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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
)
 Chevis Morris, #352985)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE TENTH JUDICIAL CIRCUIT

Case No. 2019-CP-04-0298

ORDER OF DISMISSAL

A TRUE COPY
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C. Reena Thomason

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Anderson, SC COC, CP/CS

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Chevis Morris (Applicant) on January 31, 2019. On February 28, 2023, an evidentiary hearing on the matter was held before the Honorable Perry H. Gravely. Applicant was present and represented by Sarah M. Henry, Esquire. Assistant Attorney General Chelsey Marto represented Respondent.¹ Following a thorough review of the guilty plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. This Court denies relief and dismisses this application with prejudice got the following reasons.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty year sentence. Applicant was arrested on July 31, 2016, following an investigation into the shooting death of Jennifer Poore (Victim) during an incident which occurred the day prior. During its March 2017 term, the Anderson County Grand Jury indicted Applicant for murder (2017-GS-

¹ The PCR Transcript initially indicated on its cover that Taylor Smith and Danielle Dixon represented the State. Taylor Smith was present but did not perform the examinations, and Ms. Dixon was not present that day. Assistant Attorney General Chelsey Marto performed the examinations at the PCR hearing. The transcript was subsequently corrected and provided to this Court.

04-0728) and first-degree burglary (2017-GS-04-727). Elizabeth Jennings “Jenn” Byford, Esquire (Counsel), represented Applicant. Assistant Solicitor Danny Fulmer, Jr. prosecuted the case.

On August 6, 2018, Applicant appeared before the Honorable R. Scott Sprouse and pleaded guilty as indicted to first-degree burglary and to the lesser-included offense of voluntary manslaughter. Applicant also waived presentment to the Grand Jury and pleaded guilty to armed robbery (2018-GS-04-2121). Plea Tr.p. 6-7. During the plea, Kathy Lusk, the victim’s mother, Gary Poor, the victim’s father and Haley Morrison, the victim’s daughter made victim impact statements. Plea Tr.p. 9-14. On behalf of the Applicant, the defense presented the Applicant’s first cousin Chandler Craft, Hunter Hau, the Applicant’s mother Tina Lester, and the Applicant’s sister Candy Morris, as well as the Applicant in mitigation. Plea Tr.p. 15-19. Pursuant to sentencing negotiations entered into between Applicant and the State, Judge Sprouse sentenced Applicant to concurrent terms of thirty years’ imprisonment on each charge. Applicant did not appeal his guilty plea or sentences.

Applicant timely commenced this PCR action on January 31, 2019.

STATEMENT OF FACTS

The facts and factual basis giving rise to Applicant’s plea and conviction were articulated by the State at his guilty plea hearing, as follows:

Thank you, Judge. This happened July 30th, 2016, at 106 Russell Drive in Anderson in Anderson County. That's the home of the victim, Ms. Jennifer Poor, and her boyfriend.

She was there that evening. This defendant, along with a codefendant named Jordan Hart and some others, came down to her house.

By accounts given by the witnesses, they smoked some meth together, and Ms. Poor was asked if she had any meth to sell. She says that she did not have any at that time.



During the course of this, some cash was seen that was possessed by Ms. Poor, and the defendant, I think, at that point saw it as an opportunity to take some cash from her. He had a pistol in his possession.

According to his statement to police, his intent was to rob her and pistol whip her. However, the gun did discharge. A bullet entered her back, traveled through her torso. She bled to death there, Judge.

The defendant fled the scene along with the codefendant named Jordan Hart. They traveled throughout the night. During the course of the evening, they broke into a home where the family was on vacation and stole their car. That's the basis for the burglary charge.

Ultimately, he ended up back at his mother's house the next morning. Police came to that location and found him. He ultimately gave himself up, Judge.

(Plea Tr. pp. 6, ll. 22-25 – 7, ll. 1-24). The Applicant, under oath, agreed that these are that facts of the case. Plea Tr.p. 8.

CURRENT APPLICATION

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

1. Conflict of Interest
 - a. “My victims family is a lawyer in the county in which I was sentenced and my lawyer failed to address that I still had the same solicitor in that county.”

In response to question nine as to why he did not pursue a direct appeal, Applicant states the following:

- a. “I did not appeal because I took a guilty plea and lawyer said that I couldn’t appeal unless PCR”
- b. “My pro bono lawyer said I could only file in PCR form.”

Applicant requests relief as follows:

“Re-sentencing and sentence reduction. I was given the max on my charge.”

