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S.C. SUPREME COURT



ALAN WILSON  
ATTORNEY GENERAL

September 5, 2023

The Honorable Sharon W. Stagers  
Williamsburg County Clerk of Court  
125 W Main St  
Kingstree, SC 29556-3343

Re: LaQuincy Williams, #357076 v. State of South Carolina  
2017-CP-45-0016

Dear Ms. Stagers:

Enclosed, please find the original Order of Dismissal signed by the Honorable Edward W. Miller in the above-captioned case for filing in your office.

In addition, please forward proof of service and a time-stamped copy back to our office for our file.

Sincerely,

D. Russell Barlow II  
Assistant Attorney General

RB/mbm

cc: Jonathan D. Waller, Esquire

FILED

September 8, 2023

Williamsburg County  
Clerk of Court  
Kingstree SC

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

LaQuincy M. Williams, #357076,  
Applicant,

v.

State of South Carolina,  
Respondent.

) IN THE COURT OF COMMON PLEAS  
) THIRD JUDICIAL CIRCUIT

) CASE NO. 2017-CP-45-00016

**ORDER OF DISMISSAL  
WITH PREJUDICE**

**FILED**

*September 8, 2023*

**Williamsburg County  
Clerk of Court  
Kingstree, SC**

The matter before this Court is an action for post-conviction relief (PCR) commenced by LaQuincy M. Williams' (Applicant) post-conviction relief application filed on January 17, 2017, asserting various allegations of ineffective assistance of counsel. Respondent made its Return and Partial Motion to Dismiss, dated June 13, 2017, requesting an evidentiary hearing.<sup>1</sup> Applicant filed an amended PCR application on August 26, 2021.

An evidentiary hearing was convened at the Sumter County Courthouse on October 31, 2022. Applicant was present and represented by Jonathan D. Waller, Esquire (PCR Counsel). D. Russell Barlow, II, Esquire, represented Respondent. Applicant proceeded forward on the claims set forth in his original and amended applications. In support of these claims, Applicant testified on his own behalf, and Applicant presented testimony from Cesar E. McKnight, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

<sup>1</sup> Respondent maintained a certificate of service and form order sheet that the return was filed, however, the return is not located on the public index.

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice.

#### **PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Williamsburg County Clerk of Court orders of commitment. In January 2011, the Williamsburg County Grand Jury indicted Applicant for murder, armed robbery, burglary, first-degree, criminal conspiracy, and possession of a weapon during a violent crime (2011-GS-45-0016). Cesar E. McKnight, Esquire, represented Applicant. Assistant Solicitors Kimberly Barr, Esquire, and Tyler Brown, Esquire, prosecuted the case.

On September 9-13, 2013, Applicant proceeded to trial before the Honorable W. Jeffrey Young. The jury found Applicant guilty as indicted on all charges. Judge Young sentenced Applicant to imprisonment for concurrent terms of life for murder, life for burglary, first degree, thirty years for armed robbery, five years for possession of a weapon during a violent crime, and five years for criminal conspiracy.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense, perfected the appeal. After consideration of Applicant's *pro se* brief and review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed Applicant's appeal on March 30, 2016. State v. Williams, Op. No. 2016-UP-143 (S.C. Ct. App. filed March 30, 2016). The Remittitur was returned to the circuit court on April 20, 2016.

#### **CURRENT ACTION BEFORE THIS COURT**

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Lack of Subject Matter Jurisdiction; and

- a. The State without authority to make a final determination in who actually committed a crime without being on the scene at the time of the act.
  - b. There is no lawful plaintiff in this case. At no time during the alleged arrest, detention, and trial was there lawful complaint of injury to body or damage to property other than police report filed with Clerk of Court.
  - c. No honorable adversary in this case, so there is no subject matter jurisdiction (verifiable complaint of a lawful Plaintiff) identified in this case. Therefore, the court cannot proceed when it lacks jurisdiction and should have dismissed the action.
2. Ineffective Assistance of Counsel
- a. Denied right to confront his accuser and witnesses against him.
  - b. His Public Defender heard witness testify in open Court that he lied to the police when police questioned the witness about Williams, and said nothing and did nothing to rebut witnesses' testimony or show the jury that parts of the police report that identified Williams as committing murder in this case was false.
  - c. Williams believes that his conduct did not afford him an aggressive defense.
  - d. Public Defender did not interview and counter-witnesses to rebut anything that was presented by the State.
  - e. Never visited Williams when he was in jail and started putting together a defense less than one week before Williams' trial.
  - f. Public defender knew that police never found the murder weapon and never attempted during trial to show that another party at the scene may have committed the crime.

