

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM JASPER COUNTY
Court of Common Pleas
The Honorable Roger Young, Sr., PCR Action Judge
2020-CP-27-00398

RECEIVED

Jan 31 2024

S.C. SUPREME COURT

SAMUEL OLALDE-GONZALEZ, #376196,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Samuel Olalde-Gonzalez appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Roger Young, Sr., circuit court judge, on November 27, 2023, and was denied by written order issued filed on January 24, 2024. Applicant received notice of the judgement on January 26, 2024.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
 Samuel Olalde-Gonzalez, #376196,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-27-0398

ORDER OF DISMISSAL

FILED
 JASPER COUNTY
 CLERK OF COURT
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Samuel Olalde-Gonzalez (Applicant) on August 7, 2020. On December 17, 2020, Respondent filed its return requesting an evidentiary hearing and a more definite statement. On November 14, 2023, Applicant filed his amended PCR application. On November 27, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Chelsey Marto, Esquire represented Applicant. Staff Attorney Chase Seymour for the South Carolina Attorney General's Office represented Respondent. Applicant was present and testified on his own behalf at the hearing. Assistant Public Defender Robert Hughes (Counsel) also testified. Further, following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-seven-year sentence. In January 2017, the Jasper County Grand Jury indicted Applicant for murder (216-GS-27-00440). From April 23-25, 2018, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith. Applicant was represented by Public Defender Robert

Hughes. Assistant Solicitors Hunter P. Swanson and Brian Hollen prosecuted the case. On April 2, 2018, the jury found Applicant guilty of murder. Judge Goldsmith sentenced Applicant to thirty-seven-years imprisonment.

On April 30, 2018, Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek perfected the appeal through an Anders¹ brief. Following a review pursuant to Anders, the South Carolina Court of Appeals dismissed the appeal. State v. Samuel Gonzalez, Unpub. Op. No. 2020-UP-084 (Ct. App. filed Mar. 25, 2020). The remittitur was sent May 6, 2020.

SUMMARY OF JACKSON V. DENNO HEARING TESTIMONY

Before Applicant's trial, a Jackson v. Denno² hearing was held to determine the admissibility of Applicant's statements to law enforcement. Officer Omar Nieves testified at the hearing that he was the translating officer during the investigation of Marycruz Sotela Casillas's (Victim's) homicide. (R. 8). Although Officer Nieves spoke in a different Spanish dialect than Applicant, he was a certified Spanish translator in the United States Marine Corps, and Applicant appeared to understand him. (R. 19-21).

Officer Nieves testified Applicant spoke to him on the phone and told him that he had killed Victim. After Officer Nieves arrived on the scene, Applicant was placed under arrest, and Officer Nieves read Applicant his Miranda rights in Spanish. (R. 8-9). Applicant told Officer Nieves he killed Victim and repeated this after he was taken to the Jasper County Sheriff's Office and read his rights in Spanish again. (R. 9-10). Applicant then wrote a statement in Spanish to police confessing that he had killed Victim. Applicant was not in handcuffs at the Sheriff's Office and was offered water and the ability to use the restroom. (R. 10-13).

¹ Anders v. California, 368 U.S. 738, 87 S. Ct. 1396; 18 L. Ed. 2d 493 (1967).

² 378 U.S. 376 (1964).

Officer Jeff Crosby testified at the Denno hearing and stated that he was also present during Applicant's interview in the Jasper County Sheriff's Office. (R. 23-24). Officer Crosby confirmed that Applicant was read his rights in Spanish and did not request an attorney during the interview or ask to stop the interview. (R. 24-25). Officer Crosby testified Applicant never seemed unsure about what had occurred, nor was he promised anything in exchange for his statement. (R. 25). Judge Goldsmith determined Applicant's statement to law enforcement was knowingly, intelligently, freely, and voluntarily given and was therefore admissible at trial. (R. 31).

SUMMARY OF TRIAL TESTIMONY

At trial, Gustavo Adolfo-Aguirre Isidro testified that he had worked with Applicant for several months as a painter. (R. 94-95). Isidro picked Applicant up to go to work every day, and on August 8, 2016, Applicant called Isidro before work and said that he had killed Victim. (R. 96-97). Isidro further testified that Applicant told him that Victim had tried to attack Applicant, so Applicant defended himself. (R. 97). Isidro called the police that morning and told them what Applicant had told him. Isidro also told police where Applicant lived and gave police Applicant's phone number. (R. 97-98).

