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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2022-CP-43-01108

Tyrone Josey, .....Petitioner,

v.

State of South Carolina, .....Respondent.

**NOTICE OF APPEAL**

Petitioner, Tyrone Josey, appeals the order of the Honorable Edgar W. Dickson, dated February 9, 2024, and filed February 14, 2024. Petitioner received written notice of entry of this order on February 15, 2024.

2/16, 2024



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STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

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IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.  
Tyrone Josey, SCDC #355699

Case No. 2022-CP-43-01108

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FEB 20 2024

S.C. SUPREME COURT

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

**I. INTRODUCTION**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Tyrone Josey (Applicant) on July 12, 2022. On March 2, 2023, a hearing into the matter was convened before the Honorable Edgar W. Dickson at the Sumter County Courthouse. Applicant was present and represented by Michael Lifsey, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

**II. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections. During its July 2020 term, the Sumter County Grand Jury indicted Applicant for trafficking heroin 14 to 28 grams, possession with intent to distribute marijuana, and possession with intent to distribute within proximity of a school or park (2020-GS-43-00343). Applicant was represented by Jason Bridges, Esquire. Assistant Solicitors Tyler B. Brown and Jason Corbett prosecuted the case.

On July 22, 2021, Applicant proceeded to trial before the Honorable George M. McFaddin, Jr. and a jury. After pre-trial motions hearing, but before voir dire, Applicant indicated he wished to change his plea to guilty. During the plea colloquy, Applicant withdrew his plea and the trial proceeded. After the State rested its case, Applicant again expressed his desire to plead guilty. On July 23, 2021, Applicant pleaded guilty to trafficking heroin 4 to 14 grams and possession with intent to distribute marijuana.<sup>1</sup> Pursuant to a negotiated sentence, Judge McFaddin Jr. sentenced Applicant to twenty (20) years for trafficking heroin 4 to 14 grams and ten (10) years for possession with intent to distribute marijuana, with those sentences to be served concurrently. Applicant did not file a direct appeal.

### III. STATEMENT OF FACTS<sup>2</sup>

At 9 Creed Street on January 9, 2019, officers with the Sumter Police Department executed a search warrant at the house where Applicant lived alone. Large quantities of drugs were found, including 283 grams of marijuana and 17.93 grams of heroin.

### IV. CURRENT APPLICATION

Applicant timely commenced this PCR application on July 12, 2022. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated by trial counsel erring to give client requested circumstantial evidence."
  - a. "The statute specifically requires a person act 'knowingly' State v. Taylor, 473 S.E.2d 817S.E.2d 817, 818 (1996) (addressing a previous version of the trafficking statute). A "defendant's knowledge and possession [of illegal substances] may be inferred. State v. Heath, 635 S.E.2d 18, 19 (2006). In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially. State v. Hernandez, 677 S.E.2d

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<sup>1</sup> Judge McFaddin granted Applicant's motion for a directed verdict on the possession with intent to distribute withing proximity of a school or park charge.

<sup>2</sup> The following factual summary was taken from the Solicitor's recitation of the facts presented during the guilty plea hearing. Tr. p. 192, ll. 3-10.

603 (2009). The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two. Logan, 747 S.E.2d at 452.

2. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated by trial counsel failing to instruct the court on the lesser included offense of possession of heroin with intent to distribute."
  - a. "Section 44-53-370 (a)(1) designates a number of possession with intent to distribute. Subsection 44-53-370 (e)(3) later provides in relevant part that any person who possesses at least four grams of heroin is guilty of the felony described as "trafficking in illegal drugs." Subsection 44-53-370 (e)(3)(b) further provides that a person who is convicted of possessing between fourteen and twenty-eight grams of heroin must serve a minimum sentence of twenty-five years. The floating text at the bottom of the statute clarifies that possession with intent to distribute is a lesser included offense to the offense of trafficking based upon possession see § 44-53-370. Thus, the plain reading of the statute reflects the legislature's intent to enact a hierarchical ladder of discrete offenses and punishments based upon the weight of the drugs possessed. Moreover, our Supreme Court has consistently held possession with intent to distribute is only a lesser-included offense of trafficking when the weight of the drugs is in dispute. See: Sellers v. State, 607 S.E.2d 82, 86 (2005) (A defendant is not entitled to a lesser-included charge of possession with intent to distribute when there is evidence that the amount involved exceeded minimum for trafficking. Abrogated on other grounds by Smalls v. State, 810 S.E.2d 836 (2018); see also State v. Alabama, 352 S.E.2d 483, 485-486 (1987) (Because the amounts of marijuana and cocaine in evidence were less than the statutory amounts that establish a presumption of possession with intent to distribute, appellant was entitled to a charge on simple possession of these substances"). See: Rivera, 699 S.E.2d at 159 (where there is evidence from which the jury could infer that the defendant committed a lesser included offense, the trial court must submit the lesser-included offense to the jury)."

Pursuant to Rule 71.1, SCRPC, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel for
  - a. Applicant's plea counsel did not meet with Applicant a sufficient number of times prior to his plea, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged. Had plea counsel given effective representation in this regard,

- Applicant would not have entered a guilty plea and would have insisted on a jury trial.
- b. Applicant's plea counsel did not give Applicant sufficient notice of his trial date. This led Applicant to be unprepared and to lack confidence that his plea counsel was prepared. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.
  - c. Applicant's plea counsel did not inform Applicant of his right to testify, including the advantages and disadvantages of testifying. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.
2. The ineffective assistance of counsel as described above, rendered Applicant's plea involuntary.
  3. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

At the hearing, Applicant proceeded only on claims that were raised in the amended application.

#### V. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a



probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an 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 guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the 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.* 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 [p]lea counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

This inquiry “focuses on a defendant’s decisionmaking” 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 (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).

#### **VI. FINDINGS OF FACT & CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

#### ***Failure to Meet with Applicant and Properly Explain Case***

Applicant contends Counsel was ineffective for failing to meet with Applicant a sufficient number of times. Applicant further contends Counsel did not fully explain the strengths and weaknesses of the State's case and did not explain the elements of the crime charged. This Court disagrees and finds Counsel properly explained the crimes charged and the strength and weaknesses of the State's case. This Court finds credible and persuasive the testimony of Counsel, who presented well-remembered testimony of the conversations he had with Applicant, including properly informing Applicant of all aspects of his case.

#### **1. PCR Testimony**

Applicant testified he was arrested in January of 2019 and proceeded to trial in July of 2021. Applicant testified he met with Counsel approximately four times between his arrest and trial. Applicant testified he unsuccessfully attempted to set up additional meetings with Counsel during this time. During these meetings, Applicant testified Counsel discussed his charges and the time he could serve, warning Applicant that every time he rejected a plea offer he risked more time. Applicant testified Counsel never discussed the elements of the crimes charged nor any potential defenses. Applicant testified he was not given notice of a trial until the day of the motion to suppress hearing. Applicant testified Counsel did not inform him the trial would begin after the motion to suppress hearing; furthermore, he did not discuss defense strategy or inform him of his right to testify prior to trial. Applicant testified Counsel just wanted him to plead guilty. Applicant testified he had little confidence in Counsel, and had they met more to properly discuss the case Applicant would not have pleaded guilty and would have continued the trial. On cross-examination, Applicant testified he recalls discussing the State's evidence with Counsel.

Counsel testified he previously represented Applicant on a simple possession charge in 2016. Counsel testified he was employed with the Sumter County Public Defender's Office when he was retained to represent Applicant shortly after his arrest. Counsel testified Applicant was facing numerous charges. Counsel testified he initially met with Applicant while he was incarcerated to discuss his bond. Counsel testified he was able to get Applicant's bond reduced through a motion to reduce bond. After Applicant bonded out of jail, Counsel testified it was difficult to meet with Applicant because the Solicitor left the case and protocols initiated during COVID-19 pandemic prevented them from meeting; however, Counsel began having regular contact with Applicant in the summer of 2020. Counsel testified that in early September 2020 he reviewed all the discovery and discussed all the charges with Applicant; specifically, Counsel

explained to Applicant the most serious charge he faced was trafficking, which carries a mandatory minimum of twenty-five (25) years. Counsel testified he reviewed all the warrants in this case with Applicant when discussing the charges and what he was facing.