Applicant filed an amendment to his application for post-conviction relief on January 18, 2017, adding the following claims:

3. Ineffective Assistance of Counsel;
  - a. Counsel ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.
  - b. Counsel ineffective for failing to object to the improper use of prior statements during testimony of Juandalyn Miller.
  - c. Counsel was ineffective for failing to object to the admission of State's Exhibits Nos. 47-108.
  - d. Counsel ineffective for failing to object to improper question during testimony of Melissa Skipper.

- e. Counsel was ineffective for failing to object to improper evidence of prior bad acts of the Applicant during testimony of Pamela Wrenn.

During the evidentiary hearing, Applicant raised an additional claim during direct examination, which Respondent addressed in a post-hearing brief.

4. Ineffective Assistance of Counsel;
  - a. Failure to investigate alibi defense.

At the call of the case, PCR Counsel indicated that they intended to move forward on the amended allegations and Applicant's original allegations 1(a), 1(b), 1(c), regarding challenging the validity of the indictments, and at least one co-defendant's plea deal was not properly presented.<sup>2</sup>

#### STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act<sup>3</sup> (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based 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).

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<sup>2</sup> Allegation that co-defendant's plea deal was not properly presented is Allegation 5, *infra*.

<sup>3</sup> S.C. Code Ann. §§ 17-27-10 to -160.

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, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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 v. Washington to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of

performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a

reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, 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 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. 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. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Trial Counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the testifying witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Cl. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80:

### *INITIAL FINDINGS*

As a matter of general impression, this Court finds Trial Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented testimony of relevant background, facts, and discussions leading up to and during the trial. This Court finds Applicant's testimony at the evidentiary hearing **not credible**. This Court further finds applicable the strong

presumption that at all stages of Trial Counsel's representation of Applicant that he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

***INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS***

**Allegation 1(a)(b)(c): Issues Related to Applicant's Indictment**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to argue that the trial court lacked subject matter jurisdiction due to defects in his indictment and that the impanelment of the grand jury was outside of statutorily defined dates. This Court finds these allegations are without merit.

At the evidentiary hearing, the following colloquy occurred with Trial Counsel regarding the indictments:

- Q: You mentioned the indictment just a second ago. What -- there was some confusion at trial, at the beginning of the trial, as to when the indictment was -- came down. What do you recall about that confusion and what investigation did you do into the validity of the indictment?
- A: I don't recall the confusion about the indictment per se. As far as doing an investigation so far as the indictment, I mean, when it's true billed, it's true billed. I mean, I'm not party to the grand jury so there's really not anything for me to look at. I mean, you look at -- naturally you're gonna look at the form of the indictment to make sure it's proper; and then after that, you're pretty much where you are until after you've interviewed some of the witnesses to get a lay of the land.
- Q: Okay. Did you any concerns that it was not properly true billed or presented to the grand jury?
- A: I did not.

- Q: Okay. And is it your understanding that if you did have some concerns you would need to raise those prior to the jury being sworn?
- A: Oh, yes.
- Q: So I guess it's safe to say that you did not have any concerns so you did not raise any or challenge the indictment prior to the jury being sworn?
- A: I didn't see anything that would give me reason to question the validity of the indictment, no.

(PCR Tr. pp. 16 – 18).

