STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Case No. 2020-CP-46-00499

Jefferson Quinde Quishpi, ...Petitioner,

v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Petitioner, Jefferson Quinde Quishpi, appeals the order of the Honorable J. Mark Hayes, II, dated March 25, 2024, and filed April 3, 2024. Petitioner received written notice of entry of this order on April 10, 2024.

4/15, 2024

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STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Jefferson Quinde Quishpi, SCDC #381901, Applicant, v. State of South Carolina, Respondent.	Case No. 2020-CP-46-00499 **ORDER VACATING POSSESSION OF A WEAPON SENTENCE AND DISMISSING REMAINING PCR APPLICATION**

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Jefferson Quinde Quishpi ("Applicant") on February 7, 2020. On February 29, 2024, a hearing into the matter was convened before the Honorable J. Mark Hayes, II, at the Moss Justice Center. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant and Christopher A. Wellborn ("Counsel"). Applicant testified through a Spanish interpreter, who was sworn in at the outset of the hearing.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant has met his burden of proof as to the claim related to the possession of a weapon during the commission of a violent crime sentence. This Court further finds Applicant did not meet his burden of proof for all other PCR claims. For the reasons discussed below, this Court grants relief in-part to vacate Applicant's sentence for possession of a weapon during the commission of a violent crime, denies relief on all other claims, and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its March 2018 term, the York County Grand Jury indicted Applicant for murder (2018-GS-46-01924, Count 1) and possession of a weapon during the commission of a violent crime (2018-GS-46-01924, Count 2). Applicant was represented by Christopher A. Wellborn, Esquire. Solicitor Kevin S. Brackett, Deputy Solicitor Walter W. Thompson, and Senior Solicitor Jenny Desch of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On December 17, 2019, Applicant appeared before the Honorable Daniel D. Hall and pleaded guilty but mentally ill to murder and possession of a weapon during the commission of a violent crime. Prior to the plea proceedings, the Honorable John Hayes ordered Applicant to complete a competency evaluation with the South Carolina Department of Mental Health. (Gp. Tr. p. 5). Two medical experts concurred that at the time of the offense Applicant was suffering from a mental disease—reporting he experienced "PTSD auditory hallucinations"—but nonetheless met the standards for competency and appeared to have the ability to think of and carry out his plan. Gp. Tr. p. 8—10). The Honorable Daniel D. Hall conducted a *Blair* hearing shortly before the plea was entered to confirm Applicant was competent to stand trial and criminally responsible at the time of these offenses. (Gp. Tr. pp. 14—36).

On December 17, 2019, Judge Hall sentenced Applicant to life imprisonment for murder and five years' imprisonment for possession of a weapon during the commission of a violent crime, with those sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

FACTUAL SUMMARY

The underlying facts of the crime for which Applicant is incarcerated were articulated by the State during the plea proceedings as follows:

> In June 2017 and on September 11, 2017, law enforcement responded to a domestic violence calls after Applicant punched and strangled his live-in girlfriend (Victim). (Gp. Tr. 43, 45). After the first incident, Applicant was charged with domestic violence, 2nd degree on bond with a no-contact order. (Gp. Tr. 43-44). After the second incident, the Court revoked Applicant's bond, but Applicant did not appear to his last court date on September 18. (Gp. Tr. 47-48). A couple days after both assault Victim called law enforcement to drop the charges. (Gp. Tr. 44, 46).
>
> On September 18, 2017, Applicant text messaged Victim's nine-year old son for their whereabouts before concealing his car down the street and hiding in Victim's new residence. (Gp. Tr. 50). Upon Victim and her three young children's return, Applicant locked Victim in a bedroom and stabbed her several times. (Gp. Tr. 50). When police arrive they witnessed Applicant in a locked bedroom stabbing himself. He refused to put down the knife until he was tased. (Gp. Tr. 49). Officers then spotted Victim laying on her back against a wall. She was unresponsive and later pronounced dead at the scene due to severe blood loss from twenty stab wounds. (Gp. Tr. 49, 53).

