them because she did not have their numbers.

The Court finds Ms. McNeill and Mr. Shaffer credible, and Applicant not credible, as to this issue. Both attorneys testified consistently that Applicant was a willing participant in the conversation with his family and that no improper influence was brought to bear upon him. The Court finds Applicant has not met his burden of proof as to this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. Accordingly, this allegation is denied and dismissed with prejudice.

*D. Alleged threat to frame Applicant for sexual harassment if he did not plead guilty*

Finally, Applicant argues Ms. McNeill coerced him into pleading guilty by threatening to falsely accuse him of sexual harassment if he did not accept the plea. Applicant also claims that, while Mr. Shaffer was temporarily absent from the attorney-client room during Applicant's trial, Ms. McNeill approached Applicant in a sexually provocative way but was interrupted by Mr. Shaffer's return. The Court finds this allegation to be completely without merit.

Ms. McNeill testified that there was no truth whatsoever to Applicant's story. She pointed out that Applicant had raised this accusation against her in the past, resulting in a thorough investigation by SLED. SLED interviewed transport officers who were stationed nearby and obtained video footage from the camera outside the attorney-client room at the time Applicant claimed the incident occurred, finding no evidence to corroborate Applicant's claim. Ms. McNeill testified the door to the attorney-client room was not completely closed so that the nearby transport officers would have been able to hear and investigate any kind of disturbance. In addition, Mr.

Shaffer testified that when he returned to the attorney-client room, he did not notice anything amiss, and Applicant did not appear to be upset.

Based on the testimony presented at the evidentiary hearing, the Court finds Ms. McNeill highly credible and Applicant not credible at all. Applicant has not met his burden of proving this facially implausible allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. Accordingly, this allegation is denied and dismissed with prejudice.

**Allegation 2: Failure to object to shell casings and projectiles**

Applicant argues Trial Counsel was ineffective for failing to object to the introduction of shell casings and projectiles without establishing a chain of custody. The Court finds this allegation is meritless. At trial, Applicant relied upon the theory of self-defense. At the evidentiary hearing, Applicant explained his version of the incident: the victim took a gun out of a green bag and told Applicant to get out of her bedroom, he refused, she fired at him, he wrestled the gun away from her, and then he fired at her when she came at him with something in her hand. There was no dispute as to where the bullets or ejected shell casings came from; Applicant never denied that the shell casings and bullets found at the scene came from the gun he used to kill the victim. The State's evidence concerning the shell casings and projectiles was consistent with Applicant's own story about what happened. Trial Counsel could not have been deficient for failing to object to the introduction of evidence that was consistent with Applicant's defense, and Applicant could not have been prejudiced thereby. The Court finds Applicant has not met his burden of proof as to this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. Accordingly, this allegation is denied and dismissed with prejudice.

**Allegation 3: Failure to "take seriously" Applicant's claim of self-defense**

Applicant argues Trial Counsel failed to take his claim of self-defense seriously and was, consequently, unprepared to present a defense of self-defense. The Court finds this allegation is meritless; as already discussed in response to Applicant's Allegation 1(b), the record establishes that Trial Counsel was prepared to present a case of self-defense had Applicant elected to continue his trial.

Applicant also claims Trial Counsel did not investigate the facts or witnesses surrounding the event to develop a defense of self-defense. Specifically, Applicant contends Trial Counsel erroneously told one witness, Stevie Barksdale, that she did not need to testify, although Applicant claims that witness would have testified the victim was known to carry a gun. However, at the evidentiary hearing, both Mr. Shaffer and Ms. McNeill testified that they performed extensive investigations. Mr. Shaffer testified that they tried to subpoena life insurance policies, tried to track down gun purchases from a long time ago, used a metal detector to search for the discarded gun on the side of the interstate where Applicant claimed he disposed of it, and prepared to call multiple experts. He also testified that the defense planned to call multiple witnesses, including Applicant's ex-wife, mother, and cousin, and Stevie Barksdale. Ms. McNeill agreed that this was one of the most heavily investigated cases she had ever worked on. Based on this credible testimony, the Court finds Trial Counsel was not deficient in investigating Applicant's self-defense claim.

In addition, Applicant failed to introduce any evidence at the evidentiary hearing that purportedly would have been discovered by a more thorough investigation. Therefore, he has failed to meet his burden of proof. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Taylor*

*v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation). Therefore, this allegation is denied and dismissed with prejudice.

**Allegation 4: Failure to review discovery with Applicant**

Applicant alleges Trial Counsel failed to review and explain discovery with him; specifically, Applicant claims he was never advised of the results of the gunshot residue (GSR) tests, which could have proved that the victim fired a gun. The Court finds this allegation is meritless. Trial Counsel credibly testified that they did go over the discovery with Applicant.

In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant did not present any new evidence or defenses that purportedly could have been discovered by further review of the discovery. Applicant did not introduce the results of the GSR tests to show that they would have supported his defense. Accordingly, this allegation is denied and dismissed with prejudice.

**Allegation 5: Conflict with regard to Nicole Hurley**

Applicant alleges the investigator employed by Trial Counsel—Nicole Hurley—was in a relationship with him prior to the shooting of victim that ended less-than-amicably. Applicant believes this created a conflict of interest because Ms. Hurley was biased against him. The Court finds this allegation is meritless.