Officer Nieves testified that he was the translating officer for detectives during the investigation and at the scene of the homicide. (R. 128-29). Applicant told Officer Nieves that he killed Victim and wanted to turn himself in. (R. 130). After Officer Nieves arrived at the scene, Applicant was put into custody, and Officer Nieves read Applicant his Miranda rights in Spanish. (R. 132-33). Applicant told Officer Nieves that he and Victim were arguing the day prior, and he lost control that night and strangled her to death. (R. 134). After arriving at the Sheriff's Office, Officer Nieves served as a translator for Officer Crosby. (R. 134). Officer Nieves read Applicant's rights to him again in Spanish once he arrived at the Sheriff's Office. Applicant spoke to the two



officers and wanted to provide a written statement. (R. 134-38). Applicant did not cry or appear upset during the interview. (R. 135; 158).

Officer Crosby also testified that he was one of the responding officers at the scene of the homicide and was present during Applicant's interview at the Sheriff's Office. (R. 156-58). Neither Officer Crosby or Officer Nieves promised Applicant anything to make a statement, and Applicant appeared to understand everything being said. (R. 158). Officer Crosby also testified that Applicant had wanted to kill himself after killing Victim and had attempted to do so by hanging himself and cutting his arms with a knife. (R. 159-60). Applicant was sent to the hospital for an evaluation after the interview and was released the same day. Upon his release, Officer Crosby officially charged Applicant with murder. (R. 161).

Dr. Angelina Phillips testified at trial as an expert witness in the field of forensic pathology. (R. 165-66). Dr. Phillips conducted an autopsy on Victim, which revealed that Victim's injuries were consistent with being strangled to death. (R. 167-169). Dr. Phillips further testified that "it takes about seven to fourteen seconds for a person to pass out from lack of oxygen and three to five minutes for someone to die from that lack of oxygen." (R. 170-71).

Finally, Applicant chose to testify on his own behalf at trial. Much of Applicant's testimony mirrored the testimony that had already been presented by the State. However, Applicant explained that he was truthful with police but had not given them all the details. (R. 200). Applicant testified he told police it was his first argument with Victim, but it was not actually his first time arguing with Victim. (R. 206). Applicant explained that the argument with Victim began because Victim was upset Applicant had a picture of his ex-girlfriend on his phone. (R. 180-81). Applicant also testified the argument continued sporadically throughout the day with Victim insulting Applicant. (R. 181-90). Applicant testified that Victim eventually started hitting him and he reacted by hitting



Victim in the face and strangling her to death. (R. 190-92). Applicant further stated that he did not mean to kill Victim. (R. 202). Applicant testified he did not strangle Victim for three to five minutes and it only took ten to fifteen seconds for Victim to urinate on herself. (R. 193; 208-09). Applicant confirmed he knew how to call police but chose not to after he killed Victim. (R. 207).

ALLEGATIONS

On August 17, 2020, Applicant commenced his PCR action, alleging:

1. Ineffective assistance of counsel
 - a. "My lawyer advised me to reject a pretrial plea. My lawyer said he felt I would be going home, not plea. My lack to understand English as well, bad advice. Cause of my Mexica/Latin heritage birthright."
 - b. "My lawyer failed to investigate the case."
 - c. "My lawyer failed to request jury instructions at trial."

On November 14, 2023, Applicant filed an amendment to his application alleging the following grounds for relief:

1. Ineffective assistance of counsel: "Counsel was constitutionally ineffective for..."
 - a. "forcing [Applicant] into proceeding to trial when he wanted to plead."
 - b. "telling [Applicant] that if he proceeded to trial he would receive less than twenty years' imprisonment."
 - c. "coercing [Applicant] into testifying at trial."
 - d. "failing to discuss trial strategy with [Applicant]."
 - e. "failing to procure a competent translator for attorney-client meetings prior to trial so [Applicant] was fully informed and aware of everything going on in his case."
 - f. "failure to object to the State's lines of questioning concerning [Applicant's] Nazi tattoo."
 - g. "for failure to object to the State's lines of questioning concerning the appearance of defensive wounds on [Applicant]."
 - h. "making the trial strategy centered around the concession that Applicant killed the deceased and raising this issue in closing."
 - i. "failure to adequately respond to the State arguing that [Applicant] lacked remorse by highlighting cultural differences between the United States and Mexico"



- regarding men showing emotion.”
- j. “misadvising [Applicant] that if he went to trial he would receive less than twenty years’ imprisonment and if he received that amount of time he could get deported before serving out his sentence.”

