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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Deadra L. Jefferson, Circuit Court Judge

2019-CP-40-1308

Hank Hawes, # 361739,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Hank Hawes, # 361739, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 12, 2023, issued by the Honorable Deadra L. Jefferson, Presiding Judge, Fifth Judicial Circuit.

Jonathan D. Waller

Angell Molony, LLC
SC Bar No.: 76290
210 Newberry Street NW
Aiken, SC 29801
803-335-1449 (phone)
jonathan@angellmolony.com
ATTORNEY FOR PETITIONER

November 8, 2023

Other Counsel of Record:
D. Russell Barlow, II, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Hank E. Hawes, #361739, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2019-CP-40-01308 **ORDER OF DISMISSAL**

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Jonathan D. Waller, Esq.
Respondent's Attorney:	D. Russell Barlow II, Esq.
Trial Counsel:	E. Fielding Pringle, Esq. Megan A. Eigenbrot, Esq.
Appeal Counsel:	Nicholas A. Charles, Esq.
Date of Hearing:	July 19, 2023
Court Reporter:	Karen Ambroziak

This matter comes before the Court by way of Hank E. Hawes' (Applicant) application for post-conviction relief (PCR) filed on March 6, 2019, challenging his trial for Murder. Respondent, the State of South Carolina, made its Return on June 10, 2019, requesting an evidentiary hearing to resolve the claims as set forth in the application. On July 19, 2023, Applicant, through appointed post-conviction relief counsel Jonathan D. Waller, Esquire, filed an Amendment to Application for Post-Conviction Relief asserting an additional claim of ineffective assistance of appellate counsel. On July 27, 2023, Respondent filed its Return to Amendment for Post-Conviction Relief.

An evidentiary hearing was convened on July 19, 2023, at the Richland County Courthouse before the Honorable Deadra L. Jefferson. Applicant was present and represented by Jonathan D. Waller, Esquire. D. Russell Barlow II, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, 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 Respondent presented testimony from Chief County Public Defender E. Fielding Pringle, Esquire (Pringle), and Nicholas A. Charles, Esquire (Appellate 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 constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In October 2011, the Richland County Grand Jury indicted Applicant for Murder[1] (2011-GS-40-05012). Applicant was represented by then Chief County Public Defender Doug Strickler,[2] Assistant Public Defender E. Fielding Pringle, and Assistant Public Defender Megan A. Eigenbrot, Esquires. Fifth Circuit Assistant Solicitors Dolly J. Garfield, K. Luck Campbell, and Foster M. Mathews, Esquires prosecuted the case.

On October 6 – 16, 2014, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, Jr. Applicant was found guilty as indicted. Judge Nicholson sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. Nicholas A. Charles, Esquire, of Nelson Mullins Riley & Scarborough, LLP, perfected Applicant's appeal. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Hawes, 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018). The Remittitur was returned to the circuit court on July 3, 2018.

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[1] The offense of Murder is a violent, most serious felony punishable by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. § 16–3–20 (2015); S.C. CODE ANN. § 16–1–60 (2015); S.C. CODE ANN. § 17–25–45 (2014).

[2] Douglas Strickler, Esq. was unavailable at the time of the hearing to testify as he passed away on April 13, 2018.

FACTS GIVING RISE TO THE CONVICTION

Applicant was charged with the Murder of Jennifer Wilson. Applicant admitted at trial that he killed Wilson in her home on August 28, 2011. However, Applicant claimed he acted in self-defense. (R. p. 819, line 10 – p.828, line 9; p. 904, line 20 – p. 905, line 1).

Wilson's neighbor Kelly Smith testified at trial that he woke to the sounds of screaming and physical violence coming from the bedroom area of Wilson's home. Smith testified he "heard screaming and physical violence," and he "recognized Jen's voice immediately" but did not hear another voice. (R. p. 85, line 5 – p. 86, line 4). He testified he could feel the energy of the attack, "it literally, was a violent situation. Her scream was she was being harmed." (R. p. 86, lines 9-11). He then noticed a pause, movement to the hallway progressing into the kitchen area, then:

> [T]here was a second wave of more aggressive, just brutal, carnal instant violence. And I could physically feel the vibration in my bedroom from what was coming from the other room. . . . I could hear what sounded like a table slamming against the wall, like her body being thrown against the wall.

(R. p. 86, lines 13-22).

