

trial, with J. Richard Jones, Esquire, serving as standby counsel. Deputy Solicitors Kernard Redmond and Mary Thomas Johnson-Lee, Esquires, prosecuted the case. On October 13-15, 2014, Applicant proceeded to trial before the Honorable Michael J. Nettles, circuit court judge, and a jury. Applicant was found guilty as indicted of all charges. Judge Nettles sentenced Applicant to imprisonment for concurrent terms of thirty years for the burglary, the CSC, and the kidnapping, and an additional consecutive term of five years for the weapon charge.

Applicant filed a timely notice of appeal on October 23, 2014, that was perfected by Susan B. Hackett, Esquire, through filing a brief raising the following issue:

Did the trial judge err in permitting Appellant to proceed *pro se* where the judge failed to ensure Appellant understood the dangers and disadvantages of self-representation and the record does not disclose that Appellant had sufficient background to intelligently waive his right to counsel or was apprised of his rights by some other source?

Briefing completed on March 18, 2016. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Dupree*, 2016-UP-442 (S.C. Ct. App. filed Oct. 26, 2016). The remittitur was issued on November 14, 2016.

Summary of Relevant Facts

On September 8, 2013, the seventy-six-year-old Victim was watching television in the den with her eighty-one-year-old husband when the doorbell rang. (Tr. 132-146). When she answered the door, Applicant asked her if the house was for sale and whether he could come in and look around. (Tr. 147). She let Applicant in and showed him around, and before Applicant left, she asked him for his contact information in case they decided to sell the house. (Tr. 147-48). Applicant grabbed her around the neck from behind, pushed her over on the couch, and raped her. (Tr. 148). During the attack, Victim was able to push her alert button, which answered in the den. (Tr. 149-50). Victim was not sure whether Applicant heard the alert call being

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answered from the den, but he left and she answered the emergency call and told them what happened. (Tr. 150). Police first arrested Kadeem Hooks for the crime but later released him. (Tr. 265, 318). After receiving information from SLED that Applicant's fingerprint was on the note Victim gave to the man to write down his contact information, the Marlboro County Sheriff's Office arrested Applicant. (Tr. 266-270).

Applicant gave a partial confession to the police, in which he admitted to entering the home under false pretenses. (Tr. 85, 93, 330-31, 540). Applicant's semen matched what was found in the victim's gown, vaginal area, and underwear. (Tr. 489, 500). The probability of a match of an unrelated person was one in one hundred thirty quadrillion. (Tr. 500). A writing sample was also obtained. (Tr. 273).

Current Action Before this Court

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

1. "Violation of Constitutional Rights."
 - a. "The evidence Presented at trial violated my Constitutional."
2. "Judge sentence violates Right to Jury."
 - a. "The Jury was required to impose sentence and not Judge."
3. "Request for DNA Testing."
 - a. "Request for new DNA testing."

On November 13, 2017, Applicant, through PCR Counsel Lance S. Boozer, filed his first amendment to the application, alleging:

1. Prior to trial, counsel(s) failed to make a request for change of venue.
2. At any time prior to trial, counsel(s) failed to request that Applicant undergo a mental health evaluation and/or make an independent investigation into Applicant's mental health history.
3. Applicant, in clarification of his previous allegation that his constitutional rights were violated, alleges the State withheld evidence from him until commencement of the actual trial.

On June 28, 2019, Applicant, through Counsel Kristy Goldberg, filed his second

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amended application, alleging:

1. Prior to trial, Counsel failed to request that the Fourth Circuit Solicitor’s Office be prohibited from prosecuting this case due to a conflict of interest and that the matter be sent to a different prosecution agency;
2. At any time prior to trial, counsel(s) failed to request that Applicant undergo a evaluation investigating the Applicant’s mental health history and intellectual ability;
3. The Trial Court improperly ordered that the Applicant proceed forward *pro se*;
4. The State withheld evidence from him until the commencement of the actual trial, effectively causing the Applicant to be limited in his ability to defend himself;
5. The State withheld other evidence completely which was not received by the Applicant until after the trial concluded;
6. Pre-trial counsel and shadow counsel failed to disclose/reveal all evidence received from the State in a timely manner so that the Applicant could review evidence and prepare for trial;
7. The State violated the Rules of Evidence, taking advantage of the Applicant’s *pro se* status;
8. The Solicitor’s Office misled the Applicant regarding the evidence admitted in trial and the witnesses that would be called during trial.