On cross-examination, the following colloquy occurred:

- Q: All right. There is some question to the validity of the indictment and I know you've given some testimony to that, but. From your recollection, do you remember anything or recall anything about the indictment not being sufficient?
- A: No, I don't. I don't -- because had I -- had I discovered that, I would have made a motion for it because I did a bunch of pretrial motions. I provided a notice of alibi. I submitted that on August 30th, 2013. I filed a written motion for -- to exclude the autopsy report. I did that on the 8th of September. And, you know, and I cited various cases like State v. Cribb, Benton v. Pelham, State v. Sweet, and all of those other cases in an attempt to get the autopsy report suppressed.
- Q: And also in his original application, the applicant's original application, he raises subject matter jurisdiction. Did you -- is there any reason to believe that the Williamsburg County circuit court or the Court of General Sessions did not have jurisdiction over this matter?
- A: No, it clearly does. I mean, it's proper venue and it has jurisdiction in my -- in my estimation.

(PCR Tr. pp. 30 – 31).

This Court finds Applicant's allegation that the grand jury illegally convened is wholly without merit. A grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law); see also Order No. 2019-06-28-02 (S.C. Supreme Court Order dated June 29, 2019) (authorizing chief judge for administrative purposes to "determine the dates for the convening of the grand jury in the various

counties within the judicial circuit"). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in §§ 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) ("[M]erely changing the time for holding the court did not make the grand jury illegal."). Furthermore, a presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). Absent evidence to the contrary, the court must presume a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991)).

This Court has reviewed Applicant's indictment and finds that it is valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictment is stamped "True Billed" and signed by the foreman. Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Notably, here, Applicant's indictments were amended, and this Court provided Applicant the opportunity to examine those documents. Accordingly, the Court finds Applicant failed to demonstrate a defect in the indictment process, invalidating his indictment, and this allegation is without merit.

Likewise, the Court finds the allegation of lack of subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). However, "subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts[.]" Id. at 101, 610 S.E.2d at 499. An indictment is a notice document, and any insufficiency in the indictment does not deprive the circuit court of jurisdiction. Id. at 102, 610 S.E.2d at 500. The circuit court "obviously [has] subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499.

Applicant's trial involved criminal charges in General Sessions Court. Therefore, the Court finds the circuit court had subject matter jurisdiction, and this allegation is without merit.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 3(a):** Trial Counsel failed to properly investigate the facts and circumstances surrounding the allegations against Applicant.  
**Allegation 4(a):** Trial Counsel failed to investigate the alibi defense.

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to investigate his alibi claims.<sup>4</sup> This Court finds this allegation is without merit.

Specifically, Applicant provided at his PCR evidentiary hearing that he told Trial Counsel that on the day of the murder, he was at his mother's house and took his niece and nephew to daycare, where he signed them in/out on a logbook. (PCR Tr. 42 – 43). Applicant further argued that had Trial Counsel retrieved those records, he would have been cleared of the charges because he could not be in two places at once. (PCR Tr. 43; 56 – 59). On cross-examination, Applicant admitted that he was on probation for about one and a half years and did not think he should retrieve the documents that could allegedly exculpate him. Applicant further exclaimed that while on bond, he only contacted his lawyer *once*.

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<sup>4</sup> This was not an enumerated claim in Applicant's original PCR application or his amended PCR application. However, this claim was addressed under the failure to investigate claim. Also, Trial Counsel did not testify to this claim, because it was not enumerated or addressed on direct examination by PCR Counsel. During direct examination of the Applicant and after Trial Counsel testified, this claim was raised.

At trial, Trial Counsel called Applicant's mother, April Williams (April), to the stand to provide testimony on Applicant's alibi defense.<sup>5</sup> (R. p. 990 – 1014). April testified that on November 1<sup>st</sup> and 2<sup>nd</sup>, 2007, Applicant was home from 4:00 am until 12:00 pm because he had to take his niece to daycare<sup>6</sup> at 12:00 pm. (R. pp. 993, l. 23 – 996, l. 5). April testified that Applicant had to pick up his niece from daycare at 5:30 pm. (R. p. 995, ll. 17 – 18).