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

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying conviction; Applicant’s records from the South Carolina Department of Corrections; Applicant’s record on appeal; and the record of Applicant’s current PCR action. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. Further, after a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court’s findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance by its “reasonableness under



prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). “Counsel is strongly presumed to have 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). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that 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.

Counsel Forced Applicant to go to Trial/Wanted to Plea

As an initial matter, Applicant contends he was forced by Counsel to proceed to trial when Applicant wanted to plead guilty. This Court finds Applicant has failed to show Counsel was ineffective in this regard.

A defendant has the right to effective assistance of counsel during the plea bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)); Lafler v. Cooper, 566 U.S. 156, 162 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Misadvising a defendant such that he rejects a plea offer and instead proceeds to trial may constitute deficient performance. See, e.g. Lafler, 566 U.S. at 161 (counsel misadvised defendant “that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist.”); Lee v. United States, ___ U.S. ___, 137 S.Ct. 1958 (2017) (counsel misadvised a noncitizen defendant that he would not be deported as a consequence of his guilty plea).

To show prejudice from the improvident rejection of a plea offer based upon the misadvice of counsel, an applicant must show (1) that but for the ineffective advice there is a reasonable

probability the plea offer would have been presented to the court, (2) that the court would have accepted its terms, and (3) that the conviction, sentence, or both would have been less severe under the terms of the plea than was in fact imposed. Lafler, 566 U.S. at 164.

Applicant testified at the evidentiary hearing that he was offered a plea deal for thirty years, but Counsel told him not to take the deal. Counsel testified he did not recall a plea deal being offered and expressed that he wanted a plea deal because of Applicant's confession to killing Victim. Initially, this Court finds **not credible** Applicant's testimony that counsel told him not to take the deal. Despite Counsel's inability to remember a negotiated plea offer, Counsel's actions during trial, as demonstrated by the record, and his testimony at the evidentiary hearing show he acted reasonably under prevailing professional norms. This Court finds **credible** Counsel's testimony. Counsel credibly and repeatedly testified he would have loved a plea offer due to the State's evidence, which refutes Applicant's testimony that Counsel told him not to accept the offer.³ Thus, this Court finds Counsel's performance was reasonable in light of the circumstances, and he performed in accordance with professional standards.

Further, this Court finds Applicant has failed to establish prejudice. Based on the record on appeal, the solicitor made a plea offer that was rejected. (R. 258). This Court finds **credible** Counsel's testimony that he did not want Applicant to proceed to trial. Counsel credibly testified that he would have attempted to negotiate a plea deal if Applicant had expressed to him that Applicant wanted a plea deal. Given the evidence against Applicant and Counsel's testimony that

³ The Record on Appeal shows that the solicitor made a statement during the sentencing portion of trial that Applicant was offered a thirty-year plea deal for voluntary manslaughter, and this offer was rejected. (R. 258). However, other than this statement during the sentencing portion of Applicant's trial, Applicant has failed to put forth any other evidence of a plea offer other than Applicant's testimony at the PCR hearing. Counsel testified that if he had been offered a plea deal, he would have advised Applicant to take it. This Court gives weight to Counsel's credibility given his extensive experience in criminal practice as an attorney, and his testimony that he spoke to Applicant about Applicant's rights before trial. Because this Court finds credible Counsel's testimony, even if an offer was made, it would not be determinative in showing that Applicant was forced to proceed to trial.



he did not want Applicant to proceed to trial, this Court finds **not credible** Applicant's testimony that Counsel rejected a plea offer on Applicant's behalf. Thus, this Court finds that Applicant was not coerced and exercised his right to proceed to trial. Therefore, this Court finds Applicant has failed to show prejudice in this regard.