On cross-examination, Counsel testified he specifically recalled meeting Applicant on the following occasions: first sit down meeting in February 2019, at the bond hearing in February or early March 2019, second sit down meeting in September 2020, third sit down meeting in early November 2020, fourth sit down meeting in May 2021, and during Applicant's trial in July 2021. Counsel testified his notes from those meetings were in the possession of the Sumter County Public Defender's Office which he no longer has access to.

## 2. Discussion

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Counsel's credible testimony indicates he met with Applicant several times and thoroughly informed Applicant of his charges, potential defenses, and reviewed discovery with Applicant. Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence

additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Applicant's allegations regarding Counsel's failure to meet with him a sufficient number of times is without merit. This Court finds Counsel met with Applicant, discussed the elements of the crimes charged, and properly informed him of Applicant's case. Counsel testified he specifically remembers meeting with Applicant in person at least five times, many of these meetings occurring shortly after the COVID-19 pandemic emerged. Considering the protocols implemented in response to the COVID-19 pandemic, this Court finds Counsel did well to meet with Applicant five times. Applicant himself testified they met four times prior to trial, which he did not believe was sufficient. Applicant testified Counsel should have discussed his case with him more; however, "even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation." *Harris*, 377 S.C. at 75, 659 S.E.2d at 145. This Court finds Counsel sufficiently met with Applicant prior to his guilty plea. Furthermore, Applicant has failed to present any evidence or testimony indicating how additional meetings would have affected his decision to plead guilty, thus Applicant was not prejudiced by any alleged deficiency.

During these meetings, Counsel credibly testified he explained the charges and reviewed discovery with Applicant. Furthermore, Counsel explained the primary defense strategy would be to move for a suppression of the drugs on the basis the search warrant was deficient. The motion to suppress was ultimately denied; however, this Court finds this was clearly a reasonable trial strategy in this case.

This Court finds Counsel met with Applicant a sufficient number of times; properly informed him of the case, including the charges and potential defense strategy; and reviewed

discovery with Applicant. Therefore, this Court finds Counsel was **NOT DEFICIENT** in this regard. Furthermore, Applicant has presented no evidence or testimony indicating how any alleged deficiency affected his decision to plead guilty. Accordingly, this Court finds this allegation is **DENIED**.

*Failure to Give Applicant Sufficient Notice of Trial Date*

Applicant next contends Counsel was ineffective for failing to give Applicant sufficient notice of his trial date. This Court disagrees and finds Counsel's credible testimony refutes this allegation. Furthermore, this Court finds Applicant's testimony incredible.

1. PCR Testimony

At the PCR hearing Applicant testified he did not know anything about the trial until the day of the motion to suppress hearing. Applicant testified Counsel informed him that the motions hearing was coming up and if the motion is denied the trial will begin that same day. Applicant testified nobody informed him of this prior to motions hearing. On cross-examination, Applicant testified he received no notice of a trial after he rejected last plea offer.

Counsel testified Applicant received his first plea offer for a ten (10) year negotiated sentence for all his charges in early September 2020. Counsel testified the Solicitor extended the offer through November 2020. Counsel testified he went on leave and when he came back Applicant's case was on the trial list for March or April 2021. Counsel testified he had phone conversations with Applicant informing him he was on the trial list. The Solicitor then increased the offer to fifteen (15) years, which the Applicant rejected. Counsel testified that after the plea offer was rejected Applicant was told he was on the trial list. Counsel testified Applicant definitely knew in May 2021 he was on the trial list. Counsel testified he explained to Applicant he would move for suppression before the trial began. Counsel testified that after the motion to suppress was

denied, Applicant indicated he wished to plead guilty to a seventeen (17) year sentence. Applicant changed his mind, withdrew his plea, and the trial began.

On cross-examination, Counsel reiterated he explained to Applicant the suppression hearing was a pre-trial motion and the trial would begin immediately afterwards.