On February 1, 2021, Applicant filed an amended application to include the following additional claims for relief:

1. [Plea] counsel failed to file a timely appeal on Applicant’s behalf. Applicant alleges that he met with his attorney, Elizabeth Byford, on August 8, 2018, two (2) days after the guilty plea. At that meeting Applicant specifically requested that Ms. Byford file an appeal on his behalf. Applicant alleges that Ms. Byford told Applicant that he was not entitled to an appeal, that he could not file an appeal, and that he was only entitled to file a post-conviction relief action.
2. [Plea] counsel failed to request and hold a Jackson v. Denno² hearing to determine the voluntariness of the Applicant’s statement to police prior to the guilty plea. Applicant maintains that he informed Ms. Byford that he was under the influence of drugs during the police interview and that he asked for an attorney during the interview. Applicant alleges that Ms. Byford told him that he could not challenge the statement and he could not recant the statement. Applicant alleges that the statement was not voluntarily given and alleges that he would not have pleaded guilty if he had known he could challenge the statement.
3. [Plea] counsel failed to turn over all of the discovery to Applicant prior to the guilty plea, and failed to investigate that discovery. Applicant had made several requests for copies of his discovery. He received a portion of his discovery early in the case from his attorney, and believed that was all of the discovery. However, after the guilty plea at the August 8, 2019 meeting Ms. Byford dropped off additional discovery that the client had not seen including the following: mountain dew bottles with DNA from third parties recovered from the scene.
4. [Plea] counsel failed to make a motion for a change of venue due to potential conflicts of interest between the victim’s family and friends and the solicitor’s office. Applicant alleges that Bob Lusk a relative of the victim was well connected and imbedded in both the public defender’s office and the local solicitor’s office. According to Applicant, Applicant’s original attorney, Jennifer Johnson, was conflicted out of the case because Mr. Lusk was on a board who decided who was appointed as the head public defender.

² 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

Before this Court are the Anderson County Clerk of Court records of the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records of the current post-conviction relief action.

TESTIMONY PRESENTED AT EVIDENTIARY HEARING

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that prior to his guilty plea, it was his understanding that he would receive thirty years of incarceration and get jail time credit. (PCR Tr. p. 7-8). Applicant testified that, about a week before his plea, counsel Byford informed him that the State had dropped the plea deal from the mandatory thirty day-for-day (murder) down to 85 percent (voluntary manslaughter). He also learned three days before the plea that there would also be an armed robbery charge included. (PCR Tr. p. 8). Applicant alleged that he did not feel comfortable taking the negotiated guilty plea because he was attempting to change the venue of the proceedings, and he felt rushed because of this issue. (PCR Tr. pp. 9-10). Applicant indicated that he was concerned because Bob Lusk, the victim's stepfather was on the committee and would determine the public defender. In addition, he learned that the victim's mother, Kathy Lusk, worked in the clerk's office. Applicant felt that there was a conflict of interest issue with his first defense counsel, Jennifer Johnson. (PCR Tr. pp. 11-12). Applicant did not feel that his eighteen months with former counsel Johnson had produced a fully investigated case. (PCR Tr. pp. 12-13). He indicated during that period, counsel Johnson only met with him three or four times. Plea Tr.p. 13. Furthermore, Applicant testified that Johnson did not file a motion to change the venue for this conflict of interest. (PCR Tr. p. 14).

Applicant testified that he discussed the possibility of a venue change with both counsels related to Bob Lusk's influence and that neither pursued the issue. (PCR Tr. p. 15). Applicant also

testified that the mother of the victim was a member of the clerk's office, and that if he had received a change of venue, he would have tried the case rather than accept a guilty plea. (PCR Tr. pp. 15-16).

As to his inculpatory statement, Applicant alleged that he was unable to think clearly because he was intoxicated when he gave a statement to police while in custody. (PCR Tr. pp. 17-18). He stated he was 23 years old at the time of his arrest with a tenth grade education. He stated he was using methamphetamine since he was 15 and had an empty needle on him at the time of his arrest. He claimed his mind was cloudy during the interrogation and he felt badgered which led to his request for a lawyer. PCR Tr.p. 18-19. He stated they never asked if he was on drugs at the time nor took him to a hospital to be tested. He did state that they read him his Miranda warnings and he signed a release of his Miranda warnings, but claimed he did not understand what he was waiving. PCR Tr.p. 19. Applicant identified himself and the statement he gave to the police and recognized that he requested a lawyer in the recording of the interrogation that was played at the PCR hearing. (PCR Tr. pp. 20-21). Applicant's Exhibit 3 @ 17:24. Applicant testified that the interrogation did not stop after his request, and he would go on to make incriminating statements because of this. (PCR Tr. p. 21). Applicant then testified that his attorneys never spoke to him about a Jackson v. Denno hearing to contest the voluntariness of his statement after he had told them his statements were involuntary and untrue. (PCR Tr. pp. 22-23). He claimed counsel Byford only had the case for six months and that we were going to try to get the 85% of the 30. He claimed he was not aware the statement could be excluded. He claimed he would not have pled guilty if the statement had been excluded. PCR Tr.p. 24.

Applicant stated that he filed a motion to receive discovery, and that his attorneys merely told him they had copies of discovery without providing it to him in its entirety. (PCR Tr. p. 24).