CURRENT APPLICATION

Applicant timely commenced this PCR application on February 7, 2020. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
    a. "My lawyer never filed for the appeal."
    b. "My sentencing sheet says without negotiations."

On June 21, 2022, Applicant 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. Based on plea counsel's ineffective advice as described in (a) above, Applicant believed that murder was a parole eligible offense. 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. Based on plea counsel's ineffective advice as described in (a) and (b) above, Applicant believed that he had no choice but to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea. 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.
d. Plea counsel did not adequately explain to Applicant the ramifications (and lack of any benefit) of a plea of Guilty but Mentally Ill. 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.
e. Plea counsel was ineffective for failing to object to the Judge sentencing Applicant on the charge of Possession of a Weapon During the Commission of a Violent Crime after imposing a life sentence without parole on the violent crime of Murder, as prohibited by S.C. Code Section 16-23-490(A) and for not filing an appeal of this illegal sentence.

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 fo 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).

Applicant went forward only on the allegations raised in his amended application.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); 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 687; *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 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-

probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he 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 he or she should be allowed to depart from the truth of his 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)).

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 has met his burden of proof as to the claim regarding his possession of a weapon during the commission of a violent crime sentence and hereby vacates the sentence for possession of a weapon during the commission of a violent crime. This Court finds Applicant's remaining allegations of ineffective assistance of counsel are 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.

Counsel Failed to Adequately Discuss the Case with Applicant and Counsel Erroneously Misadvised Applicant Regarding Potential Sentence[1]

Applicant contends 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. Because of this, Applicant believed murder was a parole eligible offense and he would only be sentenced to 45 years if he pleaded guilty. This Court disagrees and finds counsel thoroughly reviewed all aspects of Applicant's case, including discovery, the charges, and the potential sentence he faced. Counsel properly informed Applicant of the consequences of the guilty plea.

1. PCR Testimony

Applicant testified he is currently serving a life sentence in the South Carolina Department

[1] Allegations 1(a) and (b) of the amended application are addressed in this section.

of Corrections. Applicant testified he met with Counsel four times. Applicant avers Counsel hardly reviewed discovery or the evidence with him. Applicant testified Counsel attempted to negotiate a plea deal for 65 years. Applicant testified that, based on Counsel's advice, he would be sentenced to 45 years if he pleaded guilty. Applicant testified the plea Judge informed him he could be sentenced to a maximum of life without parole.

Counsel testified he met with Applicant multiple times. During these meetings, Counsel explained they reviewed the allegations, incident reports, and discovery. Counsel testified there was never a plea offer of 45 years and he never advised Applicant of such. Counsel testified it was always Applicant's understanding that he faced a potential sentence of life without parole.

2. Discussion

This Court finds Counsel was not ineffective in consulting or reviewing the case with Applicant. At the time of his plea, Applicant asserted that he had enough time to speak with Counsel, that Counsel explained the law and evidence the State has, and that he had no complaints about the way Counsel represented him. (Gp. Tr. p. 39–40).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . ., a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014)). Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Id. at 137–38, 654 S.E.2d at 874; see also *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable

barrier in any subsequent collateral proceedings").

Applicant suggests a failure to adequately meet with him prior to the plea. This Court finds Counsel's credible testimony, and the record of Applicant's guilty plea, demonstrates Counsel met with Applicant a sufficient number of times. There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "'[B]revity of consultation time between a defendant and his counsel, alone,' 'cannot support a claim of ineffective assistance of counsel.'" *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by itself establish that counsel's performance was inadequate."); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result"). Counsel testified he met with Applicant multiple times, which is corroborated by the exhaustive *Blair* hearing that was held prior to the entry of the plea. Counsel's use of Applicant's background and records from Ecuador could only have been possible through consultation with Applicant. Thus, this Court finds Applicant has failed to prove Applicant was deficient in consulting with him

regarding his case prior to the plea.

