

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Edward W. Miller, Circuit Court Judge

Case No. 2020-CP-30-00600

Khelsey C. Rice, #381937, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Anthony Maurice Wise, appeals the order of the Honorable Edward W. Miller, filed on or about February 29, 2024.



March 11, 2024

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STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Khelsy Rice, #381937

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE EIGHTH JUDICIAL CIRCUIT

) Case No.: 2020-CP-30-00600

) **ORDER OF DISMISSAL**

K. MICHELLE SIMMONS
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LAURENS COUNTY
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Khelsy Rice (“Applicant”) on July 10, 2020. The Court convened an evidentiary hearing into the matter on March 7, 2023, at the Laurens County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent. After reviewing all records and evidence before the Court, this Court finds Applicant has not met her burden of proving she is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. In September 2018, the Laurens County Grand Jury indicted Applicant for two counts of felony DUI resulting in death (2018-GS-30-1526) and two counts of felony DUI resulting in great bodily injury (2018-GS-30-1529). Applicant was represented by Tristan M. Shaffer, Esquire (“Counsel”). Assistant Solicitors Julie K. Keeney and Matthew W. Dowtin prosecuted the case.

Applicant pleaded guilty as indicted to all charges. On December 19, 2019, the Honorable Thomas L. Hughston, Jr., sentenced Applicant to ten years' imprisonment for the two counts of felony DUI with great bodily injury, and sixteen years' imprisonment for two counts of felony DUI resulting in death. These sentences were to run concurrent. Applicant did not appeal her conviction or her sentence.

Factual Summary

On May 18, 2018, Applicant, while under the influence of a combination of alcohol and drugs, drove her car across the center line and went into oncoming traffic. (Tr. 6). Applicant struck another car that was lawfully on its side of the road, and this crash caused the death of Lois King and Margie Seymore. (Tr. 6-7). The crash also caused great bodily harm to Navaeh Cunningham, Applicant's daughter, and Norma Smith, a passenger in the other car. (Tr. 6-7). Norma Smith was taken to the hospital, where she stayed for eleven days. (Tr. 11). Mrs. Smith had a broken back, a cracked sternum, broken ribs, and bruising. (Tr. 11, 30). Navaeh Cunningham suffered a broken arm. (Tr. 16). Both Margie Seymore and Lois King were pronounced dead at the hospital. (Tr. 11). Applicant was found at the scene in her car, along with her four children. (Tr. 11). Applicant had an open can of beer at her feet, smelled of alcohol, and appeared to be lethargic and under the influence of some substance. (Tr. 11). Applicant was taken to a hospital, where she consented to a blood test. (Tr. 11-14). Applicant had a blood alcohol content of .013 and had methamphetamine and marijuana in her system. (Tr. 12).

Present Application

On July 10, 2020, Applicant filed a PCR application, raising the following allegations:

1. "Ineffective assistance of counsel."
 - a. "My attorney, Tristan Shaffer, failed to fully explain, in detail, what the exact possibilities of a guilty plea. I was not advised on the specifications discussed with the solicitor, such as 1-25 years etc."

- b. "During my stay in the county jail for 580 days, I only saw Mr. Shaffer twice and without appropriate answers to my questions and concerns."
 - c. "I explained my concerns about not having consented to my blood being taken after the accident and Mr. Shaffer still never mentioned this during my trial."
2. "[I] was not aware of the proper process for appealing, lawyer didn't explain the process for appealing."

As requested relief, Applicant states she is seeking to have her sentence and case reviewed for a possible reduction in her sentence.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's plea proceeding, the records of the Greenwood County Clerk of Court regarding the subject convictions, and the application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of Counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *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*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures 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). 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. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced 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. "The likelihood of a different result must be substantial, not just conceivable." *Harrington*, 562 U.S. at 112. In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why she should be allowed to depart from the truth of her statements. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

Allegation 1: Failure to explain guilty plea

Applicant argues Counsel failed to adequately explain the details or consequences of the guilty plea to her, such as the possible sentencing range. The Court finds this allegation is without merit. At the evidentiary hearing, Applicant admitted Counsel told her there was no plea deal, so she would have known she was pleading straight-up to the charges as indicted. Counsel confirmed that he would have explained the charges Applicant was facing and their potential consequences, including the sentencing range, at their first meeting. In addition, Judge Hughston conducted a thorough colloquy with Applicant prior to accepting her guilty plea, during which he explained the sentencing range for each of the charges Applicant was facing; Applicant indicated she understood. (Tr. 7–8).