Smith then heard Wilson for the last time, yelling "no, no, no" and pleading for her life. (R. p. 86, line 24 – p. 87, line 1). Smith knew Applicant from Applicant's romantic relationship with Wilson. He also knew the relationship had turned "rocky." (R. p. 79, line 8). Smith testified that he called 911. (R. p. 88, lines 1-9). Though he did not become involved at that time, Smith assumed the officers talked to "Jen and Hank." (R. p. 91, lines 4-11). Later that morning, Smith left his home and noticed Applicant's vehicle, a Range Rover, in the driveway, along with Wilson's car and his own car. (R. p. 91, lines 21-25).

Law enforcement responded after Smith called 911 and arrived at approximately 2:47 am. (R. p. 112, line 17 – p. 113, line 5; p. 114, lines 20-21). However, the lights in Wilson's home were off, and after hearing and seeing nothing out of the ordinary, and having no cause to enter the

home, the officers only stayed outside briefly, then left. (R. p. 113, line 11 – p. 116, line 25). They noted a Range Rover parked behind the house with two other cars. (R. p. 115, lines 5-12).

Applicant testified at trial that he unclothed Wilson, washed her body, and placed her on the couch in the living area. (R. p. 831, lines 12-17; p. 843, line 7 – p. 846, line 23). He cut his own wrists and collected his blood in a cooler. (R. p. 879, line 2 – p. 881, line 7). He stayed in the home for hours, calling an ex-girlfriend, Stacy Newsom. The first call was at 2:37 am. (R. p. 294, lines 10-12). He was crying and upset, and sometimes would keep the phone connection with Newsom even though nothing was said. (R. p. 293, line 11 – p. 294, line 21). He eventually left and drove a short distance to his own home. Another one of Wilson's neighbors, Eric Ashton, testified he saw Applicant leave that morning, driving his automobile in an odd way—with his forearms instead of his hands. (R. p. 124, line 15 – p. 125, line 8). Starting at 8:48 that morning, Applicant searched the internet for defense attorneys. (R. p. 462, line 15 – p. 463, line 3).

Around 10:00 am, he called another ex-girlfriend, Kimberly Williams, and confided he could be charged with Murder. He stated he had been in contact with an attorney and needed $25,000.00 for representation. She advised him that she did not have such money. Further, he stated he had acted in self-defense though no one was going to believe him. He also stated he tried to commit suicide by slitting his own wrists. Williams advised him to seek medical attention. (R. p. 267, line 2 – p. 268, line 1).

Applicant called Newsom again later that morning, and she advised him to call EMS if he was not feeling well. (R. p. 294, line 18 – p. 295, line 6).

Eventually, Applicant spoke to well-known criminal defense attorney Jack Swerling, Esq. Swerling testified that, with Applicant's permission, he placed a 911 call to law enforcement reporting a possible Murder. (R. p. 50, line 23 – p. 52, line 22).

During the time Swerling was reporting the Murder, Applicant called 911 for help, reporting he had cut his wrists. An officer was dispatched at 11:45 am to meet EMS at the scene. (R. p. 311, lines 7-12). Robin Haselden with Richland County EMS testified Applicant's clothes were wet, his cuts were no longer bleeding, and there "was no blood noted on him anywhere." (R. p. 316, line 21 – p. 317, line 10). An emergency room doctor, Dr. John Robinson, treated Applicant. Applicant would not answer questions. Dr. Robinson noted a concern that Applicant "was being deceptive" about self-inflicted wounds or had some type of trauma-induced amnesia; however, that "was inconsistent with the fact that he was alert and oriented with everything else." Dr. Robinson determined the wounds were self-inflicted, not life-threatening, and nothing accounted for the "amnesia" Applicant appeared to present. Dr. Robinson released Applicant into the custody of officers who had arrived at the hospital. (R. p. 328, line 16 – p. 334, line 21).

Officer Hudson testified that law enforcement responded to Wilson's home at approximately 11:30 am as a result of Swerling's report. (R. p. 60, lines 15-23). The officers noted blood on the rear entry. Smith was outside and also advised them of the sounds of violence he had reported earlier that morning. (R. p. 54, lines 18 – 25). The officers entered the home from the backdoor and were met with a bloody scene in the kitchen. (R. p. 55, lines 1-4). Upon further investigation, the officers found Wilson's body on the living room couch covered, with the exception of one portion of one arm, by a "blanket." (R. p. 57, line 9 – p. 58, line 25; p. 61, lines 2-4). Officer Hudson testified that upon moving the blanket:

> I observed [Wilson] with multiple stab wounds, the front area (indicating) over her body, and she was unclothed, naked. And her hair seemed to be like it was wet, but sort of dry. . . . No signs of life.