Applicant further fails to specify what Counsel did not disclose to him from materials provided in discovery, or what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding the contents of his discovery. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief). Thus, Applicant has failed to meet his burden establishing prejudice as to this allegation.

This Court further finds Counsel was not ineffective in advising Applicant of the consequences of his guilty plea. Specifically, this Court finds Counsel properly advised Applicant he was facing a maximum sentence of life without parole by pleading guilty. This Court finds Counsel never informed Applicant that murder is a parole eligible offense, nor that Applicant would be sentenced to 45 years in exchange for his guilty plea.

Counsel was clear the decision to reject the State's offer of 50 years was ultimately Applicant's own decision. This Court finds Applicant was aware he was pleading guilty pursuant to no recommendations or negotiations, and he faced a possible sentence of life without parole. Although they were hoping for a lighter sentence by pleading guilty, this Court finds Counsel made no assurances to Applicant that this would result in a 45-year sentence.

Based on Counsel's credible testimony and the record of the guilty plea hearing, this Court finds Counsel did not inform Applicant he would be sentenced to 45 years by pleading guilty but mentally ill. This Court finds Counsel properly advised Applicant he was facing a potential sentence of life without parole by pleading guilty. Thus, Counsel was not deficient in advising

Applicant of the consequences of his guilty plea.

Even supposing Counsel affirmatively misadvised Applicant regarding parole eligibility or sentencing, any misadvise on the part of Counsel was cured by information conveyed at the guilty plea hearing. "Defendant's knowing and voluntary waiver of statutory or constitutional right must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both". *State v. Ray*, 310 S.C. 431, 427 S.E.2d 171 (1993). Any possible misconceptions regarding sentencing on a defendant's part can be "cured by the colloquy during the actual guilty plea hearing." *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). "In considering an allegation on post-conviction relief (PCR) that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." *Stalk v. State*, 375 S.C. 289, 652 S.E.2d 402 (Ct. App. 2007), *aff'd as modified*, 383 S.C. 559, 681 S.E.2d 592 (2009) (citing *Wolfe*, 326 S.C. at 165).

At the outset of the guilty plea hearing, the Solicitor informed the plea court this is a straight up plea. (GP. Tr. p. 4). The Court later engaged in the following colloquy with Applicant:

> The Court: . . . the charge of murder carries a mandatory sentence of at least thirty years in prison and a potential the Court can give you a *life without parole* sentence. Do you understand that? (Emphasis added)
>
> Mr. Quishpi: Yes, you Honor.

(Gp. Tr. p. 37).

Applicant alleges he only answered the trial judge affirmatively upon alleged advice of counsel; however, this does not support the grant of post-conviction relief.[2] *See Moorehead v.*

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[2] Allegation 1(c) of the amended application.

State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (citing *Wolfe*, 326 S.C. 158) ("Further, respondent's explanation that he answered the trial judge affirmatively on counsel's alleged advice that the questions were meaningless does not support the grant of PCR"). Therefore, any misconception Applicant may have had regarding his potential sentence or parole eligibility was cured by information conveyed at the guilty plea hearing. Thus, Applicant suffered no prejudice by any alleged deficiency.

Although Applicant was hoping for a lighter sentence by pleading guilty, "wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). Applicant was aware of the charges and consequences of his plea as evidenced from the record of the guilty plea hearing. Furthermore, the plea court thoroughly explained to Applicant the Constitutional rights he would be waiving by pleading guilty. (Gp. Tr. pp. 35–41). Thus, this Court finds Applicant's guilty plea was knowing, voluntary, and intelligent.

Accordingly, this Court finds Applicant's allegation counsel was ineffective for misadvising Applicant as to his parole eligibility and sentence are **DENIED**.