Counsel Told Applicant he Would Receive Less than Twenty Years if he Went to Trial

Applicant also contends Counsel told him that he would receive less than twenty years if he proceeded to trial. Applicant contends he proceeded to trial under this advice. This Court finds Applicant has failed to show Counsel was ineffective in this regard. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

This Court finds **credible** Counsel's testimony that he never informed Applicant he would receive less than twenty years imprisonment if Applicant proceeded to trial. Likewise, this Court finds **not credible** Applicant's testimony that Counsel told him he would receive less than twenty years if he proceeded to trial. Counsel credibly testified that he informed Applicant he would be facing a minimum of thirty years imprisonment for murder if he was found guilty. Additionally, Counsel requested that the court impose the minimum sentence of thirty years for murder after Applicant had been found guilty. (R. 257). Thus, this Court finds Applicant has failed to show deficiency or prejudice, and this claim is denied.

Applicant was Coerced into Testifying at Trial

Applicant further contends Counsel coerced him into testifying at trial. Applicant contends he did not want to testify on his own behalf, but Counsel told him that was the only way he would get twenty years or less. This Court finds Applicant has failed to show Counsel was ineffective in this regard. "No person ... shall be compelled in any criminal case to be a witness against himself."



U.S. Const. Amend. V. "Every criminal defendant is privileged to testify in his own defense, or to refuse to do so." Rock v. Arkansas, 483 U.S. 44, 53, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (quoting Harris v. New York, 401 U.S. 222, 230, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971)). "The choice of whether to testify in one's own defense ... is an exercise of [] constitutional privilege." Id. A defendant must be aware of the consequences of testifying or not testifying on their own behalf at trial. Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000).

This Court finds **credible** Counsel's testimony that it was Applicant's decision to testify at trial. Counsel credibly testified that he did not promise Applicant he would be sentenced to less than twenty years if he testified at trial. Additionally, Counsel credibly testified he never forced Applicant to testify, and in fact, did not want Applicant to testify at trial. Counsel explained that he believes his clients can fall into traps from the State and does not like any of his clients testifying at trial. Further, Counsel credibly stated that he informs all his clients about their rights to testify or not testify, and the consequences associated with testifying (or not). Counsel also credibly stated that he always suggests to his clients what they should do, but the decision to testify is ultimately that of the client. Finally, at trial, the trial judge entered a colloquy with Applicant before he took the stand and explained Applicant's rights associated with testifying at trial. (R. 176-78). After the colloquy, Applicant chose to testify. (R. 178). Ultimately, it was Applicant's decision to testify. Accordingly, this Court finds Applicant has failed to show Counsel was deficient in this regard.

Likewise, Applicant has failed to show prejudice. Based on the record on appeal, Applicant decided to testify after participating in the judge's colloquy regarding Applicant's right to decide whether to testify. (ROA pp. 176-78). Counsel credibly testified, and the record reflects, that Applicant made the decision to testify at trial. This Court finds **not credible** Applicant's testimony that testifying at trial was the last thing Applicant wanted. Therefore, this Court finds Applicant



has failed to show prejudice in this regard.

Failure to Discuss Trial Strategy

Applicant also contends Counsel was ineffective for failing to discuss trial strategy with him. This Court finds Applicant has failed to show Counsel was ineffective in this regard. This Court finds **credible** Counsel's testimony that he met with Applicant on multiple occasions and discussed Applicant's defense with him. Counsel admitted he wished he could have met with Applicant more but needed to have a translator at each meeting to communicate with Applicant. Counsel testified he could only get translators from Beaufort County. Counsel credibly testified that he met with Applicant at least two or three times before trial. Counsel credibly explained that a translator was always present during the meetings, and Counsel never felt that Applicant did not understand what was going on. Therefore, this Court finds Counsel's performance was not deficient because it was reasonable under prevailing professional norms. Likewise, without more, this Court finds Applicant has failed to show prejudice.