Trial Counsel called Applicant's sister, Lakasha Williams (Lakasha), to the stand to also provide testimony on Applicant's alibi defense. (R. pp. 1014, l. 22 – 1030, l. 15). Lakasha testified that on November 1<sup>st</sup> and 2<sup>nd</sup>, 2007, Applicant took her son to daycare, and he had to be there no later than 10:00 am. (R. p. 1018, ll. 7 – 19). Contrary to Williams' testimony, Lakasha testified that she was positive that Applicant took her son to daycare around 9:00 or 9:15 am. (R. p. 1019, ll. 12 – 21). Then Lakasha testified that she could not remember when Applicant took her son to daycare but that it had to be before 9:30 or no later than 10:00 am because Ms. Olla Mae Brown would not accept children after 10:00 am. (R. p. 1021, ll. 12 – 15).

On cross-examination, Lakasha testified that she did not see Applicant take her son to daycare because she was already on the way to work, but she knew Applicant had dropped her son off at daycare. (R. p. 1029, ll. 5 – 11). Lakasha further testified that the daycare had a sign-in sheet but did not think she needed to bring it. (R. p. 1029, ll. 15 – 22).

Strickland v. Washington makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."

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<sup>5</sup> Trial Counsel noticed the State of Applicant's alibi defense on August 30, 2013. At trial, Trial Counsel placed on the record that his alibi was that he was at his mother's house the day the crimes occurred. (R. pp. 255, l. 12 – 257, l. 10).

<sup>6</sup> Testimony provided that the daycare was actually a neighbor, Olla Mae Brown, who ran a daycare from her home, and it was right down the street from Applicant's mother's home. (R. pp. 995, l. 15 – 996, l. 6).

466 U.S. 668, 691 (1984). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597.

Further, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence that could have been discovered by a more thorough investigation. See Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial").

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136)). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "Since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all."

State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

This Court finds the record reflects Trial Counsel did investigate Applicant's alibi. Specifically, Trial Counsel noticed the State of his intent to use Applicant's mother, sister, and TaShonda<sup>7</sup> Mickens as alibi witnesses who would testify that Applicant was at his mother's house at the time the crimes were committed. However, their testimony at trial was, at best, skeptical because their stories conflicted with one another regarding whom the Applicant took to daycare and the time Applicant left for the daycare.<sup>8</sup> This Court finds that the jury was able to hear and weigh the credibility of the alibi witnesses' testimony. Importantly, this Court finds that if the log existed, it would have been cumulative at best. This Court further finds Trial Counsel cannot be found deficient for failure to proffer duplicative evidence when testimony is the best evidence to establish the defense. Accordingly, Applicant has failed to establish Trial Counsel was deficient as required by Strickland.

Furthermore, this Court finds Applicant has failed to show that he was prejudiced as required by the second prong in Strickland's analysis. Whether a sign-in sheet from Ms. Olla Mae Brown's in-home daycare would have changed the outcome of Applicant's trial is pure conjecture, and Applicant has yet to provide the Court with a copy of this alleged sign-in sheet. See Clark v.

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<sup>7</sup> The trial transcript indicates that her name is "Toshonda" and not TaShonda, as indicated in the Notice of Alibi. Also, Toshonda was Applicant's co-defendant and was never called to testify. (R. p. 1).

<sup>8</sup> Notably, Applicant's evidentiary hearing testimony contradicts his mother's and sister's trial testimony. Applicant testified at the evidentiary hearing that he took his nephew *and* niece to daycare. (PCR Tr. pp. 42, l. 20 – 43, l. 9). At trial, Applicant's mother testified that Applicant took his *niece* to daycare around noon. (R. p. 994, ll. 14 – 15; 995, l. 6 – 18). Applicant's sister testified that she had just had a baby boy and Applicant would help her by taking his *nephew* to daycare somewhere between 9:00 am and 10:00 am. (R. p. 1017, ll. 2 – 20; 1010, ll. 16 – 23; 1019, ll. 15 – 21; 1021, ll. 8 – 15).

State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice). Even if Trial Counsel had located this purported daycare sign-in sheet, whether or not that sign-in sheet would be admissible in court is mere speculation. See Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)) (finding failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 3(b): Trial Counsel failed to object to the improper use of prior statements during the testimony of Juandalyn Miller.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to improper use of prior statements during the testimony of Juandalyn Miller (Miller). Specifically, Applicant contends Trial Counsel should have objected to the Solicitor not attempting to refresh the witness' recollection before having her read her statement into the record. This Court finds this allegation is without merit.