First of all, Applicant is entitled to the effective assistance of counsel, not the effective assistance of an investigator. Second, the mere fact that Applicant was on bad terms with an investigator does not establish prejudice, and Applicant has failed to offer any explanation as to how Ms. Hurley's disposition toward him materially affected his case. Third, Trial Counsel consistently and credibly testified that Ms. Hurley's involvement in the investigation was minimal; the primary investigator on the case was Jimmy Powers, while Ms. Hurley only became involved shortly before trial. Finally, Mr. Shaffer testified that Applicant never told them about his relationship with Ms. Hurley until after his conviction.

For these reasons, the Court finds Applicant has not show he is entitled to post-conviction relief on this ground. Therefore, this allegation is denied and dismissed with prejudice.

**Allegation 6: Failure to contest admission of Applicant's statement**

Applicant alleges Trial Counsel was ineffective for failing to object to the introduction of Applicant's statement to police, which Applicant contends was given while he was in custody but without *Miranda* warnings. The Court finds this allegation is meritless.

In his statement to police, Applicant claims he discovered the victim in the master bedroom of their house, and she told him to get out. When he refused, she took a gun from a green bag under a pillow and fired it at him. He wrestled the gun away from her. She came toward him, and he shot her with the gun. (Trial Tr.pp.230–31).

This account of the incident is not materially different from the account Applicant gave at the evidentiary hearing. Therefore, it is not clear how Applicant could have been prejudiced by the admission of this statement. In addition, Applicant has provided no evidence to substantiate his claim that the statement was taken in violation of *Miranda*. To the contrary, the testimony at Applicant's trial was that law enforcement carefully explained the *Miranda* rights to Applicant and obtained a signed waiver before taking his statement. (Trial Tr.pp.220–25).

Furthermore, Trial Counsel consistently testified they had unsuccessfully moved to exclude Applicant's statement at a *Jackson v. Denno* hearing before Judge Hocker prior to trial. The Court finds Trial Counsel's testimony credible on this issue. Because Trial Counsel did what Applicant claims they failed to do, and because Applicant has not established that his statement was inadmissible or prejudicial to his case, this allegation must be denied and dismissed with prejudice.

#### **Allegation 7: Failure to request mental health evaluation**

Applicant alleges Trial Counsel was ineffective for failing to request a mental health evaluation despite Applicant telling law enforcement that he was suicidal. The Court finds this allegation is meritless.

Both Mr. Shaffer and Ms. McNeill testified Applicant was depressed and traumatized in the aftermath of the shooting; however, neither attorney had any concerns as to his competency to stand trial or his criminal responsibility at the time of the shooting. In addition, Applicant has failed to prove prejudice because he did not present any evidence showing what the result of a mental health evaluation would have been. *See, e.g., Taylor*, 258 S.C. at 378, 188 S.E.2d at 854. Accordingly, the Court finds Applicant has failed to prove Trial Counsel was ineffective as to this issue, and this allegation is denied and dismissed with prejudice.

**Allegation 8: Isolating Applicant by keeping family out of courtroom**

Applicant alleges Trial Counsel kept his family out of the courtroom during his trial, isolating him and pressuring him to plead guilty. The Court finds this allegation is meritless.

Trial Counsel testified witnesses were sequestered during the trial, which prevented them from coming into the courtroom while other witnesses were testifying. Therefore, the Court finds that the absence of Applicant's family from the courtroom was not due to any deficient act or omission of Trial Counsel. In addition, the Court finds it is not likely Applicant was pressured to plead guilty merely because his family was absent from the courtroom—especially since Applicant also complains, in Allegation 1(c) above, that his family was urging him to plead guilty.

Because Applicant has not met his burden of proof as to this claim, the Court finds this allegation must be denied and dismissed with prejudice.

**Allegation 9: Failure to remove solicitor from Applicant's case**

Applicant alleges Trial Counsel was ineffective for failing to have Warren Mowry removed as prosecutor on Applicant's case. Applicant claims there was a conflict of interest on the part of Mr. Mowry because Mr. Mowry did not bring charges against another inmate who allegedly assaulted Applicant in the detention center. The Court finds this allegation is meritless.

At the evidentiary hearing, Applicant testified he was assaulted by his cellmate in the detention center, but the solicitor would not prosecute the alleged assailant due to a lack of evidence. Neither Mr. Shaffer nor Ms. McNeill believed this constituted a conflict of interest or required Mr. Mowry to recuse himself. The Court is not aware of any authority stating that a prosecutor must recuse himself in circumstances of this kind, and Applicant has not provided any authority to support this position. Accordingly, this allegation is denied and dismissed with prejudice.

### III. CONCLUSION

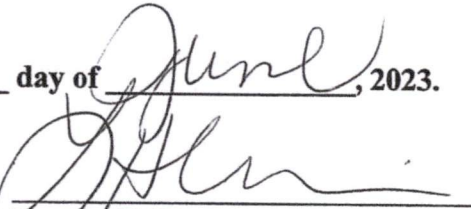
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

#### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 20 day of June, 2023.

  
LETITIA H. VERDIN  
Presiding Judge  
Eighth Judicial Circuit

Dawens, South Carolina