At the PCR hearing, Applicant proceeded forward on the allegations raised in his second PCR application amendment, as well as:

1. Ineffective assistance of counsel for failing to investigate fabricated evidence.
2. Prosecutorial misconduct for falsifying evidence against Applicant.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated he has had three prior PCR attorneys. He stated he wanted one of his trial counsels to change venues for the case because of a close association with law enforcement in the case. Applicant testified that the victim’s son and the chief of police may have known each other, which he thought may have an undue influence over the trial. Applicant claimed that some of the documents used at trial to secure the conviction were falsified, as were the fingerprints. He stated that his fingerprints were retaken in October 2015. He stated that part of

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the chain of custody was printed and entered at trial, but another section was not. Applicant claimed he never received any fingerprints in his discovery. Applicant claims that the SLED labs report show communication between the detective, fingerprint analyst, the SLED Lieutenant, and the Solicitor's office. He claims that this is evidence of collusion between SLED and the Solicitor's Office. He also claims that these communications show the prints never existed or were not in the Solicitor's Office's possession.

Applicant claimed that his mental abilities were never investigated, even though he received prior treatment for his mental health in the fall of 2013. Applicant claimed he was ordered to proceed forward *pro se*. He stated that the Court informed him it was a bad idea to proceed forward *pro se* but stated that he had to proceed forward *pro se* since he was not afforded another attorney. He stated that he believes his attorneys, the documents, and the transcripts show that Counsel was ineffective.

Applicant stated that Counsel did not request missing documents. He stated that the State withheld motions and documents, including SLED sexual assault lab reports, until the commencement of trial. Applicant claimed that the prosecutors turned over a sexual assault document during the trial. He stated that the medical examiner may not have swabbed the victim. He stated that the medical examiner's report was handed over later. He stated that this evidence was not revealed until years later. He stated that one of his prior attorneys brought this up at a March 2016 hearing. He claimed other evidence was withheld until after trial. He stated that he did not receive the 2014 fingerprints or the SLED fingerprints. He testified that the State did not have enough information to obtain biological evidence.

Applicant testified that the State took advantage of Applicant's *pro se* status. He stated this was, in part, done when the State handed over evidence late. He also stated that they misled

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him at trial, particularly regarding the DNA issue and a handwriting analysis. He stated that the case was pushed back in September 2013 due to getting handwriting in person. He stated that the State did not present a witness they should have had.

Applicant claimed that Marlboro County never took his prints. He also stated that the prints were taken on February 1, 2012, but that he did not see them until February 12, 2012. Applicant claimed that the Court should not have handled the sentencing portion of the case without the jury.

On cross-examination, Applicant stated that he thought a conflict of interest existed because the victim's son was the chief of police. He stated he was unsure whether there was a conflict of interest in the Solicitor's office itself. He stated he conducted the entire trial himself but was unsure whether he was competent to stand trial. He stated he had four trial attorneys before proceeding *pro se* at trial. He acknowledged that the State stated that they turned over all exculpatory evidence before trial but stated that they were lying. Applicant stated that there was an original suspect for the crime and stated that he confessed to the crime. Applicant stated he went to the police department voluntarily to clear his name. He stated he received biological DNA evidence around this time and that his DNA matched the DNA found on the victim and her clothing. Applicant claimed that the victim seemed coerced in her testimony at trial. He stated that the victim recognized him as the perpetrator at trial. Applicant stated that the DNA evidence was seemingly fabricated and that his DNA could not have matched the DNA found on the victim and that there was not sufficient evidence in the case showing Applicant committed the crime.