Failure to Procure a Competent Translator for Attorney-Client Meetings

Applicant contends Counsel failed to procure a competent translator during attorney-client meetings. Applicant further contends that because of the translator's inability to effectively communicate, Applicant was confused and unable to be aware of everything going on with his case. This Court finds Applicant has failed to show Counsel was ineffective in this regard. This Court finds **credible** Counsel's testimony that he did not have any concerns about whether Applicant understood him. This Court further finds **not credible** Applicant's testimony that he could not understand the translator used during meetings with Counsel. Counsel credibly testified he used a court-certified Spanish translator during his meetings with Applicant. Moreover, Counsel credibly testified that he had extensive experience representing criminal defendants and could tell



when his clients did *not* understand. Counsel credibly testified that he did not believe there appeared to be any language barrier problems. Therefore, this Court finds that Applicant has failed to show Counsel was ineffective in this regard.

Failure to Object to the State's Questioning About Applicant's Nazi Tattoo

Applicant contends Counsel failed to object to the State's line of questioning regarding his Nazi tattoo.⁴ This Court finds Applicant has failed to show Counsel was ineffective in this regard. Failing to object does not automatically constitute ineffective assistance of counsel. See Millidge v. State, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018). (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); see also id. at 380. (“[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court’s finding... if so, an appellate court would necessarily have affirmed the trial court’s [ruling]....”).

Applicant testified that he wished Counsel had objected in trial or asked Applicant during trial how he got the tattoo. Applicant testified he got the tattoo when he was ten years old in Mexico and did not know what the tattoo meant. He further testified that he got a black widow tattoo to cover up the Nazi symbol once he realized what the Nazi symbol meant.

Counsel testified that he did not object because he felt it would be favorable testimony that Applicant’s tattoo was now covered up by another tattoo. Counsel stated he felt that it was better that the tattoo was covered up so that others could not see the Nazi symbol. Counsel explained that he felt Applicant’s actions of covering up the Nazi tattoo with another tattoo showed that Applicant had changed. This Court finds **credible** Counsel’s foregoing testimony. Further, this Court finds Counsel’s performance was reasonable under prevailing professional norms. Likewise, without

⁴ At trial, Officer Crosby testified that Applicant told him his “[black widow] tattoo was to cover up a Swastika or the Nazi symbol that he had in the web of his hand.” (R. 161).



more, this Court finds Applicant has failed to establish prejudice.

Failure to Object to the State's Questioning About Applicant's Defensive Wounds

Applicant contends Counsel was ineffective for failing to object to testimony relating to Applicant's defensive wounds. This Court finds Applicant did not prove this claim.

At the PCR hearing, Counsel testified he did not see a basis for objecting. He further testified he believed testimony regarding defensive wounds would be helpful in showing Victim attacked Applicant. Counsel explained he was limited by the State's evidence and Applicant's confession, and he tried to secure the best outcome for Applicant by arguing voluntary manslaughter at trial. Counsel testified that any defensive wounds would have helped to show that the malice element was missing for the murder charge. Based on the foregoing testimony, which this Court finds credible, counsel articulated a valid strategic reason for not objecting to questions regarding Applicant's defensive wounds and was not deficient. Further, based on Applicant's trial testimony that Victim "would very easily get angry and be very explosive" and would occasionally squeeze Applicant's arms and shove him when she got upset, and Victim had pushed and hit him the night he killed her, it is not reasonably likely the outcome would have been different had counsel objected to testimony about defensive wounds on Applicant's arms. (R. 188, 201). In fact, the defensive wounds *corroborated* Applicant's testimony, making it more likely the jury would have believed his story. Thus, Applicant did not prove prejudice, and this claim is denied.

Counsel Centered the Trial Strategy Around Concession that Applicant Killed Victim

Applicant contends Counsel was ineffective by centering the trial strategy around the concession that Applicant killed Victim. "Courts must be wary of second-guessing counsel's trial tactics." Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). When counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found

ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). If counsel articulates a valid strategy, “it is measured under an objective standard of reasonableness.” Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690). “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.” Weldon v. State, 436 S.C. 69, 81, 870 S.E.2d 183, 189 (Ct. App. 2021) (quoting Strickland, 466 U.S. at 689).