Applicant further testified that he was given thick discovery regarding chain of custody and DNA evidence (Applicant's Exhibit 4) after his guilty plea when she visited him on August 8, 2018 which was after the plea on August 6. He supported this with a portion of a visitor's log. Applicant's Exhibit 2. (PCR Tr. pp. 24-26). Applicant testified that counsel Byford did not discuss these items with him during the prior occasions when he met with them prior to the plea. (PCR Tr. p. 27-28). Applicant stated that DNA evidence regarding Mountain Dew cans (Applicant Exhibit 4, DNA info, p. 3 of 5) would have been important to his case because the DNA found on them "could've been somebody else's". (PCR Tr. p. 28).

Applicant testified that he specifically told counsel that he wanted to file an appeal and that her response was that he was not eligible for one. (PCR Tr. p. 30). He claimed this occurred at the meeting after the plea on August 8. He claimed that he would have wanted to appeal the conflict of interest and all things they discussed. PCR Tr.p. 30.

On cross-examination, Applicant stated he decided to plead guilty because he felt like the deck was stacked against him and he would face more time at trial. Applicant testified that the Bob Lusk "conflict of interest" scared him, as he felt that he was being conspired against because of the political relationships that he speculated about. (PCR Tr. pp. 32, 35). However, he recognized that counsel Byford was not associated with the public defender's office. He testified that he went over the video statements and pictures with counsel. PCR Tr.p. 34. Applicant indicated counsel did not comment about it. As to the DNA material, Applicant then testified that counsel suggested that it would not have made a big difference to his case. (PCR Tr. pp. 34-35). Applicant admitted that there were multiple people at the place of the incident. PCR Tr.p. 35-36.

COUNSEL JENNIFER JOHNSON'S TESTIMONY

Counsel Jennifer Johnson testified that she was Applicant's first attorney and worked on

his case for roughly eighteen months. (PCR Tr. p. 37). Counsel Johnson testified that she was assigned by the Circuit Public Defender to Applicant's case shortly after his arrest. During her representation of Applicant, she applied for and received the position of Circuit Public Defender, and Applicant's case was later passed on to someone else. (PCR Tr. pp. 37-38). Counsel Johnson testified that she was not certain if there was an actual conflict of interest because Bob Lusk was on the selection committee, however she recalled Applicant being troubled by the possibility. (PCR Tr. p. 38). Because of his concern and out of an abundance of caution, counsel Johnson decided that seeking a Rule 608 new counsel appointment would be the best course of action. (PCR Tr. p. 38). Counsel Johnson testified that she was unaware of any undue influence from anybody in Applicant's case. (PCR Tr. p. 39). She indicated that Mr. Lusk never contacted her concerning this case. PCR Tr.p. 39.

She testified that she received the initial discovery in the case, but did not recall receiving any DNA reports after he signed a consent to obtain a DNA sample. PCR Tr.p. 39.

Regarding the potential for a Jackson v. Denno hearing, Counsel Johnson testified that she could not recall any discussions with Applicant about that possibility, noting that they were not in a trial posture at that time. (PCR Tr. p. 40).

ASSISTANT SOLICITOR DANNY FULMER'S TESTIMONY

On direct examination, Assistant Solicitor Fulmer testified that he was the primary solicitor on Applicant's case, and that there was no connection to the victim or the victim's family members. (PCR Tr. p. 41). Solicitor testified that he now knows of Bob Lusk, a defense attorney who was on the board that selects the Circuit Public Defender, but that he did not see any conflict in the case and that there was no reason to believe he could not appropriately handle the case. (PCR Tr. p. 41).

COUNSEL ELIZABETH JENNINGS “JENN” BYFORD’S TESTIMONY

On direct examination, counsel Byford testified that she was appointed to Applicant’s case on April 12, 2018, over three months before Applicant’s guilty plea. (PCR Tr. p. 42). Counsel Byford testified that she was told that there was a conflict regarding the case, and only later did she learn details of the alleged conflict. (PCR Tr. pp. 42-43). In counsel Byford’s professional opinion, there was not an actual conflict of interest in the case, but counsel Johnson’s actions were understandable. (PCR Tr. p. 43). Counsel Byford testified that her strategy, which was communicated to Applicant, was that they would prepare a trial defense while also attempting to negotiate out of the murder charge to a voluntary manslaughter charge, (PCR Tr. p. 43-44).

Counsel Byford then testified she had three theories related to the suppression of the video of Applicant’s statement to the police that had to be suppressed. If the statement could not be suppressed the trial was a nonstarter. She stated if that happened, the defense would be in big trouble because Applicant gave a very detailed confession in the video, including reenacting the crime. A problem for them concerning a request to suppress based upon Applicant’s request for counsel was that after the initial request for counsel four minutes later on the video, the Applicant stands up and starts to walk off and then states “wait, wait, wait” and they come back and he states he wants to see his little girl and law enforcement states they cannot do that, he starts crying and then at 11:22 into the video he starts talking which supports that he reinitiated the discussion. This would be a strong argument for admission of the statement by the State. (PCR Tr. pp. 44-45). Counsel Byford testified that based on her review of the video, Applicant had indeed reinitiated questioning. (PCR Tr. p. 46). There were three different legal theories considered by Counsel Byford in suppressing the video evidence, and they were all discussed with Applicant. (PCR Tr. p. 46). According to Byford, they also discussed case law on this assertion.