On re-direct, Applicant testified he represented himself at trial because he was missing evidence and his fourth and final attorney would not admit anything was missing. He stated

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another one of his trial attorneys took another job and another asked to be removed. Applicant stated that he did not think there was any evidence showing he committed the crime. He acknowledged that the victim recognized Applicant as the perpetrator of the crime but stated that she was coerced. He stated that there were no fingerprints or DNA proving he committed the crime.

Prosecutor Redmond Testimony

Prosecutor Redmond testified that he helped prosecute this case. He stated he was involved from the beginning. He testified that no conflict of interest existed in this case. He stated that Applicant's mental health was not at issue and stated he thought he did a good job overall representing himself *pro se*. He stated that he was competent to represent himself. He stated that included in the evidence in this case were fingerprints and DNA evidence, as well as the victim's testimony. He stated that Applicant went to speak to law enforcement voluntarily. In speaking to the police, Prosecutor Redmond testified that there were items in evidence that Applicant brought up, which only the perpetrator would know about. He stated that the transcript would show whether all evidence was turned over to the defense. He stated that the victim was not coerced in her testimony. He stated that no evidence was fabricated, and no witnesses coerced. He testified that he never took advantage of Applicant in his *pro se* status and stated that juries often sympathize with *pro se* defendants, so Applicant was granted more leeway as a result.

On cross-examination, Prosecutor Redmond testified that he had no knowledge of a conflict of interest and did not recall his office making any statement to the Court or Attorney General's Office about having no conflicts of interest but deferred to the record. He also deferred to the record concerning any mental health issues Applicant had, but stated he was not aware of

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any investigations into his mental health issues. He stated that Applicant proceeded forward *pro se* and did not recall why his previous four attorneys were relieved or if there was conflict associated with any of them. He stated he was not personally aware of any issues with any prior attorneys. He testified he did not recall any issues with the chain of custody report but deferred to the transcript. He testified that concerning authentication of the note, the State did everything they could to show Applicant touched it. He testified that the State worked to get a conviction ethically. He stated that there may have been contested issues in the case, but he would have to view them in context and see what the response was. He testified he did not recall an officer misleading him and stated that he had no reason to believe that the prosecutors did anything wrong with the witnesses or the SLED reports. He stated that the only issue he recalled was related to the authentication of the prints, but that this was resolved at trial. Emails were shown to Prosecutor Redmond, who stated that he was involved in the communications and that this was a Marlboro case and any reference to Marion County was a misinterpretation by one of the people involved and was resolved by the record.

On re-direct, Prosecutor Redmond testified that no one ever mentioned Applicant having a mental issue. He testified that he only handles Fourth Circuit cases, which do not include Marion County cases.

Prosecutor Thomas-Lee Testimony

Prosecutor Thomas-Lee stated that she helped prosecute this case since its inception. She stated that the strongest piece of evidence in the case was that Applicant's DNA matched the victim's underwear, vaginal swabs, and a print from a note. She stated she did not recall withholding any evidence. She stated there was no reason to obtain medical records in this case. She stated that there were no conflicts of interest in this case but that, if there were, the office

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would have recused themselves and the matter would have been assigned to another agency. She testified that Applicant proceeded forward *pro se* at trial, but that Counsel Rick Jones sat next to Applicant as standby counsel at trial. She stated that she did not see any issues with Applicant's competency at trial. She stated that Applicant seemingly studied the law at trial. She stated that Applicant was given a lot of leeway at trial. She stated that she would not do anything to actively harm or take advantage of Applicant at trial.