This Court finds **credible** Counsel’s testimony that the only valid strategy he could come up with was centered around arguing against the malice element of murder. Counsel testified self-defense was ruled out by Applicant’s confessions to multiple people, including law enforcement. Although Counsel attempted to suppress Applicant’s confession, the court determined it was admissible. (R. 28). Despite Applicant’s confession being admissible, Counsel attempted to discredit Officer Nieves’s translation of Applicant’s confession on cross-examination that the Spanish dialect spoken between Officer Nieves and Applicant was different. (R. 147-48). Due to this evidence, which limited Counsel’s strategy, this Court finds Counsel articulated a valid trial strategy and was not deficient. Further, because the confession was going to be admitted, Applicant cannot demonstrate prejudice from counsel’s decision to use it as part of his strategy.

Failure to Respond to the State’s Argument that Applicant Lacked Remorse

Applicant contends Counsel was ineffective for not highlighting Applicant’s remorse for killing Victim at trial. Applicant contends Counsel should have highlighted the cultural differences between men in Mexico and the United States in how they express emotion. Applicant testified

that men do not cry in the Mexican culture he was raised in, and Applicant knew what he did was wrong and was remorseful for it. Applicant further testified that Counsel's failure to highlight the cultural differences with expressing remorse would have changed his sentence.

This Court finds **credible** Counsel's testimony that he believed he countered the State's argument that Applicant lacked remorse. Counsel elicited testimony from Officer Crosby that Applicant wanted to kill himself after he killed Victim. (R. 160-61). Counsel noted in closing argument that Applicant's emotions expressed during the videotaped interview at the Sheriff's Office was that of "a man who has resigned himself to his fate. He knows what he did." (R. 230). Finally, at sentencing, Counsel explained Applicant was not showing more emotion because "he has totally accepted whatever fate [the court] is willing to bestow" and that "he accepts his fate." (R. 261). Therefore, this Court finds Counsel was not deficient for failing to highlight the Applicant's cultural differences in expressing remorse. Likewise, this court finds it is not reasonably likely such evidence would have been admissible or the outcome would have been different without such evidence. Thus, Applicant failed to show prejudice.

Counsel Misadvised Applicant he Could be Deported Before Serving a his Sentence

Finally, Applicant contends he was misadvised by Counsel that if he went to trial and received less than twenty years at sentencing, he could be deported before serving out his entire sentence. This Court finds **not credible** Applicant's testimony that Counsel's wrongful advice influenced his decision to go to trial. This Court finds **credible** Counsel's testimony that he never told Applicant he would receive less than twenty years imprisonment. Counsel credibly testified he informed Applicant that Applicant would get at least thirty years if sentenced for murder and would be deported after serving whatever sentence the court imposed. Further, Counsel requested that the court impose the minimum sentence of thirty years for murder after Applicant had been

found guilty and informed the court that Applicant would be deported after serving whatever sentence the court imposed. (R. 257). Thus, this Court finds Applicant has failed to show Counsel misadvised him about the sentence would receive and that Applicant could be deported before serving his sentence. Therefore, this Court finds Applicant has failed to show Counsel was deficient in this regard. Further, Applicant has failed to meet his burden of establishing prejudice.

CONCLUSION

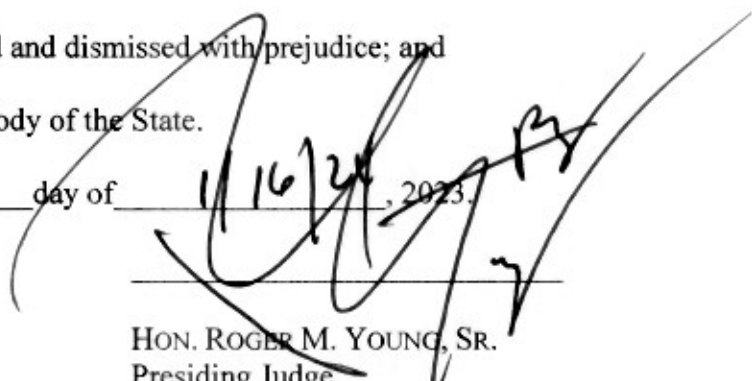
Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

Should Applicant wish to appeal, he must serve and file a notice of appeal within thirty days to secure appellate review. 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 denial of PCR. Rule 71.1 (g). SCRCF provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this _____ day of 11/16/24, 2023.



HON. ROGER M. YOUNG, SR.
Presiding Judge
Fourteenth Judicial Circuit

Chamber, South Carolina.