A second suggested challenge was based upon Applicant's drug use. The Applicant provided counsel with a list of all the drug use he had done leading up to the statement which was a good bit. PCR Tr.p. 45. She saw a problem with that for them based upon his demeanor during the video statement. Contrary, he appeared in the video as she saw him appear on the stand in the PCR hearing. PCR Tr.p. 45. She did not think that this would meet the threshold (of showing that his faculties were too impaired to make a knowing and voluntary waiver of his rights). Id. She learned that he claimed to have been awake for three days and was discussing with him how a lack of sleep deprives a person of cognitive ability. They discussed retaining an expert to assist them. She thinks she had Dr. (David) Price (a known forensic psychologist in Greenville) reviewed the video for her and indicated it would be a hard hill for them as a defense. However, counsel Byford told Applicant that if they went to trial they would throw it all in. PCR Tr.p. 46. All the legal theories were discussed with Applicant. PCR Tr.p. 46. Due to the decision to plead guilty, a Jackson v. Denno claim was not advanced. (PCR Tr. pp. 46-47).

Counsel Byford testified that they received some indication from the prosecutor that there might be movement off the murder charge, after there had been no movement the first few months asserting to them that it had to be murder. This switched their focus to try to pursue the voluntary manslaughter potential. PCR Tr. pp. 46-47

Counsel Byford testified that she provided all the discovery she had to Applicant. (PCR Tr. p. 47). She stated she had received some from counsel Johnson. Byford went through what she had with Applicant to make sure he had what she had. PCR Tr.p. 47. They would sit down and go through the evidence together, including watching the videos. Counsel Byford could not recall a chain of custody report, but did recall that Applicant wanted to pursue an argument regarding the Mountain Dew bottles, but felt that the State could easily argue that DNA on the bottle was

meaningless because there were so many people in the house. She noted they were selling drugs out of the house with people coming and going, and she noted his DNA was probably on the bottles. (PCR Tr. pp. 47-48). Unfortunately, they were aware that a number of people were going to be able to establish that Applicant was there at the time of the incident.

Counsel stated that after the plea she had gone to see him to make sure she had a chance to discuss the possible appeal before the 10 days ran out. PCR Tr.p. 48. Counsel Byford testified that Applicant was in good spirits and pleased with the outcome of the guilty plea. (PCR Tr. p. 49). Counsel Byford testified that she told Applicant she did not know of any appellate issues, but told Applicant that he had ten days to appeal or file a PCR application. (PCR Tr. p. 49). Counsel recalled that the Applicant laughing after they discussed the possibility of filing a PCR later and thanked her.

Counsel Byford testified that if Applicant had affirmatively requested an appeal, she would have filed one. (PCR Tr. p. 50). Counsel Byford testified that she could not recall if any discovery was being shown to him for the first time after the guilty plea, and that it was likely copies of discovery that they had already reviewed together beforehand. (PCR Tr. p. 49-50). Counsel Byford testified that none of the discovery given to Applicant would have changed her recommendation regarding pleading guilty. (PCR Tr. p. 50).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary

hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); 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 § 17-27-80 of the South Carolina Code:

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL, GENERALLY

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an

objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] [i]t 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; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth

Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

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

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

56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. 357, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. 357, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining

whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. State, 282 S.C. at 134, 318 S.E.2d at 361 (1984).

This Court finds Applicant has not met his burden as to his claims of ineffective assistance of plea counsel rendering his guilty plea involuntary. The specific claims are addressed below.

INITIAL FINDINGS

As a matter of general impression, this Court finds Counsel Johnson and Counsel Byford's testimony at the evidentiary hearing credible and persuasive, where they presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of counsels' representation of Applicant, they rendered adequate assistance and exercised reasonable professional judgment in their 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).