(R. p. 59, lines 3-8).

EMS arrived at 11:51 am. (R. p. 68, lines 4-5). EMS pronounced Wilson dead at the scene. (R. p. 59, lines 18-22; p. 61, line 2 – p. 67, line 16). Though the scene was exceptionally bloody,

there was little blood on the blanket that previously covered Wilson's body. (R. p. 61, lines 11-24). In fact, the body appeared to have been cleaned and showered, apart from one smear of blood near the neck that had "a curved angle to it like the body had been wiped." (R. p. 62, lines 8-19). However, EMS noted multiple "straight cuts stab wounds," and bruising along the neck wound. (R. p. 62, line 19 – p. 63, line 17).

The pathologist who performed the autopsy noted multiple defense wounds on Wilson's hands; blunt force trauma to her head ("at least three blows"); cuts, bruises on arms and legs, lip and chin injury; twelve stab wounds; eleven slashes; and, one bite mark. The cause of death was blood loss from the stab wound, with the neck wound most likely being the fatal wound. However, the sum total of her wounds was fatal. The pathologist opined that Wilson would have died within approximately two minutes. (R. p. 711, lines 5 – 23; p. 713, line14 – p. 714, line 6; p. 720, line 22 – p. 747, line 23). He testified it was a brutal homicide. (R. p. 748, lines 16-19).

As noted, the hospital examination for Applicant, as discussed above, noted only his self-inflicted wounds. While in custody, officers found only one small mark on one of Applicant's fingers. (R. p. 388–89, 904).

Applicant testified in his defense that Wilson was the aggressor, and, though he remembered little else, the incident was clearly her fault. (See R. p. 819, line 10 –p.828, line 9; p. 904, line 20 – p. 905, line 1). Cross-examination uncovered a series of implausible assertions by Applicant when considered with the forensic evidence and other testimony. For example, he claimed she had a large knife, but no large knife was found. He claimed his shirt "may have been damaged" during the fight, and buttons pulled off, but there were no buttons found at the crime scene. He claimed she had on a top at the time of the violence, but no top was recovered with any stab wound tears. He had collected his blood in an insulated bag to not get it on the carpet, and yet his blood was on the scene. (See R. p. 856, line 20 – p. 904, line 24).

In addition to Smith, several friends testified as to the rocky relationship between Wilson and the Applicant, and the fact that she was frightened. Wilson's friend, Janelle Bondr, testified that she knew of the relationship from its start in February 2011. She further testified that she observed a change in Wilson. Wilson had become anxious, her health seem to be poor, "she had been terrified" during the months before her murder and demonstrated becoming upset during a SKYPE call when Applicant "arrived at the house." (See R. p. 132, line 11 – p. 134, line 24).

Another of Wilson's friends David Virtue testified that at a dinner party at his home on August 14, 2011, Applicant and Wilson were together but "seldom on the same side of the room or part of the house during that evening." Virtue also testified Wilson had confided in him over the summer she was attempting to withdraw from Applicant and end the relationship. (R. p. 135, line 18 – p.138, line 2).

Wilson had remained friends with a former boyfriend, Drew Kabbe, and they had been communicating fairly frequently. Kabbe testified he spoke to Wilson the night/early morning of August 27–28, 2011. Wilson was in a good mood and happy at that time, returning home from a birthday party. However, she had previously told Kabbe about Applicant, though they normally did not, by agreement, discuss their romantic relationships. Wilson told Kabbe "[s]he was frightened of [Applicant]." Kabbe heard, over the phone, Wilson safely arrive home the night of the party before their telephone conversation ended. (R. p. 171, line 14 – p. 174, line 15).

Other friends testified consistent with Kabbe's testimony that on the night before her death, Wilson attended two birthday parties and appeared to be in a happy mood and enjoying herself. (See R. p. 141, line 12 – p. 144, line 18; p. 151, lines 1-7).

Another friend, Tasha Laman also heard Wilson express and/or demonstrate distress over the relationship. Laman advised Wilson to go to a counselor. (R. p. 269, line 15 – p. 272, line 4). Laman also testified Wilson had confided to her Applicant had threatened to "ruin her life." (R. p.