On cross-examination, she testified that she heard some of Applicant's testimony at the PCR hearing. She stated that the victim's son was related to the chief of police, but that the office only had normal procedural contact with him. She stated that no relationship with the chief of police rose to the level where recusal would be warranted. She stated that Applicant made mention of a potential conflict of interest at trial. She stated that she did not have any reason to believe mental issues were a problem with Applicant. She stated she did not recall Applicant testifying that the State withheld evidence at the PCR hearing. She testified that the fingerprint expert was not her witness and deferred to Prosecutor Redmond on that ground. She reiterated that the DNA evidence was the most compelling piece of evidence in this case. She stated she did not recall what steps the Solicitor's Office took to obtain Applicant's DNA evidence but stated that the normal procedure likely would have been followed. She stated that Mr. Albert Smith took Applicant's fingerprints. She stated she met with the sheriff's office to prepare for trial, the evidence list, met with the victim multiple times. She stated that she did not have much involvement with the fingerprints.

On re-direct, she reiterated that she and Prosecutor Redmond approached the case through a divide and conquer strategy, working in concert together. She stated that her responsibility was over only half the witnesses.

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Counsel Testimony

Counsel testified that he was Applicant's fourth trial attorney and that he was prepared to proceed forward to trial on the day of the hearing. Counsel testified he practiced criminal law for forty-two years. He stated he had numerous discussions with Applicant about the discovery. He stated he was practicing in Darlington County at the time. He testified that Applicant was frustrating to work with and that there was sufficient evidence indicating his guilt, consisting of DNA evidence, fingerprint evidence, and a partial confession. Counsel testified that Applicant was fixated mostly on dates in the chain of custody report, not actual issues in question at trial. Counsel testified that he had all discovery prior to trial and that it was shared through an electronic file. He stated that there was no conflict-of-interest issue in the case. He testified that he did not see any indication that Applicant had a competency issue. Counsel testified that there was no cause for concern about Applicant's mental state. Counsel testified that the Court engaged Applicant in a colloquy about his decision to proceed forward *pro se* and warned him not to do it. Counsel testified that the prosecutors did not take advantage of Applicant's *pro se* status and that no one misled Applicant.

On cross-examination, Counsel testified that all of Applicant's counsels practiced in the Fourth Circuit Public Defender's Office. He stated that a digital copy of all discovery was sent to all of his counsels. Counsel testified that he was unaware if Applicant stated that he was concerned with a conflict of interest with any of his prior attorneys. Counsel testified that he was never given the impression that Applicant had mental health issues. Instead, he stated that Applicant was hard-headed and opinionated. Counsel testified that all SLED people did not always have all the evidence in the case. Counsel stated that this was one of the reasons why he and Applicant clashed. He stated that he did not see any major holes in the SLED chain of

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custody. Counsel testified that the Court engaged Applicant in a colloquy about proceeding *pro se*. He stated that this was happening while he and Applicant were picking a jury. He stated that they used all ten peremptory strikes. Counsel testified that Applicant referred to him as his assistant throughout the trial. Counsel testified that he had all the discovery but could not confirm whether Applicant had his own copies of everything. Counsel testified that Applicant's primary approach at trial was questioning SLED people primarily about dates and how they were always not personally in possession of all evidence. He stated that he did not recall whether the fingerprints were taken again.

Findings of Fact and Conclusions of Law

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

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984);

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Butler, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

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

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695.

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Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Failure to Request Change of Venue

Applicant claims Counsel was ineffective for failure to request a change of venue. However, both Prosecutors and Counsel all testified that there was no conflict of interest in this case, warranting a change of venue. Counsel is not deficient for failing to make a frivolous request for a change of venue and Applicant has made no showing that he was prejudiced by any alleged conflict. Accordingly, relief is denied on this ground.

Failure to Request Mental Health/Competency Evaluation

Applicant claims Counsel was ineffective for failing to request a competency evaluation. “Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea.” *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). “In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea.” *Id.* at 458-59, 596 S.E.2d at 50. “In order to find that petitioner’s trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner’s competency to

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stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings." *Id.* at 459, 596 S.E.2d 50-51. Prejudice is found when the petitioner shows a "'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

This Court finds both Prosecutors and Counsel credible in their assertions that there was never any indication that Applicant suffered from mental health or competency issues. This Court finds those assertions were substantiated by Applicant's performance at trial when he proceeded forward *pro se*. Counsel was not deficient for failing to seek out a frivolous competency evaluation and, because this Court finds no indication of insanity at the trial, no prejudice has been established. Relief is denied on this ground.