This Court makes the following findings from the record: 1) Applicant swore on the record to tell the whole truth and nothing but the truth. (Plea Tr. p. 2); 2) Applicant understood he was pleading to voluntary manslaughter, burglary, first degree, and armed robbery for a negotiated sentence of thirty years. (Plea Tr. p. 3); 3) Applicant understood a thirty-year sentence would be imposed if Judge Sprouse accepted the negotiated plea. (Plea Tr. p. 3); 4) Applicant pled guilty to each charge. (Plea Tr. p. 3); 5) No one promised or coerced Applicant into pleadings. (Plea Tr. p. 3); 6) Applicant pled guilty of his own free will. (Plea Tr. pp. 3-4); 7) Applicant was not under the

influence of any drugs, alcohol, or anything else that would affect his judgement in pleadings. (Plea Tr. p. 4); and 8) Applicant understood he had a right to a jury trial, a right to present a defense, a right to confront witnesses against him, a right to remain silent, and that he would be presumed innocent at trial. (Plea Tr. pp. 4-5);

The record further shows: 9) Applicant waived venue for his case to be heard in Oconee County even though his cases were Anderson County cases. (Plea Tr. p. 5); 10) Applicant waived presentment the armed robbery charge. (Plea Tr. pp. 5-6); 11) Applicant testified he had enough time to consult with Counsel Byford, had no questions for Counsel Byford, was completely satisfied with Counsel Byford's services, and Counsel Byford has done everything Applicant has asked her to do. (Plea tr. p. 6); 12) Applicant agreed with the State's recitation of the facts giving rise to his conviction. (Plea Tr. pp. 7-8,); 13) Counsel Byford reviewed the facts and applicable law in Applicant case prior to his plea. (Plea Tr. p. 8); 14) Counsel Byford was satisfied that Applicant understood his rights and Counsel Byford agreed with Applicant's decision to plea. (Plea Tr. p. 8); 15) Counsel Byford explained the consequences of having a violent and most serious offense to Applicant. (Plea Tr. p. 8); 16) Judge Sprouse found there was a factual basis for Applicant plea, and qualified Applicant's plea as given freely, voluntarily, and intelligently with advice of competent counsel. (Plea Tr. p. 9); and 17) Applicant made a statement of guilt at the plea hearing. (Plea Tr. p. 18, ll. 12-25).

Trial Counsel Failed to File a Timely Appeal Claim

Applicant alleges that Counsel failed to file a timely appeal on Applicant's behalf. Specifically, Applicant alleges that he met with his attorney two days after the plea, where he requested an appeal be filed. (PCR Tr. p. 29). An appeal was not filed, and Applicant alleges that Counsel informed him that he was not entitled to an appeal. (PCR Tr. p. 30). The Court finds this

allegation meritless and without credible factual support. To the contrary the appeal was properly discussed with the Applicant, but Applicant indicated he was happy with the outcome and did not requires the filing of an appeal from the guilty plea.

On direct-examination, Applicant testified he did not file an appeal because counsel Byford told him he was not eligible, and if he had an opportunity to appeal, he would appeal the issue of the conflict of interest in his case. (PCR Tr. p. 30). This Court rejects the Applicant's testimony.

This Court finds credible and persuasive the testimony of defense counsel Byford that reflects Applicant knowingly waived his right to appeal. This Court finds as a fact after the plea, but before the ten-day deadline to appeal, counsel met with Applicant to discuss his intent on appealing the guilty plea. (PCR Tr. pp. 48-49). Counsel Byford informed Applicant of his right to appeal, the deadline to appeal, and asked him if he desired to file an appeal. (PCR Tr. p. 49). The Applicant was happy with the outcome of his plea. (PCR Tr. p. 49). Applicant asked if there were any issues he could appeal, and she correctly informed Applicant she did not see any appealable issues, but appropriately advised Applicant he could get a new lawyer to review his case and see if there were any appealable issues. (PCR Tr. p. 49). At the PCR proceeding, the Applicant asserted that he wanted to appeal an issue related to the Robert Lusk conflict of interest specifically and possible change of venue and the statement. PCR Tr.p. 30. However, none of these claims were raised to the plea court before or during the guilty plea so they were not preserved for appellate review at that time. As revealed from a review of the plea, no objections were made at the plea and the sentence was consistent with the negotiated sentence and within the available sentencing range for the crimes. Counsel's advice was legally and factual correct. McCray v. State, 271 S.C. 185, 187-88, 246 S.E.2d 230, 231 (1978) ("A defendant can only raise and argue on the 'belated appeal' those issues which could have been raised and argued on a timely direct appeal."); State

v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) (“A contemporaneous objection is required to preserve issues for direct appellate review.”); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (“Absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of [PCR].”); In re Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (“The proper avenue in which to challenge a guilty plea which is not objected to at the time of its entry is through [PCR].”)

Counsel Byford found that Applicant was happy with the plea and sentence and indicated maybe he would do something later, but did never ask Counsel Byford to appeal his case. (PCR Tr. p. 49). Four months later Applicant’s family called her and asked her to help fill out Applicant’s PCR application. (PCR Tr. p. 49). This court finds Applicant never affirmatively asked for an appeal, joked he might later file a PCR action against her. (PCR Tr. p. 50).

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). “However, the standard for a guilty plea differs.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Id. See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)).

This Court finds Applicant never asked Counsel Byford to appeal his convictions, and no nonfrivolous issues existed that would have prompted Counsel Byford to file an appeal on Applicant's behalf. The Applicant was aware of his right to appeal, the time frame to request an appeal within ten days, and concurred in the decision to not appeal in the discussion with counsel Byford. Counsel's advice was not deficient. Therefore, Applicant's allegation of ineffective counsel for failure to file an appeal is **DENIED** and **DISMISSED** with prejudice.