The Court finds Counsel's testimony credible as to this issue, and further finds that the record refutes Applicant's claim that she did not understand the sentencing ranges for the charges

she was pleading to. Accordingly, the Court finds Applicant has not met her burden of proving either deficiency or prejudice as to this allegation. Therefore, this allegation is denied and dismissed with prejudice.

Allegation 2: Failure to adequately meet and discuss case with Applicant

In her PCR application, Applicant argues Counsel only met with her twice and failed to discuss her questions and concerns about the case. The Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified Counsel met with her “no more than ten” times—a far cry from the two times she claimed in her PCR application. She claimed Counsel failed to pursue a potential defense related to a man named “Adams,” who purportedly was driving Applicant’s car at the time of the crash but then got out of the driver’s seat and ran away. She further claimed that her handbag was found in Mr. Adams’ possession after the wreck, which would have established a connection between her and Adams and, theoretically, could have supported an argument that he was driving her car when it crashed. However, she admitted that there was a witness who could put her in the driver’s seat. Counsel testified that, when he talked to Applicant, her initial story was that she had not used drugs for at least 12 hours at the time of the crash; she did not claim there was another driver until seven or eight months after Counsel began representing her, and Counsel and his investigator were surprised when Applicant mentioned it. Counsel also testified there were problems with Applicant’s claim that Adams was driving the car: the fire department had to extricate Applicant from the car, and Applicant told the doctor at the hospital that she was the driver. Counsel testified he could not recall anything about Applicant’s handbag being found in Adams’ possession. The Court finds Counsel’s testimony credible on this point; therefore, Applicant has failed to prove Counsel’s performance fell below a reasonable standard of reasonableness in this respect.

Applicant also claims Counsel never went over the discovery with her. Counsel, however, credibly testified that he went over all the relevant discovery with Applicant. In addition, 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*, 422 S.C. 174, 810 S.E.2d 836. 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)). Here, Applicant did not present any new evidence or defenses that purportedly could have been discovered by further review of the discovery; therefore, the Court finds she has failed to prove either deficiency or prejudice as to this claim.

Finally, Applicant complains that the solicitor reported that her toxicology report indicated alcohol was found in her system, but she claims an officer said there was no alcohol in her system. She also complains that no toxicology analysis was done on the victim. However, she admits she never asked Counsel about these issues because she assumed he wouldn't listen to her. The Court fails to see how Counsel could have addressed concerns that Applicant concededly never raised to him. Therefore, the Court finds Applicant has failed to prove Counsel was deficient. In addition, the transcript of Applicant's plea reflects that the solicitor described the amount of alcohol found in Applicant's system—a BAC of 0.013—as negligible. (Tr. 12–13). Counsel testified at the evidentiary hearing that the trace amount of alcohol found in Applicant's system was not

important; what mattered was the high level of methamphetamine in Applicant's system. Counsel testified that the level of methamphetamine detected would certainly have resulted in impaired driving. Counsel also testified that he believed there had been an autopsy and toxicology report done on the victims, although he could not recall what they showed. However, he testified that any alleged impairment of the victim would not have mattered because the accident reconstruction determined Applicant's car had caused the accident by crossing the center line into the opposite lane of traffic. Based on Counsel's credible testimony, as well as the transcript of the plea proceeding, the Court finds Applicant was not prejudiced by Counsel's conduct.

For all of these reasons, the Court finds Applicant has not met her burden of proving ineffective assistance of Counsel as to this allegation. Therefore, this allegation is denied and dismissed with prejudice.