Failure to Show Evidence

Applicant claims Counsel was ineffective for failing to show him all the evidence. However, Counsel credibly testified that discovery had already been provided by the State to the defense before he took over the case. Additionally, Counsel credibly testified that he had multiple discussions about the discovery with Applicant. Thus, this Court finds this claim is without merit and denies relief accordingly.

Failure to Investigate Fabricated Evidence

Applicant alleges ineffective assistance of counsel for failure to investigate allegedly fabricated evidence. *Strickland* makes clear that Defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated

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for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* However, counsel is required to, at minimum, “interview potential witnesses and 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) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen 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*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

This Court finds both Prosecutors credible in their statements that no evidence was fabricated. Thus, there was nothing for Counsel to investigate. This Court also finds Applicant failed to show what evidence was fabricated or how that would have affected the outcome at trial. Accordingly, relief is denied on this ground.

Pro Se

Applicant claims that the trial court improperly ordered him to proceed forward *pro se*. “It is well-established that an accused may waive the right to counsel and proceed *pro se*.” *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). This right must be honored even if it is to the defendant’s detriment and must be asserted prior to trial. *Id.* If asserted after trial has begun,

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the grant or denial to proceed *pro se* is within the judge's discretion, who is then required to weight the prejudice to the legitimate interests of the defendant against the potential disruption of proceedings in process. *State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010) (citing *United States v. Wesley*, 798 F.2d 1155, 1155-56 (8th Cir. 1986); *United States v. Stevens*, 83 F.3d 60, 66-67 (2d Cir. 1996)). The right to counsel must be waived knowingly and intelligently, with an understanding of the consequences. *Id.* The trial judge has the responsibility to guarantee the waiver of Counsel is done knowing and intelligently. *State v. Barnes*, 407 S.C. 27, 36, 753 S.E.2d 545, 550 (2014). Further, a defendant competent enough to stand trial is competent enough to waive the right to counsel. *Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). Additionally, a trial judge is not required to permit hybrid representation, a situation where applicant proceeds partially *pro se* and partially by counsel. *Id.* at 43, 503 S.E.2d at 751.

This Court finds that Applicant knowingly and intelligently waived his right to counsel. Applicant affirmed he wished to represent himself and, after a colloquy in which the Court apprised Applicant of the severity of the mistake he was making in proceeding without counsel, the Court granted Applicant's request and relieved Jones of his representation but instructed him to remain in the courtroom. (Tr. 37-43). The Court admonished Applicant that proceeding forward *pro se* instead of being represented by Counsel was an "extreme error" (Tr. 39-40). Applicant still elected to proceed forward *pro se*. (Tr. 41). Applicant again confirmed his desire to proceed *pro se* after the Court launched a second colloquy after the disposition of several pre-trial motions. (Tr. 121-22). The Court ensured Applicant that he would be held to the same standard as if he were a lawyer. (Tr. 121). The Court again advised that proceeding forward *pro se* was not in his best interest. (Tr. 121). The Court still directed Counsel to serve as standby counsel. (Tr. 122).

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This Court finds the trial court went to great lengths to ensure Applicant was advised of the dangers of self-representation and ensured that Applicant was waiving his right to counsel knowingly and intelligently. Accordingly, this Court finds Applicant's allegation to the contrary to be without merit and denies relief as a result.

Prosecutorial Misconduct, Generally

Prosecutorial misconduct is most commonly found within the confines of a *Brady*¹ violation. *Brady* violations occur if four conditions are met: "the evidence was favorable to the accused", "it was in the possession of or known to the prosecution", "it was suppressed by the prosecution", and "it was material to guilt or punishment." *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Whether a *Brady* violation is material and, thus, sufficient to warrant relief, is contingent on where there is a "reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial." *Id.* at 325. Further, whether a mistrial is warranted remains contingent on "(1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court." *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) (quoting *United States v. Anwar*, 428 F.3d 1102, 1112 (8th Cir. 2005)).