Trial Counsel Failed to Request a Jackson v. Denno Hearing

Applicant alleges that Counsel failed to request and hold a Jackson v. Denno hearing to determine the voluntariness of the Applicant's statement to the police prior to his guilty plea. The Court finds the Applicant has failed to prove either deficient performance or prejudice. The allegation must be denied.

On cross-examination, Applicant testified Counsel Byford never discussed the fact he waived his right to pre-trial motions when he pled guilty, and he never discussed a Jackson v. Denno hearing with Counsel Byford. (PCR tr. p. 33). Applicant testified he reviewed the video of his statement to law enforcement with Counsel Byford prior to his plea, but Counsel Byford had no comments concerning his statement. (PCR Tr. p. 34).

On direct examination, Counsel Johnson testified she cannot recall discussions concerning a potential Jackson v. Denno hearing. (PCR Tr. p. 40). Counsel Johnson testified she might have explored the issue, and she naturally would explore the issue if they had decided to go to trial, but they were not preparing for trial at the time. (PCR Tr. p. 40).

This Court finds that the counsel acted reasonably in her review of the potential suppression of the Applicant's video statement. Although the Applicant at one point requested counsel, counsel recognized that the State had an argument that after a period of time, he re-initiated contact with

law enforcement to discuss matters, aware of his Miranda right to silence and right to counsel. A criminal suspect's rights are not violated when the suspect, not the police, "initiates further communication, exchanges, or conversations with the police." State v. Howard, 296 S.C. 481, 489, 374 S.E.2d 284, 288 (1988) (citing Edwards v. Arizona, 451 U.S. at 485, 101 S.Ct. 1880 (1981); State v. Binney, 362 S.C. 353, 360, 608 S.E.2d 418, 421 (2005)). Defense counsel reasonably investigated and recognized this re-initiation of communication by him would be an issue of concern for them if they went to trial and tried to suppress the statement.

Counsel also considered whether his drug use around the time impacted whether his will was overborne. The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession. Dickerson v. U.S., 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000). When considering the voluntariness of a statement, the court and jury should consider "not only the crucial element of police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health." Withrow v. Williams, 507 U.S. 680, 693, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993) (omitting internal citations). Indicia of coherence and an understanding of "what is happening" relate to whether a defendant understands that they are being questioned such that they realize the import of waiving their Miranda rights. For instance, in United States v. Walker, the Fourth Circuit held that the defendant adequately waived his Miranda rights despite seeming "a little bit out of it" because the evidence showed he was "aware of and understood his rights." 607 Fed. Appx. 247, 257 (4th Cir. 2015). And in Montague, the court held that even though a defendant was under the influence of heroin and fell asleep during the interrogation, his waiver was knowing and intelligent because he knew the date and time of the interrogation, which indicated coherency. United States v. Montague, 2022 WL 14915631, at *3 (W.D. Va. Oct. 25, 2022). "Whether a

person is too affected by alcohol or other drugs voluntarily and intelligently to waive his rights is one of coherence, of an understanding of what is happening.” United States v. Smith, 608 F.2d 1011, 1012 (4th Cir. 1979).

Counsel acted reasonably in her investigation concerning Applicant’s state at the time of his statement to determine if there was a defense to the admission of the video statement. She acquired information from the Applicant about the amount and type of drugs he was taking. She learned of his alleged lack of sleep for three nights, but most importantly, she reviewed the video of the statement to determine the impact of the drugs on his coherence and whether it reflected issues that might be successful. She acquired assistance from a forensic psychologist who gave his impression. She understood the applicable test concerning the admissibility of statements and discussed the matters with the Applicant and that if they went to trial, rather than pleading guilty, all these potential arguments would be presented.

Importantly, this Court finds that counsel discussed the potential arguments against admissibility with the Applicant prior to his guilty plea where he expressly confirmed that he was waiving his right to present a defense, implicitly these claims with respect to the statement. Plea Tr.p. 5, l. 6-10 (Morris indicating he understood he was waiving his right to present defense that he might have to the charges).

This Court finds counsel Byford’s testimony credible, and finds Applicant failed to show counsel Byford was deficient in her advice and investigation or any resulting prejudice under the Sixth Amendment. Counsel Byford explored and prepared for the possibility of suppressing Applicant’s post-arrest statements, and discussed the possibility of a suppression hearing with Applicant. The main factor in Applicant’s decision to plead was not whether his statements could be suppressed, but if the State would offer him a reduced charge of voluntary manslaughter.

This Court finds that the Applicant failed in his burden of proof to show either deficient performance or prejudice as it relates to the potential suppression of his statement.