Allegation 3: Failure to challenge voluntariness of blood draw

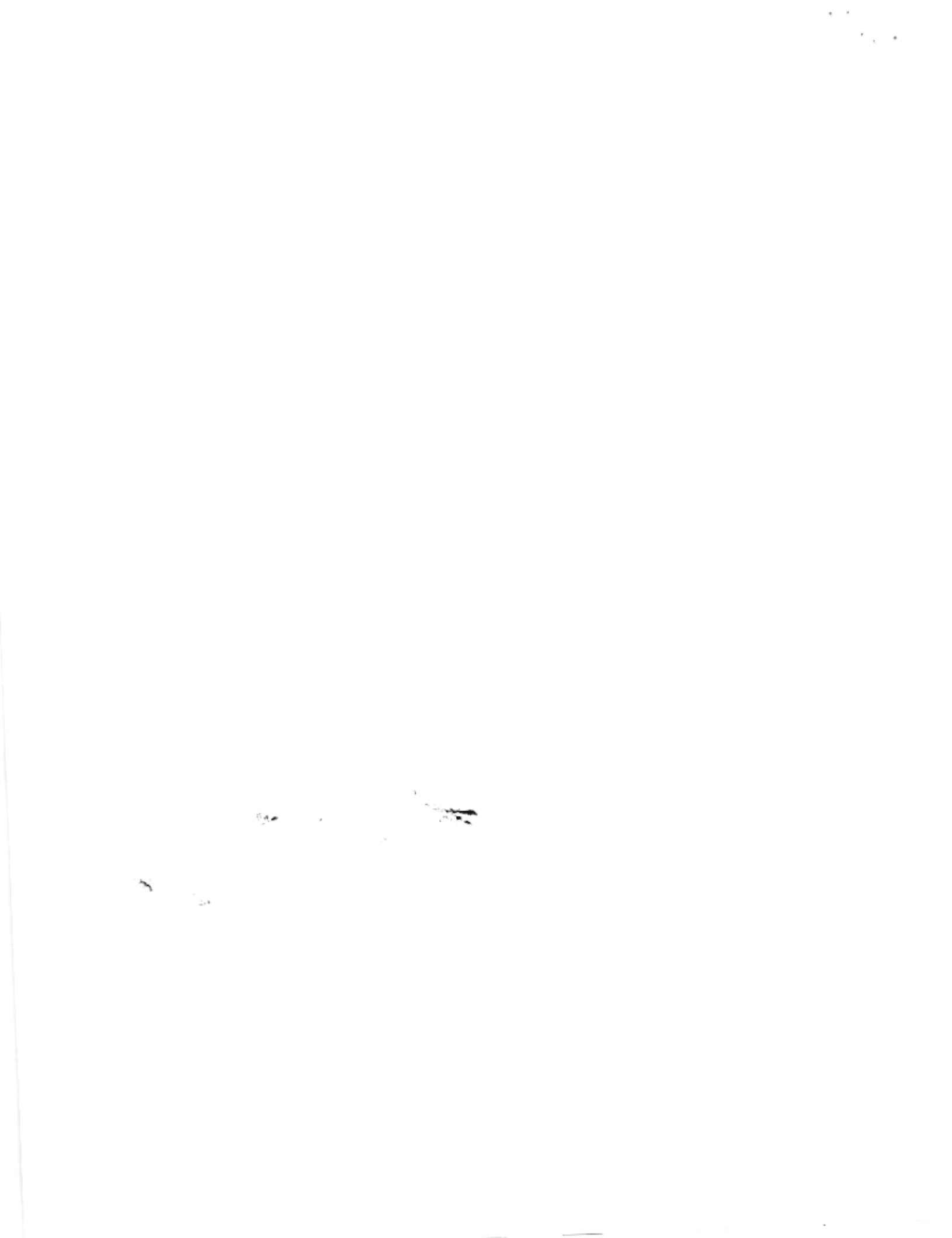
Applicant argues Counsel failed to challenge the voluntariness of Applicant's blood draw, despite her telling him that she had not consented to it. The Court finds this allegation is without merit. During the plea hearing, Solicitor Keeney stated Applicant was read her implied consent rights and signed a consent form agreeing to give blood. (Tr. 13). Immediately thereafter, Applicant admitted the facts alleged by the State as to each of her charges. (Tr. 14–15). Counsel testified he likely would have attempted to suppress the toxicology report if Applicant had insisted on going to trial; however, he did not challenge the voluntariness of the blood draw because Applicant had decided to plead guilty. The Court finds Applicant's self-serving claim that she never signed the consent form, contrary to the record of the plea proceeding, is not credible. Therefore, the Court finds Applicant has not met her burden of proving, by a preponderance of the

evidence, either deficiency or prejudice as to this allegation. This allegation is, accordingly, denied and dismissed with prejudice.

Allegation 4: Failure to explain appeal process

In her PCR application, Applicant argues Counsel failed to explain the process for filing an appeal. Counsel has a constitutionally imposed duty to consult with a defendant about an appeal *only* when there is reason to think (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for an appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). A highly relevant factor in this analysis is whether the conviction follows a guilty plea, because a guilty plea reduces the scope of appealable issues and indicates that the defendant seeks an end to further judicial proceedings. *Id.*

Applicant did not introduce any evidence or testimony at the evidentiary hearing to substantiate her claim that Counsel failed to consult with her about an appeal. Therefore, the Court finds this allegation has been abandoned. Accordingly, this allegation is denied and dismissed with prejudice.



III. CONCLUSION

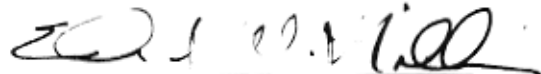
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14 day of February, 2024.


EDWARD W. MILLER
Presiding Judge
Eighth Judicial Circuit

, South Carolina