Withholding Evidence Until Right Before and After Trial

Applicant claims prosecutorial misconduct for failure to turn over evidence until right before and after trial. However, Prosecutor Redmond credibly stated at the trial that he turned everything exculpatory over to the defense, including an officer's personal note. (Tr. 66). This was backed by both prosecutors' testimonies at the PCR hearing, where they testified that they

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

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did not recall any evidence being withheld from the defense and deferred to the trial transcript on this issue. This Court finds the prosecutors credible and Applicant not credible on this point. Accordingly, relief is denied on this ground.

Taking Advantage of Pro Se Status

Applicant alleges the State engaged in misconduct by taking advantage of Applicant's *pro se* status. Both prosecutors testified that they did not take advantage of Applicant's *pro se* status. This Court finds Prosecutor Redmond credible in his assertion that the State granted Applicant more leeway than they typically provide an attorney with, because juries tend to empathize more with *pro se* defendants. Applicant has failed to provide this Court with any specific evidence to the contrary of Mr. Redmond's assertion. Accordingly, relief is denied on this ground.

Misleading Concerning Evidence/Witnesses Called

Applicant claims the State engaged in misconduct for misleading Applicant concerning evidence and witnesses called. However, both Prosecutors credibly testified that no witnesses were coerced, Applicant was not intentionally misled, no evidence was fabricated, and that they did not take advantage of Applicant. Accordingly, this Court finds the Prosecutors credible and Applicant not credible. Accordingly, relief is denied on this ground.

Fabricating Evidence

Applicant claims prosecutorial misconduct because the State allegedly fabricated evidence. However, this Court finds Prosecutor Redmond credible in his assertion that no evidence was fabricated in this case. Additionally, Applicant's definition of fabrication seemingly stems from his recognition that the discovery in question is unfavorable. This Court

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declines to find this evidence fabricated on this basis. Accordingly, relief is denied on this ground.

Conclusion

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

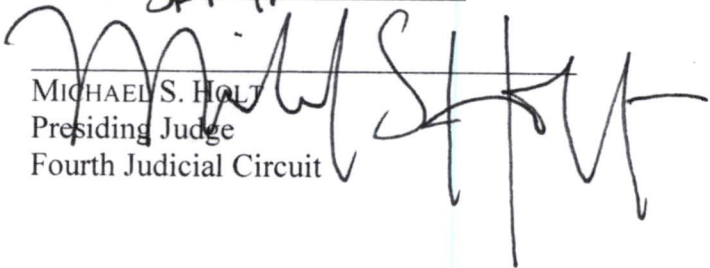
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant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

IT IS THEREFORE ORDERED:

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

ANITA M. WILLIAMS
 CLERK OF COURT
 MARLBORO COUNTY, S.C.
 FILED
 26 A 10:19

AND IT IS SO ORDERED this 21st day of SEPT., 2022.


 MICHAEL S. HOLT
 Presiding Judge
 Fourth Judicial Circuit

CHESTERFIELD, South Carolina.

CHESTERFIELD COUNTY CLERK OF COURT

Christy F. Gaddy, Clerk of Court

CHESTERFIELD, SOUTH CAROLINA

(843) 623-2574 or (843) 623-6301

Court of General Sessions
Court of Common Pleas

Family Court

RECEIPT FOR DOCUMENTS

The following Chesterfield County Documents were transmitted on September 21, 2023 by

Amanda Dixon of the Chesterfield County Clerk of Court's Office.

Name	Case Number	Type of Document
Derrick Dupree	2017-CP-34-6222	Order of Dismissal

2023 SEP 26 A 10:18
ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.
FILED

Receipt of the Documents listed above is hereby acknowledged this 21st day of September, 2023, by

Ariel DeGgers
Name and Title

of: Marlboro County Clerk of Court
Name of Agency

NOTE: Please sign and return to:
Chesterfield County Clerk of Court
PO Box 529
Chesterfield, SC 29709