Additionally, Applicant knowingly waived the possibility of a pre-trial suppression hearing when he decided to plea. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981) (“guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea... counsel’s failure to make the motion to suppress here did not constitute ineffective assistance of counsel rendering the guilty pleas involuntary.”). Accordingly, this Court finds this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Trial Counsel Failed to Turn Over All Discovery to Applicant and Investigate

Applicant alleges that counsel Byford failed to turn over all of the discovery materials to Applicant and that Counsel Byford did not sufficiently investigate discovery in preparing for his case. The Court finds this allegation meritless.

To prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel’s further review of the discovery. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836. Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the

alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing on direct examination, Applicant testified that he was provided with the entirety of discovery for the first time after his guilty plea. (PCR Tr. p. 25). Applicant testified that this included a chain of custody and DNA analysis regarding DNA found on Mountain Dew bottles, which could have yielded the DNA of other individuals. (PCR Tr. p. 28).

However, counsel Byford credibly testified that she did share and go over the discovery with Applicant prior to the guilty plea. (PCR Tr. p. 47). Further, counsel Byford credibly testified that she recalled discussing the DNA evidence with Applicant prior to his guilty plea. (PCR Tr. p. 48). Counsel Byford also testified that it was already known that there were many people there at the time of the incident, and if the defense brought the DNA evidence in, it would have been easy for the State to argue that the evidence was meaningless due to the evidence that he was there and multiple individuals had been on the scene. (PCR Tr. p. 48). Counsel Byford's testimony also revealed she conducted legal and factual investigation concerning the statement and prepared for a possible pre-trial suppression hearing of Applicant's post-arrest statements. Counsel Byford's efforts eventually led to Applicant receiving a favorable plea deal. (PCR Tr. pp. 44-46).

This Court finds Counsel Byford reviewed Applicant's discovery with him and conducted reasonable and thorough investigations prior to the entry of the guilty plea. The Court finds Applicant failed to show Counsel Byford was deficient under prevailing constitutional standards or any resulting 6th Amendment prejudice on this ground. Additionally, Applicant failed to present evidence or testimony of what additional evidence or defense counsel Byford could have discovered had she further reviewed discovery with him differently. This Court further notes

Applicant's representation to the plea judge that he was completely satisfied with counsel Byford and that counsel Byford had answered all of Applicant's questions. Applicant also represented to the plea court that counsel Byford had done everything she was asked to do. (Plea Tr. p. 6); see Dalton v. State, 376 S.C. 130, 137– 38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements."). Moreover, to whatever extent Applicant was not entirely satisfied with counsel Byford's discovery investigation or her time spent reviewing discovery, Applicant was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Counsel Failed to Motion for a Change of Venue

Applicant alleges that Counsel failed to motion for a change of venue due to a potential conflict of interest relating to Bob Lusk and his connection to both the public defender's office and the solicitor's office. This Court finds this allegation meritless. The Applicant has made no legally correct argument that a change of venue was necessary or appropriate based upon the issue related to Robert Lusk or the victim's mother working in the Clerk's office. Defense counsel Byford did not act deficiently in failing to move for a change of venue due to the relationship of Robert Lusk and Kathy Lusk to the victim. The Applicant has failed to show in any manner that there was a reasonability that a change of venue would have been granted due to this limited relationship among the two and the victim.

A change of venue is generally based upon the ability to have fair and impartial jurors. The moving party bears the burden of establishing his entitlement to a change of venue. Stevens v. Sun News, 267 S.C. 63, 68, 226 S.E.2d 236, 239 (1976). “When a party moves for change of venue based on unfair publicity or substantial influence of an opponent which would deprive it of a fair trial, the burden is formidable. It is universally recognized that a keystone to efficient and responsible adjudication is trial by jury of the vicinage.” Id. “Normally, a party's popularity, influence, or reputation is not an adequate basis, in and of itself, to justify a change of venue.” Id. at 69, 226 S.E.2d at 239. See State v. Evins, 373 S.C. at 413, 645 S.E.2d at 908 (“It is the defendant's burden to demonstrate actual juror prejudice as a result of such publicity.”); id. at 412–13, 645 S.E.2d at 908 (finding defendant did not prove he suffered any prejudice from the denial of his motion to change venue based on pre-trial publicity even where seven of the twelve seated jurors “had some knowledge of the case” because (1) “the trial court and defense counsel conducted a thorough *voir dire* of the jury pool,” (2) all of the jury pool members who had knowledge of defendant or his pending charge in another murder stated they could “put that knowledge aside,” and (3) the defense did not use all of its peremptory challenges); State v. Caldwell, 300 S.C. 494, 502, 388 S.E.2d 816, 821–22 (1990) (finding trial court did not abuse its discretion in denying defendant's motion for a change of venue where “eleven of the seated jurors and two of the alternate jurors were aware of media coverage of the crime,” because “those jurors expressed to the trial judge no doubt or reservation of their ability to impartially serve as a juror and to decide the matter solely on the evidence presented,” and thus, the defendant did not prove prejudice or extraordinary circumstances warranting a change of venue), overruled on other grounds by State v. Evans, 371 S.C. 27, 30, 637 S.E.2d 313, 315 (2006); State v. Stanko, 402 S.C. 252, 277–79, 741 S.E.2d 708, 721–22 (2013) (finding the trial court did not abuse its discretion in

denying defendant's motion to change venue where “seven of the twelve jurors seated had some knowledge of the case,” but defendant did not prove prejudice or “present even one juror who stated he or she could not ignore exposure to pretrial publicity prior to serving as a juror”).