273, line 23 – p. 274, line 1; p. 275, lines 5-18). Laman, like Bondr, similarly noticed a loss of weight and an anxiousness in Wilson. (R. p. 274, lines 9-19). Laman testified Wilson did go to counseling and went to couple's counseling on at least one occasion. (R. p. 277, lines 7-12). Laman testified that Wilson "was very nervous after talking with Ms. Stewart and Ms. Stewart telling her this was a classic case of domestic violence," and that Wilson intended to break off the relationship with Applicant. (R. p. 276, lines 1-7).

Wilson's counselor, Jamme Stewart, testified she was very concerned about a new relationship that had so quickly turned to "constant contact," and that Applicant had "threatened to expose something embarrassing about [Wilson]" should Wilson break off the relationship. (R. p. 278, lines 8-14). Stewart responded that she did have reservations about domestic violence. (R. p. 279, line 25 – p. 280, line 12). Stewart testified that Wilson did not want to stay in the relationship but had difficulty with making the break. Stewart noted Wilson was concerned about Applicant's constant contact and jealousy. (R. p. 281, line 12-24). Wilson was killed just four days after meeting with Stewart. (R. p. 282, lines 13-17).

A series of text messages between Applicant and Wilson showed a back and forth relationship between the two, turning accusatory and threatening toward Wilson. (See, for example, R. p. 420, line 1 – p. 421, line 25; p. 604, line 25 – p. 605, line 3). Wilson's messages reflect both a fear of Applicant and her confusion about him. (See, for example, R. p. 548, line 4 – p. 549, line 10). The last call to Wilson from Applicant was at 2:14 am the morning of her death. The next call was at 2:37am to Stacey Newsom. (R. p. 460, lines 7-23).

Applicant's phone records also reflected contacts with multiple other women. (See R. p. 573, line 3 – p. 592, line 25; p. 608, line 10 – p. 609, line 25). In fact, he was making plans to meet a woman matched to him through a dating website on August 28th, according to a text message sent August 27th. (R. p. 755, line 20 – p. 760, line 7). Also, the night of the incident, Applicant was

happy, outgoing, and expressed that he was excited about "getting back together with his girlfriend." (R. p. 767, line 3 – p. 770, line 7).

Applicant argued the evidence demonstrated self-defense and/or supported the lesser-included offense of voluntary manslaughter. (R. p. 1068, lines 9-17). The jury convicted Applicant of murder).

CURRENT ACTION BEFORE THIS COURT

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

1. Trial counsel failed to develop and present readily available evidence and failed to adequately investigate the charges against Applicant. Further, trial counsel failed to explore potential defenses to the charges against Applicant.
2. Trial counsel failed to adequately impeach the State's witnesses at trial, failed to make appropriate objections and legal arguments during trial and failed to adequately argue objections made during trial.

On July 19, 2023, Applicant, through counsel, filed an amended PCR application adding an additional claim for relief:

1. Ineffective Assistance of Appellate Counsel
   a. Appellate Counsel failed to file a Petition for Certiorari with the South Carolina Supreme Court or to inform Applicant of his right to do so.

Before this Court are Applicant's application for post-conviction relief, Applicant's amended PCR application, the Richland County Clerk of Court general sessions records from the underlying conviction, the complete trial transcript, Applicant's complete records from his appeal, and Applicant's records from the South Carolina Department of Corrections.

SUMMARY OF RELEVANT PCR EVIDENTIARY TESTIMONY

APPELLATE COUNSEL'S TESTIMONY

On direct examination, Appellate Counsel testified that he worked on Applicant's criminal appeal in 2018 when working at Nelson Mullins Riley and Scarborough LLP, (Nelson Mullins) a

couple of weeks before oral argument. Appellate Counsel testified that Applicant's case came to Nelson Mullins through the Office of Appellate Defense, as Nelson Mullins sometimes handles criminal appeals. Appellate Counsel testified that he did not handle the drafting or filing of the briefs on Applicant's criminal appeal, and testified Robert Dudek, Esq. (Dudek) from the Office of Appellate Defense was listed on the pleadings and was responsible for maintaining contact with Applicant.

Appellate Counsel testified that he made the decision not to file the Petition for Writ of Certiorari to the South Carolina Supreme Court on behalf of Applicant. Appellate Counsel testified that he made this decision after discussing it with Dudek and his supervising partner, Matt Bogan, Esq. Appellate Counsel testified that the decision was a strategic decision based on their win from the Court of Appeals decision concerning the photographs of the Victim. Appellate Counsel testified that he did not believe the remaining issues had merit. Appellate Counsel testified that it was standard practice for a letter to be sent to Applicant informing him of their decision not to file a petition for cert. However, Appellate Counsel testified that he did not recall if Nelson Mullins or Dudek sent the letter, and he does not recall when it was sent out.