## 2. Discussion

This Court finds Applicant had notice, as well as actual knowledge of his trial date. Counsel credibly testified he informed Applicant he was on the trial list after he rejected the first plea offer of ten (10) years. Counsel had phone conversations with Applicant informing him he was on the trial list for March or April 2021. Applicant was again informed he was on the trial list after rejecting the fifteen (15) year plea offer. Counsel credibly testified Applicant knew in May 2021 that he was on the trial list. During conversations surrounding the motion to suppress hearing, Counsel informed Applicant his trial would begin immediately after the hearing if it was denied. This Court finds Counsel repeatedly informed Applicant of his impending trial throughout his representation; thus, Counsel was **NOT DEFICIENT** in this regard. Accordingly, this Court finds Applicant's allegation he was not given sufficient notice of his trial date is **DENIED**.

### *Failure to Inform Applicant of Right to Testify*

Applicant further contends that Counsel was ineffective for failing to inform Applicant of his right to testify, including the advantages and disadvantages of testifying. This Court disagrees and find Counsel's credible testimony refutes this allegation. This Court further finds Applicant's testimony incredible.

## 1. PCR Testimony

Applicant testified that Counsel did not inform him of right to testify. Counsel testified that following the directed verdict on the proximity charge, the only issue that remained was whether

Applicant was going to testify. Counsel testified Applicant informed him over the phone he did not wish to testify. The trial judge and Counsel were going to go over his right to testify on the record before the defense presented its case, but Applicant changed his plea to guilty prior to that.

## 2. Trial Transcript

During Applicant's first plea colloquy before trial began, the trial court explained Applicant's right to testify as follows:

The Court: You would have the right to question witnesses who testify against you, and you could call witnesses to testify for you. No one could make you testify, and a judge will tell the jury not to hold that against you. If you do not testify at your trial, you can present defenses to the charge.

...

By pleading guilty, Mr. Josey, you give up your right to a trial and the right to remain silent. Do you understand that, sir?

Mr. Bridges: Mr. Josey informed me he would like to change his - - withdraw his plea.

(Tr. pp. 35 - 36).

Ultimately, Applicant withdrew his plea; however, he was informed of his right to testify prior to trial. Furthermore, the record from Applicant's trial corroborates Counsel's testimony at the PCR hearing, as indicated below:

Mr. Bridges: I discussed whether or not he wanted to testify because that will be our main decision today. He told me definitely no. So he's invoking his Fifth Amendment rights as far as that's concerned.

(Tr. p. 183).

Applicant again indicated he wished to plead guilty, and the trial court reiterated the information regarding Applicant's right to testify during his plea colloquy:

The Court: You have the right to remain silent. If you did not testify, the Court would testify the Court would tell the jury not to hold that against you.

(Tr. p. 189).

## 3. Discussion

This Court finds Counsel properly informed Applicant of his right to testify. Counsel testified they discussed whether Applicant was going to testify in a phone conversation. Counsel testified

Applicant did not wish to testify. Counsel clearly had discussions with Applicant regarding his right to testify prior to his guilty plea. Thus, this Court finds Counsel was **NOT DEFICIENT** in informing Applicant of his right to testify.

Furthermore, the record from Applicant's trial transcript demonstrates Applicant was repeatedly informed of his right to testify or not. The record also corroborates Counsel's testimony that he spoke with Applicant regarding his right to testify prior to trial. This Court finds Applicant was properly informed of his right to testify by both Counsel and the trial court on multiple occasions.

Accordingly, Applicant's allegation he was not properly informed of his right to testify is **DENIED**.

## VII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a

notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 9<sup>th</sup> day of February, 2024.



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EDGAR W. DICKSON  
Presiding Judge  
Third Judicial Circuit

Orangeburg, South Carolina

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
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The Honorable Edgar W. Dickson, Circuit Court Judge

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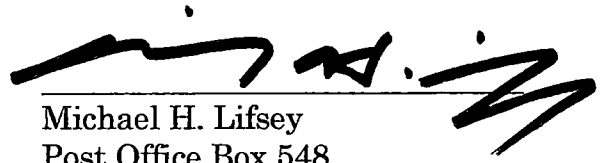
**PROOF OF SERVICE**

I, Michael H. Lifsey, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, on February 16, 2024, addressed to:

T. Cruise Mitchell  
Assistant Attorney General  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

2/16, 2024



Michael H. Lifsey  
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ATTORNEY FOR PETITIONER