At trial and on direct examination, the following colloquy occurred with Miller:

Q: You testified just now that you don't remember whether or not P.J., G., or Laquincy ever got out of the vehicle when you all rode down to Hemingway. Is that still your testimony? You don't remember if they got out of the vehicle?

A: I can't remember. That's how long ago it was.

MS. BARR: Your Honor, may I approach the witness?

THE COURT: You may.

Q: Ma'am, I am going to show you a transcribed statement of an interview that you gave back on November 9th of 2010.

A: Yes, ma'am.  
Q: Do you remember that?  
A: I remember that's the day I got locked up.  
Q: I am going to call your attention to page 52, line 10. You see the Q there? Do you see that?  
A: Q, question.  
Q: The question, right. The question law enforcement asked was, have you ever been to Hemingway before. Do you remember that? Is that a yes?  
A: Yes, ma'am.

(R. p. 101, ll. 1 – 25).

At the evidentiary hearing, on direct examination, the following colloquy occurred with

PCR Counsel and Trial Counsel:

Q: Mr. McKnight, I want to get into some of the allegations in the trial transcript. If you would, turn to Page 101. And 101 of the record on appeal which is 1099 of the transcript so it's the bigger bold number and not the --- A So the bigger bold number I'm looking for, what's that number?  
Q: 101.  
A: Yes, sir, I'm here.  
Q: All right. So this is the testimony of [Juandalyn] Miller. I believe it's one of the people you mentioned earlier who was originally charged and then I believe it was the charges were dismissed against her. Beginning on Page 101 at Line 6, Ms. Miller didn't appear she wanted to participate in trial. It didn't appear she wanted to testify against anyone. She states on Line 6 that she can't remember. So she's handed her statement, and if you would, turn to the next page.  
A: Uh-huh.  
Q: Beginning on Line 3 and continuing on to Page 104 through Line 9, she's reading her statement into the record. She was not -- not asked to refresh her memory, not asked to read it silent to herself by Solicitor Barr. Was there a strategy, trial strategy behind not objecting to that procedure?  
A: Hold on a second. I'm trying to ---  
Q: Sure. And if I -- please take your time and make sure you're familiar with what I'm asking.  
A: It wasn't necessary a trial strategy there, but I was trying to see where the prosecution was gonna go with it. And having had that before and having her statement there before me to see what she's asking her, I didn't anticipate it being at the time something to be concerned about.

Q: Okay. If I can get you to turn over to Page 113, Line 14.  
A: 113. Line?  
Q: Line 14?  
A: Yes, sir.  
Q: Essentially the same question, was there a strategy behind not objecting to Ms. Barr not attempting to refresh her recollection prior to instructing her to read her statement into the record?  
A: There -- there wasn't a strategy. And also understand, too, my experience has been if you object too much they become ineffective. They're like, what is he doing, is he -- what was -- so. And, also, having been in front of Judge Young many times and knowing that judge's tendencies, it's like playing in baseball, you know where the strike zone is so you kind of -- you have to pick your battles. And of course, you know, you also keep in mind you also want to preserve the record for potential appeals issues. I didn't see a dan-- there wasn't anything there gave me something to just make a stink about.

(PCR Tr. 19 – 21).

Rule 803(5), SCRE, provides:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

If such a statement is admitted by the witness, "the memorandum or record may be read into evidence." Id.

Here, Miller testified that she could not remember whether Applicant got out of the car when they all rode to Hemingway because it was so long ago. (R. p. 101, ll. 1 – 6). Solicitor Barr then hands up Miller's transcribed November 9, 2010, interview and asks Miller if she remembered it. (R. p. 101, ll. 11 – 16). Notably, after admitting she remembered the question in the transcribed interview, Solicitor Barr then has Miller to read from her statement.