On examination by the Court, Appellate Counsel testified that he knew a letter was sent to Applicant, but did not know when. Appellate Counsel testified that it was a strategic decision based on precedent not to file the petition. Appellate Counsel testified that the Office of Appellate Defense handled communications with Applicant, not Nelson Mullins. Appellate Counsel testified that ultimately it was his decision not to file the petition.

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that Doug Strickler, Esq. (Strickler) began representing him at the end of 2011 or the start of 2012. Applicant testified that he reviewed discovery with Strickler and Pringle (collectively "Trial Counsel") as it was coming in, but from

the outset, the game plan was self-defense. Applicant testified that he gave all the information he was able to provide to Trial Counsel.

Applicant recalled Trial Counsel had forensic testing done, blood testing, DNA analysis, and autopsy. Applicant testified that he further recalled Trial Counsel hired experts, informed him when the State added witnesses to their lists and informed him of potentially damaging evidence like the text messages between himself and an ex-girlfriend who testified. Applicant stated that, in hindsight, Trial Counsel could have been better prepared, stating Trial Counsel failed to argue there was photographic evidence of the victim's blouse in evidence when the Solicitor questioned him about it and believes Trial Counsel could have questioned some more on it.

Applicant testified that he did not ask Trial Counsel to speak to his ex-girlfriends and could not think of a reason why he would ask them to do that. Applicant testified that he and his ex-girlfriends remained friends to the extent that any could remain.

Applicant testified that he recalled discussing with Strickler his right to testify, and Strickler told him he would have to testify so that the jury could hear his side. Applicant testified that he assumed that was to support self-defense. Applicant testified that they discussed him testifying prior to court, and he had mixed messages and was on the fence about it. Applicant testified that Strickler told him he would have to testify to support the claim of self-defense. Applicant testified and conceded that the Court fully explained his right to testify and the consequences of testifying prior to his making a decision to testify.

Applicant stated he believed Pringle was more competent than Strickler. Applicant testified that Trial Counsel told him that if he went for self-defense, he was going to get a life sentence. Applicant testified that there were potential defenses, like a crime of passion, that Trial Counsel should have investigated.

Applicant testified that Trial Counsel could have questioned the character of some of the State's witnesses, like Stacey Newsom (Newsom) and Christine Dahlheimer (Dahlheimer), to impeach them. Applicant testified that Trial Counsel should have impeached Newsom asserting her testimony the first time was fine, but her demeanor, when recalled in-camera, was different. Applicant testified that Trial Counsel could have used the six thousand (6,000) texts that showed everything was fine between them until he was arrested. Applicant testified that Trial Counsel could have done the same thing with Dahlheimer. Applicant testified that Dahlheimer testified he pulled a knife on her, but they still had financial ties together, and no one explored that.

Applicant testified that Trial Counsel could have impeached the neighbor because of his abuse of alcohol and drugs. Applicant testified that he and Trial Counsel discussed the conflict of interest with the neighbors. Applicant testified that the female neighbor worked for the Solicitor's Office and was friends with the Victim.

On cross-examination, Applicant testified that he contacted Jack Swerling prior to turning himself in to the police. Applicant testified that Trial Counsel failed to present readily available evidence like failure to develop witnesses, explore witnesses' character, inform Applicant of strategies, and make sure he understood. Applicant testified that Trial Counsel should have attacked the Victim's character.

Regarding the blouse, the Applicant testified that the Solicitor tried to paint a picture of when Victim was stabbed and whether she was clothed. "I said, 'Yes', and she said, 'Where's the top?', I said, 'It's there in the photos', and she said, 'I don't see it.'" Applicant testified that he felt that Trial Counsel just did not defend the accusation about the blouse. When asked if he believed the jury would have found him not guilty if the blouse picture was found, Applicant testified that it could have helped.

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Applicant testified that Trial Counsel did not discuss the details of the investigation with him, then he testified that they did discuss the investigation with him but did not raise it at his trial. Applicant clarified that he meant Trial Counsel did not investigate Wilson's character—specifically, her aggressive character. Applicant testified that the State called several of the Victim's friends and co-workers to testify, and Trial Counsel was able to cross-examine them.

Applicant testified that Trial Counsel should have explored potential defenses like the heat of passion. Applicant testified that he did not recall the jury being charged with voluntary manslaughter—he thought they were only charges with self-defense and murder. Applicant testified Trial Counsel should have explored crime of passion more. In Applicant's testimony, Applicant made a vague reference to a concern about a juror but did not testify to any additional details.