This assertion is based on Robert Lusk’s connection with the Public Defender’s office and the victim’s mother being employed with the clerk’s office and the Applicant’s speculation about whether the relationship impacted his case. On direct examination, Applicant testified he informed counsel Johnson from the start of her representation that a conflict of interest existed, because Bob Lusk - the head of the selection committee for the Public Defender’s Office - was the victim’s stepfather, and he tasked counsel Johnson to become the lead Public Defender in the office during the representation. (PCR Tr. pp. 11-12). Applicant testified counsel Johnson did not agree with him initially that a conflict existed due to Lusk’s family relationship with the victim, but eighteen months later she handed Applicant a letter and said a conflict existed and she had to give Applicant’s case to someone else. (PCR Tr. p. 12). Applicant testified he asked both counsel Johnson and counsel Byford for a venue change. (PCR Tr. pp. 14-15). Applicant also testified the victim was also related to Kathy Lusk, and Ms. Lusk worked in the Anderson Clerk’s Office. (PCR Tr. pp. 15-16). Applicant stated at the PCR that he would have proceed to trial (for murder) rather than plead guilty if he had received a change of venue. (PCR Tr. p. 16). This was not a credible statement under the circumstances he was facing.

On cross-examination, Applicant testified Bob Lusk’s involvement in his case scared him because “all these people that got political relationships, so they're sitting down probably talking with each other and they're all against me.” (PCR Tr. p. 32, ll. 9-13). However, Applicant acknowledged counsel Byford was not affiliated with the Public Defender’s Office. (PCR Tr. p. 32).

Counsel Johnson testified that, during the course of her representation, there was no indication that the Solicitor's office should not have been handling Applicant's case due to a conflict of interest. (PCR Tr. p. 38). Further, Johnson did not see any indication that Applicant's case was being handled any differently due to a potential conflict. (PCR Tr. p. 39).

Solicitor Fulmer credibly testified that he did not see any conflict in Applicant's case and saw no reason to believe he could not have appropriately handled the case. (PCR Tr. p. 41). Out of an abundance of caution, Applicant's case was given to Counsel Byford, who testified that while that was understandable, she saw no actual conflict of interest in Applicant's case. (PCR Tr. p. 43).

This Court finds the testimony of both defense counsel and Solicitor Fulmer credible, and 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). An actual conflict of interest that would have affected the fairness of Applicant's plea or potential trial did not exist. Though Bob Lusk was related to the victim, counsel Johnson counsel Byford had no relation to the victim and owed no duty to the victim or the victim's family. Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007) (An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's interests). Moreover, even if an actual conflict existed in Johnson's representation, counsel Johnson remedied the potential appearance conflict when she removed herself and the case was re-assigned to counsel Byford, a private attorney not affiliated with the Public Defender's Office. Moreover, Applicant's speculation the Public Defender's Office was conspiring against him is not enough to show he is entitled to relief. State v. Gregory, 364 S.C. 150, 152-3, 62 S.E.2d 449, 450 (2005) ("The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal

conviction.”). Thus, Applicant has failed to establish the existence of an actual conflict of interest that adversely affected the entry of the guilty plea.

Further, the Applicant failed to show that counsel Byford was deficient in any manner in not seeking to move to change venue prior to the plea. The Applicant failed to make any showing that the fact of the relationship of Robert Lusk or Kathy Lusk in the case would have prevented a sufficient jury being drawn from Anderson County. Any change of venue would only be related to the trial jury pool and the case was not being called for trial at that time. No showing had been made that the relationship entitled him to a change of venue.

Accordingly, this Court finds the Conflict of Interest and Change of Venue allegations are **DENIED** and **DISMISSED WITH PREJUDICE**.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not shown that Counsel was deficient or that alternatives suggested by Applicant would have changed the outcome. Thus, this application is 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.

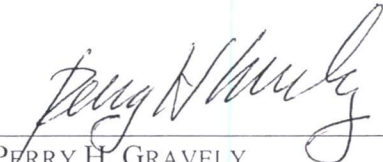
IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

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2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED THIS 26th day of Nov., 2023.



PERRY H. GRAVELLY
Presiding Judge
Tenth Judicial Circuit

Pickens, S.C.

A TRUE COPY
NOV 29 2023
C. Reena Thomason
CLERK OF COURT