This Court finds the proper foundation was laid for a recorded recollection in order to permit Miller to read from her prior statement to law enforcement, and, consequently, Applicant has failed to establish any deficiency on the part of Trial Counsel for his alleged failure to object to this testimony. Even if this Court were to find Trial Counsel deficient, Applicant has failed to establish any resulting prejudice from this alleged deficiency.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 3(c): Trial Counsel failed to object to the admission of State's Exhibits Nos. 47 – 108.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the admission of State's Exhibits Nos. 47 – 108. This Court finds this allegation is without merit.

At the evidentiary hearing, the following colloquy occurred on direct examination of Trial Counsel:

- Q: Okay. All right. If I can get you to turn to Page 489.  
A: The big numbers 489?  
Q: Yes.  
A: Okay. Yes, sir.  
Q: Yes, sir. Beginning at Line 21. Mr. Scott, or Investigator Scott, is testifying and he was present once when the pictures were taken by SLED. Is there any strategy behind not objecting to the introduction of Exhibits 47 through 108 that came in at two different times right there in his testimony without -- I believe the Solicitor tells him he doesn't need to look at each one of them and just flip through and tell me do you recognize what's depicted in these photographs?  
A: Hold on a second. No, there wasn't any trial strategy in that because he testifies that he's present when the picture's taken and they accurately depict what he saw.

(PCR Tr. 21 -22).

Rule 901(a), SCRE, provides that "the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Here, Investigator Scott testified that he was present when the pictures were taken, and they accurately depict what he saw. This Court finds there was no basis for an objection to the admission of these pictures.

Consequently, Applicant has failed to establish any deficiency on the part of Trial Counsel for his alleged failure to object to this testimony, and Applicant has failed to establish any resulting prejudice from this alleged deficiency.

Accordingly, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 3(d): Trial Counsel failed to object to an improper question during the testimony of Melissa Skipper.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to an improper question during the testimony of Melissa Skipper.

Applicant failed to present any evidence, testimony, or legal authority at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

**Allegation 3(e): Trial Counsel failed to object to improper evidence of prior bad acts of the Applicant during the testimony of Pamela Wrenn.**

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to object to improper evidence of prior bad acts during the testimony of Pamela Wrenn. This Court finds this allegation is without merit.

In Applicant's case, the alleged bad act testimony occurred during the State's direct examination of Investigator Pamela Wrenn, who worked for the Williamsburg County Sheriff's Department. (R. pp. 876 – 877). During questions regarding the indictments, the following exchange occurred:

Q: Did you record on the arrest warrant a height for Mr. Laquincy Williams?

A: Yes, ma'am.

Q: And where did you get the information about the height?

A: That from was a prior booking if I am not mistaken, with Florence County Sheriff's Department.

(R. p. 892, ll. 16 – 23).

At the evidentiary hearing, Trial Counsel testified on direct examination that this testimony was technically hearsay, it was admissible because it was a public record, and her testimony was a prior bad act. Trial Counsel was asked if there was a trial strategy for not objecting to the "prior booking," and he stated that he was focused on suppressing the autopsy and introducing statements such as the time of death being different from the time Latisha Ann Bell testified the murder occurred. Trial Counsel testified that he may not have been alert when the testimony was elicited.

On cross-examination, Trial Counsel testified that he did not have a reason for not objecting to Investigator Wrenn's testimony.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show

motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE; see also State v. Weaverling, 337 S.C. 460, 467, 523 S.E.2d 787, 791 (Ct. App. 1999) (citing State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)) ("Generally, South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged.").

Here, while Trial Counsel's failure to object to Investigator Wrenn's oblique reference to Applicant's "prior booking" *may* have been deficient, Applicant has failed to meet his burden of proving prejudice. See Thompson v. State, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding trial counsel's deficient failure to object to testimony does not remove an applicant's burden to prove prejudice.). Relevant considerations are the strength of the State's case apart from the inadmissible evidence to which trial counsel deficiently failed to object. Id. 423 S.C. at 246, 814 S.E.2d at 493-94.

Applicant had a week-long trial with several witnesses who testified to Applicant's presence and involvement in the crimes for which the jury convicted Applicant. For example, a co-defendant gave lengthy testimony about Applicant's presence and actions during the robbery. James Gquan Henry (James) testified at trial that he was sixteen years old at the time of the robbery. (R. p. 777, l. 13). James testified that Applicant gave him a gun and Applicant had a gun on him both times they went to the Victim's house. (R. pp. 800, l. 23 – 801, l. 19). James testified that they entered the Victim's house and bedroom, and the Victim shot James twice, and Applicant started wrestling with Victim. (R. pp. 808, l. 4 – 810, l. 10). James testified that Applicant somehow got the Victim's gun from him and started shooting the Victim, and when James put his hands on Applicant's shoulder Applicant turned and shot James with the Victim's gun. (R. pp. 809,

l. 23 – 811, l. 8). James then testified that he did not think Applicant intentionally shot him in the chest. (R. p. 811, ll. 7 – 12).

This Court finds that the evidence, in this case, was one of witness credibility. The jury had the opportunity to hear the testimony and weigh the witness' credibility. This Court cannot reason that the single oblique reference to Applicant's prior booking was the deciding factor in this case which warrants a reversal. Nor can the Court entertain that had Trial Counsel objected to the isolated testimony, the outcome at trial would have been a verdict of not guilty.

Additionally, this Court finds the oblique reference to Applicant's prior booking was not prejudicial because the State did not attempt to introduce the prior booking as character evidence. See State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) (determining law enforcement agent's isolated testimony that he compared defendant's fingerprints with SLED's fingerprint card they had on record was not so prejudicial to defendant as to warrant a mistrial because it was questionable whether jury drew connection between fingerprint card and defendant's prior criminal activity); State v. Robinson, 238 S.C. 140, 119 S.E.2d 671 (1961), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (holding that, even if the testimony created the inference in the jury's mind that the accused had committed another crime, the State never attempted to prove the accused had been convicted of some other crime); State v. Creech, 314 S.C. 76, 81–82, 441 S.E.2d 635, 638 (Ct.App.1993) (holding trial judge did not abuse his discretion in denying defendant's motion for a mistrial when officer testified that he obtained warrants for defendant's arrest and contacted "the Probation Officer"). Instead, the Court finds it was a statement made in passing.

Consequently, Applicant has failed to establish any deficiency on the part of Trial Counsel for his alleged failure to object to this testimony, and Applicant has failed to establish any resulting prejudice from this alleged deficiency.

Accordingly, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 5: Co-defendant's plea deal was not properly presented.**

Applicant alleges that the co-defendant's plea deals were not properly presented and Trial Counsel was constitutionally ineffective for failing to properly inform him of the co-defendant's plea deal. This Court finds this allegation is without merit.

On direct examination, the following colloquy occurred with Trial Counsel:

Q: Okay. The co-defendant, Mr. Henry, that you just mentioned, he testified against Mr. Williams and Ms. Mickens; is that correct?

A: He did.

Q: All right. What was your understanding as to any sort of plea deals or negotiations he had with the State prior to the trial?

A: Hold on a second. I think prior to the trial -- I think that came out on -- on cross when I asked him. I mean, I knew he had a deal; I didn't know what the deal was. Normally what happens is, especially in the third in Williamsburg County, if someone is going to plead or someone is going to cooperate, they plead first and then they hold off on sentencing based upon how they do at the -- during the trial during their testimony. So there wasn't so much to quid pro quo if you do this we'll give you X, Y, Z. There's not that. Especially not with Solicitor Barr, she wouldn't do that.

Q: Okay. Do you know if he had entered his plea yet and deferred sentencing or if he had not entered his plea? What was your understanding ---

A: My understanding ---

Q: --- of the way it worked?

A: I'm sorry, I didn't mean to cut across you, forgive me. My understanding is that he had already entered it.

Q: Okay. Was that disclosed to you?

A: Yes.

(PCR Tr. pp. 18 – 19).

On direct examination, Applicant testified that Trial Counsel asked the State to reveal all plea deals, and they said there were no deals. Applicant testified that there were deals in place.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, 466 U.S. 668). Trial Counsel **credibly** testified as to how Solicitor Barr handles plea deals when a co-defendant is going to testify against another co-defendant. Trial Counsel **credibly** testified that the co-defendant had entered his plea, but he did not know the details of the plea negotiations. Trial Counsel **credibly** testified that he was noticed with the plea deal, and he was able to bring that out through cross-examination of the co-defendant. Consequently, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel was deficient and has failed to prove any resulting prejudice.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 6: Trial Counsel failed to review discovery with Applicant.<sup>9</sup>**

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to review discovery with him. This Court finds this allegation is without merit.

On direct examination, the following colloquy occurred with Trial Counsel:

Q: How many times you think you were able to, or if you have notes that reflect this, how many times did you meet with Mr. Williams in preparation?

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<sup>9</sup> While this was not an enumerated allegation in Applicant's original or amended applications, it was alleged during the PCR evidentiary hearing so this Court will address this allegation.

A: My notes -- I don't -- so I brought my trial notebook, my notes, so they don't indicate how many times I met with Mr. Williams. They don't.

Q: Okay. Do you have any recollection of just a ballpark?

A: I'm under oath; I can't lie. I, I want to say at least three ---

Q: Okay.

A: --- perhaps.

Q: Okay. All right.

A: But I did meet with him prior to us going to trial and I prepared this memorandum of understanding where I go through -- I'll just tell you. It's -- and it's initialed by him in every one. The first one is, "I'm charged with the offense of murder, armed robbery, criminal conspiracy, possession of a weapon during a violent crime and burglary first degree." He initials that. "For the offense of murder, I understand that if I'm found guilty or plead guilty to this offense I can receive a sentence of a mandatory minimum of 30 years in prison or life in prison. I understand that this is a violent, most serious offense. I would be required to serve at least 85 percent of the sentence if a sentence -- if sentenced to 30 years. Lastly, I understand that if I'm convicted of two most serious offenses, I could be sent to SCDC for a term of life in prison." He initials that. "For the offense of armed robbery, I understand that I am -- that if I am found guilty or plead guilty to this offense, I can receive a sentence of 10 to 30 years in prison. I understand that the minimum sentence I can receive for this offense is 10 years. I further understand that this is a violent and most serious offense. I further understand that I will have to serve at least 85 percent of any sentence I receive for this offense. Lastly, I understand if I'm convicted of two most serious offenses, I could be sent to the South Carolina Department of Corrections for a term of life in prison." He initials that. "For the offense of criminal conspiracy, I understand that if I'm found guilty or plead guilty to this offense, I can receive a sentence of up to 5 years or a fine of no more than \$5,000." He initials that. "For the offense of possession of a weapon during a violent crime, I understand that I can receive a sentence of 5 years." He initials that. "I have discussed all of these charges fully with my attorney, and he's explained all the possible penalties to me and I understand them." He initials that. **"I have reviewed my discovery materials with my attorney, and I have had enough time to discuss them with him." He initials that. "I've decided that I would like to have a jury trial for these charges." He initials that. "I have come to this decision on my own without pressure or promises**

**from anyone." He initials that.** "And my attorney advises me that I have ten days to appeal the conviction in this matter," and I've been advised him -- "and I have advised him to file a Notice of Intent to Appeal in that event." He initials that. And he signed that on September 9th, 2023 [sic]. And it's signed by me as well.

THE COURT: 2023?

THE WITNESS: I'm sorry, excuse me, 2013. Sorry.

(PCR Tr. pp. 12 – 14) (emphasis added).

This Court finds Trial Counsel's memorandum of understanding where Applicant signed that Trial Counsel had reviewed all discovery with him and Applicant had enough time with Trial Counsel refutes Applicant's allegation. Consequently, this Court finds Applicant has failed to overcome the strong presumption that Trial 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 Trial Counsel's further review of the discovery, nor has he explained how further review would have changed the outcome of his trial. See Hill, 474 U.S. at 59; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where applicant failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

CONCLUSION

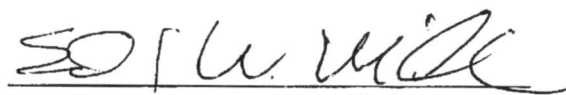
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

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 this 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), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 30 day of August, 2023.

  
THE HONORABLE EDWARD W. MILLER  
Presiding Judge  
Third Judicial Circuit

Guille, South Carolina