E. Fielding Pringle's Testimony

On direct examination, Pringle testified that Applicant called Newsom and Swerling and told them what he had done shortly after it happened. Pringle testified that they crafted a defense strategy knowing the State wanted to present this as a brutal murder; however, the forensics available painted more of a crime of passion from a fight between Victim and Applicant.

Pringle testified that they discussed voluntary manslaughter and self-defense many times with Applicant, and she thought voluntary manslaughter was a more prudent defense. Pringle testified that it was apparent to her and Strickler that Victim and Applicant were in love but had a tumultuous relationship. Pringle testified that Applicant remained adamant that he wanted to present self-defense. As a result, Pringle testified, that they ceded to Applicant's preference regarding self-defense. Pringle testified that Strickler's closing was a hybrid, if not this, then that. Pringle testified that they were able to get Murder, Voluntary Manslaughter, and Self-Defense jury charges.

Pringle testified that she could recall something about the blouse, but there was no argument, and she did not recall hunting for a picture. Pringle testified that all of the photos were in a photo album and are still in that album—they were never all over the tables at trial. Pringle testified that she could not understand the significance Applicant was placing on this blouse because Victim was found naked—so she is unsure about the relevance of this blouse.

Pringle testified that regarding failure to investigate, they hired experts for blood because there were coolers of collected blood at the scene, and there was blood all over the house in multiple rooms. Pringle testified that Applicant requested blood testing, but they wanted to make sure it did not make things worse for Applicant. Pringle testified that Applicant was correct–the blood collected on the scene also had his blood in it. Pringle testified that they hired a blood evidence investigator to examine the entire scene. Pringle testified that they hired a DNA expert, but they were not helpful. Pringle testified that they consulted an investigator for cellphone evidence and interviewed people. Pringle testified that they spent a lot of time on this case, and she had ten banker boxes in her office containing just this case.

Pringle testified that she recalled Newsom being recalled in-camera, and they did an extensive cross-examination of her. However, she could not recall specifics. Pringle testified that Dahlheimer was a former love interest who co-signed for a car for Applicant. Pringle testified that they did speak with Dahlheimer, but her testimony was limited.

On cross-examination, Pringle testified that she did not recall anything fitting the legal definition of domestic violence. Pringle testified that she recalled Victim and Applicant had a volatile relationship but did not recall anything physical. Pringle testified that she did recall Victim's friends worried for her but could not recall anything physical. Pringle testified that what happened did not meet any criteria for domestic violence. Pringle testified that she could not recall if any motion was filed to exclude any reference to domestic violence. Pringle testified that there

was no strategy in not objecting to a reference to domestic violence in the direct examination of Kelly Smith. (Tr. p. 259, ll. 5 – 6). Pringle was asked why they did not object to Jamme Stewart's hearsay statement and Pringle recalled that it was at best a passing reference and the rest of her testimony was helpful to her client right after that. (Tr. p. 514, ll. 12 – 16; ll. 20 – 24).

Pringle testified that she did not keep Applicant apprised of an appeal, but Strickler did that in practice.

APPLICANT'S TESTIMONY ON RECALL

Applicant testified he did not recall receiving communication about the Petition for Writ of Certiorari being denied, but probably did receive some kind of notification. Applicant did not recall when the letter was received.

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 each of 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 entitle Applicant to post-conviction relief. See Rule 71.1(e), SCRCP (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 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief.");

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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 (2014):

STANDARD OF REVIEW

Ineffective Assistance of Trial Counsel

The Uniform Post-Conviction Procedure Act[3] (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).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal defendants the right to "[assistance] by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not

[3] S.C. Code Ann. §§ 17-27-10 to -160.

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. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing Strickland, 466 U.S. 668). The applicant bears the heavy burden of establishing both prongs of the Strickland standard, and failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP; 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)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all

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the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816; see White v. Singletary, 972 F.2d 1218, 1220 (11th Cir. 1992) (instructing reviewing courts evaluating a claim of ineffective assistance of counsel to "at the start presume effectiveness" and "always avoid second guessing with the benefit of hindsight"). "The burden of rebutting this presumption' rests squarely on the defendant, and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" Dunn v. Reeves, 594 U.S. ----, 141 S. Ct. 2405, 2410 (2021) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if the record does not reveal that counsel took an approach that *no competent lawyer would have chosen.*"" Id. (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

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 v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The reviewing court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 8; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

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Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Id. at 688–89 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn, 594 U.S. ----, 141 S. Ct. at 2410 (quoting Harrington, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108).

Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689; see Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial"). The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied Strickland's deferential standard.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694; see id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In evaluating prejudice, the PCR Court must consider the "specific impact counsel's error had on the outcome of the trial" in addition to "the strength of the State's case in light of all the evidence presented to the jury." Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018); see Strickland, 466 U.S. at 695–96 (explaining that the reviewing court must analyze how individual errors of counsel affect the important factual findings in a particular case); see generally Jones v. State, 332 S.C. 329, 333, 504 S.E.2d 822, 824 (1998) ("In deciding whether Jones was prejudiced, we must bear in mind the strength of the government's case . . . [and] the totality of the evidence before the jury."). In general, "the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice." Smalls, 422 S.C. at 188, 810 S.E.2d at 843 (citing Strickland, 466 U.S. at 696) (reiterating that "a verdict . . . only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support").

It is therefore not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding" and "[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, 693. Rather, counsel's errors must be "so serious as

to *deprive the defendant of a fair trial.*" Id. at 687 (emphasis added). Significantly, "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.

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"); 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.").

Ineffective Assistance of Appellate Counsel

Just as a defendant is entitled to effective representation during his general sessions proceeding, a defendant is also entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice as outlined above. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to

professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836; see also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." Smith v. Robbins, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every nonfrivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our South Carolina Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167. "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" Smith, 528 U.S. at 288 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

Accordingly, in order to meet his burden of proof, Applicant must establish a reasonable probability that, but for appellate counsel's failure to raise a specific issue on appeal, he would have prevailed on his appeal. Smith, 528 U.S. at 285-86.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of Trial Counsel and Appellate Counsel. The specific claims are addressed below:

INITIAL FINDINGS

As a matter of general impression, this Court finds Pringle's testimony at the evidentiary hearing **credible** and **persuasive,** where she presented testimony of the relevant background, facts, and discussions leading up to and during the trial. This Court finds Applicant's testimony at the evidentiary hearing **lacks credibility and is not persuasive**. This Court further finds applicable the strong presumption that at all stages of Trial Counsels' representation of Applicant that they 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: Trial Counsel Failed to Readily Present Evidence

Applicant alleges Trial Counsel was constitutionally ineffective for failing to present readily available evidence. This Court disagrees and finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsel failed to argue there was photographic evidence of the Victim's blouse in evidence that Trial Counsel should have explored more.

On cross-examination, when asked what evidence Trial Counsel should have more readily presented, Applicant testified that Trial Counsel should have developed witnesses and explored witnesses' character. Applicant testified that Trial Counsel should have explored the character of the Victim. Applicant went on to testify that he felt Trial Counsel did not defend him on the blouse accusation. Applicant testified that he told them the picture of the blouse was on the table, and

they went "digging around" for it but could not find it.

On direct examination, Pringle **credibly** testified that she remembered something about a blouse, but there was no argument of merit to be made because the Victim was found nude, the pictures were all in an album, not spread out in disarray over a table and that the pictures are still in that album.

This Court finds counsel is a criminal practitioner who has significant experience in the trial of serious offenses. 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). Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012). Additionally, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Whether the evidence Applicant contends should have been more readily presented would have changed the outcome of Applicant's trial is mere speculation in light of the breadth of the trial record. Consequently, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish 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 2: Trial Counsel Failed to Adequately Investigate

Applicant alleges Trial Counsel was constitutionally ineffective for failing to adequately investigate the case prior to trial. Applicant specifically asserted that Trial Counsel failed to

properly investigate the witnesses' character and the aggressive character of the Victim. In support of this claim, Applicant only provided his self-serving testimony; he did not present the results of any independent investigation and did not present any documentary evidence to establish that any additional investigation would have yielded beneficial information that would have resulted in a different outcome at trial. For these reasons, this Court finds Applicant failed to meet his high burden of establishing that counsel was constitutionally ineffective in her investigation.

As an initial matter, 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). The Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. See, e.g., Ard at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "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). "While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); see id. at 457, 710 S.E.2d at 64–65. "Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of

evidence that could conceivably help their client." Green v. French, 143 F.3d 865, 892 (4th Cir. 1998), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

Further, a PCR applicant must ordinarily present some probative evidence to prevail on a claim of ineffective assistance based on failure to investigate. 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"). As discussed above, Applicant failed to present any evidence to establish what benefit an additional investigation would have yielded, and, accordingly, his assertions are merely speculative and do not meet the burden of proof he must establish for relief. Moreover, the Court finds credible Pringle's testimony that a thorough investigation of the case was conducted as reflected by the ten banker boxes of files for the case.

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**.

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Allegation 3: Trial Counsel Failed to Explore Potential Defenses

Applicant alleges Trial Counsel was constitutionally ineffective for failing to explore potential defenses. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that he thought about crime of passion and "other stuff" that Trial Counsel should have explored. On cross-examination, Applicant testified that they discussed self-defense, but they did not have any discussions about the heat of passion.

On direct examination, Pringle credibly testified that they discussed Voluntary Manslaughter and Self-Defense with Applicant numerous times. Pringle testified that the prudent defense would have been Voluntary Manslaughter, but Applicant was adamant in pursuing Self-Defense. Pringle testified in consideration of the Applicant's preference self-defense was pursued. Pringle further testified that in the end Strickler pursued a hybrid either or argument in closing that encompassed self-defense and voluntary manslaughter. Pringle testified that in the end, the jury was charged on Murder, Voluntary Manslaughter and Self-Defense.

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46.

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

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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.**

Allegation 4: Trial Counsel Failed to Adequately Cross-Examine Witnesses

Applicant alleges Trial Counsel was constitutionally ineffective for failing to adequately cross-examine witnesses. This Court disagrees and finds that the record reflects Trial Counsel thoroughly cross-examined the witnesses at Applicant's trial.

Cross-examination is a matter of trial strategy and is subject to the presumption that Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690); see Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 7 (Ct. App. 2014) ("[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*") (emphasis added).

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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 5: Trial Counsel Failed to Make Appropriate Objections

Applicant alleges Trial Counsel was constitutionally ineffective for failing to make appropriate objections. This Court disagrees and finds Applicant has failed to show Trial Counsel's performance fell below an objective standard of reasonableness based on any of the allegedly objectionable instances identified by Applicant. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id. As noted *supra*, Pringle was asked why Trial Counsel did not object to Jamme Stewart's hearsay statement and Pringle recalled it was a passing reference and that the rest of her testimony was helpful to her client right after that. (Tr. p. 514, ll. 12 – 16; ll. 20 – 24). Given the deference owed to real-time, tactically significant decisions about objections made by Trial Counsel, Applicant ultimately failed to demonstrate that, had Trial Counsel objected to these matters, the result of the proceeding would have been different. Strickland, 466 U.S. at 689, 694.

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.**

Ineffective Assistance of Appellate Counsel Allegation on the Merits

Allegation 1: Appellate Counsel Failed to File A Petition for Writ of Certiorari

Applicant alleges Appellate Counsel was ineffective for failing to file a Petition for Writ

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of Certiorari to the South Carolina Supreme Court. However, Applicant had no right to seek discretionary review and, therefore, no right to effective representation when seeking discretionary review. See Douglas v. State, 369 S.C. 213, 216, 631 S.E.2d 542, 543– 44 (2006) ("We find that the decision whether to pursue certiorari is a matter left solely to the appellant's attorney's professional discretion."); see also Wainwright v. Torna, 455 U.S. 586, 102 S.Ct. 1300, 71 L.Ed.2d 475 (1982) (no Sixth Amendment right to counsel in pursuing discretionary appeal); Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974) (no Fourteenth Amendment right to counsel when pursuing discretionary appeal after an appeal of right); State v. Clinkscales, 318 S.C. 513, 458 S.E.2d 548 (1995) (Sixth Amendment right to counsel "extends only to the first right of appeal").

This Court finds Appellate Counsel reasoned why he did not seek the petition as they had won on the issue with merit, and a petition for certiorari on the other issues would have been fruitless. Applicant was provided with a letter explaining that they would not be seeking certiorari and instructing him on the PCR and state *habeas* process. Further, this Court finds that even if Appellate Counsel did not provide a reason for not seeking certiorari, that precedent in South Carolina precludes Applicant's claim and it fails as a matter of law.

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

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony in support of the claims. Accordingly, this Court deems these allegations abandoned by the Applicant. Therefore, they are hereby **DENIED and DISMISSED.**

CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR Counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Applicant's attention is also directed to South Carolina Appellate Court Rules 203, 206, and 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 3rd **day of** October**, 2023.**

Hon. Deadra L. Jefferson
Presiding Circuit Court Judge
Fifth Judicial Circuit

Charleston, South Carolina
At Chambers