Counsel Failed to Inform Applicant of the Ramifications of Pleading Guilty But Mentally Ill[3]

Applicant next contends Counsel was ineffective for failing to adequately explain to Applicant the ramifications (and lack of any benefit) of a plea of Guilty but Mentally Ill. Applicant further alleges that 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. This Court disagrees and

[3] Allegation 1(d) of the amended application.

finds the record from Applicant's guilty plea and Counsel's credible testimony refutes this allegation.

1. PCR Testimony

Counsel testified that an initial mental health evaluation was conducted by Dr. Colby Sutton who found Applicant competent to stand trial. After Applicant informed Counsel he was hearing voices, Counsel explained he retained the services of Adranna Flores – a Spanish speaking psychologist – to interview family members and track down Applicant's records from Ecuador. Counsel testified Dr. Flores conducted a full mental evaluation of Applicant, who also found Applicant competent to stand trial. Counsel pointed out this put an end to any potential insanity defense.

2. Discussion

This Court finds Counsel properly informed Applicant of the ramifications of pleading guilty but mentally ill. Counsel credibly testified he explained to Applicant that pleading guilty but mentally ill conferred no legal benefit as to sentencing. Counsel explained that due to the horrific facts of this case and the strength of the State's evidence, he advised Applicant to plead guilty but mentally ill in an attempt to convince the plea court a lesser sentence was warranted. Despite the worthy efforts of Counsel, the plea judge sentenced Applicant to life without parole.

This Court finds Counsel's explanation he advised Applicant to plead guilty but mentally ill for mitigation purposes was a valid strategy in this case. This Court reiterates that the tragic nature of the case left Counsel with few, if any, strategic alternatives. Therefore, Applicant has 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*). "[W]hen Counsel

articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). The underlying facts of this case are both significant and tragic, which presented a difficult case from the defense position. Although an offer of 50 years was presented to Applicant, Counsel explained this was essentially a life sentence and advised Applicant to plead straight up and argue in mitigation that Applicant was mentally ill at the time of the crime. This Court again finds this strategy valid.

For these reasons, this Court finds counsel was not deficient in advising Applicant of the ramifications of pleading guilty but mentally ill. Additionally, Applicant has not presented sufficient evidence he would have proceeded to a jury trial had he been advised differently. Accordingly, this Court finds Applicant's allegation Counsel was ineffective for failing to inform Applicant of the ramifications of pleading guilty but mentally ill is **DENIED.**

Counsel Failed to Object to Possession of a Weapon Sentence[4]

This Court finds Applicant has shown he is entitled to relief for Counsel's failure to object to the Court's five-year sentence for possession of a weapon during the commission of a violent crime. The five-year sentence for possession of a weapon during the commission of a violent crime "does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime." S.C. Code Ann. § 16-23-490(A) (2010). Where a defendant has been sentenced to life without parole for murder, the "five-year sentence for possession of a weapon during the commission of a violent crime [is] inapplicable." *State v. Palmer*, 415 S.C. 502, 783 S.E.2d 823 (Ct. App. 2016). Here, Counsel failed to object to the Court's five-year sentence for possession of

[4] Allegation 1(e) of the amended application.

a weapon during the commission of a violent crime. At the evidentiary hearing, the State conceded this was in error. Accordingly, this Court finds Applicant has met his burden on this claim, and his five-year *sentence* for possession of a weapon during the commission of a violent crime is hereby vacated pursuant to Section 16-23-490 of the South Carolina Code. Notwithstanding, this Court does not vacate Applicant's *conviction* for possession of a weapon.

[SIGNATURE PAGE FOLLOWS]

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has met his burden on the claim related to his possession of a weapon sentence and hereby vacates Applicant's sentence for possession of a weapon. Notwithstanding, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief as to his remaining claims. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, this Court 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. Applicant's sentence for possession of a weapon is vacated; and
2. The remaining PCR application claims be denied and dismissed with prejudice; and
3. Applicant is to remain in the custody of the State.

AND IT IS SO ORDERED this 25th day of March, 2024.

THE HONORABLE J. MARK HAYES, II
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina