

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Aug 05 2024**

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable George M. McFaddin Jr.

Case No. 2019-CP-21-3035

Justin M. Pringle #379795,

Petitioner,


v.

State of South Carolina,

Respondent.

**NOTICE OF APPEAL**

Petitioner Justin M. Pringle appeals the Honorable George M. McFaddin's Order Denying his Application for Post-Conviction Relief filed on **July 23, 2024**.

  
Dayne C. Phillips, Esq.  
1614 Taylor Street, Suite D.  
Columbia, SC 29201

**ATTORNEY FOR PETITIONER**

**August 2, 2024**

**Other Counsel of Record:**

D. Russell Barlow II, Assistant Attorney General  
South Carolina Attorney General's Office  
PO Box 11549  
Columbia, SC 29211

**cc:**

Doris Poulos O'Hara, Florence County Clerk of Court

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 Justin M. Pringle, #379795, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE TWELFTH JUDICIAL CIRCUIT  
 CASE NO. 2019-CP-21-3035

**ORDER OF DISMISSAL  
 WITH PREJUDICE**

2024 JUL 23 PM 3:10  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

Presiding Judge: Hon. George M. McFaddin, Jr.  
 Applicant's Attorney: Ola A. Johnson, Esq.  
 Respondent's Attorney: D. Russell Barlow, II, Esq.  
 Plea Counsel: Karen E. Parrott, Esq.  
 Date of Hearing: June 15, 2022  
 Court Reporter: Krystal J. Smith

The matter before this Court is an action for post-conviction relief (PCR) commenced by Justin M. Pringle (Applicant) on October 28, 2019, asserting various allegations of ineffective assistance of counsel. Respondent, the State of South Carolina, made its Return filed on January 21, 2020, requesting an evidentiary hearing. Applicant filed an amended PCR application on August 27, 2020.

An evidentiary hearing was convened before the Honorable George M. McFaddin, Jr., on June 15, 2022, at the Florence County Courthouse. Applicant was present and represented by Ola A. Johnson, Esquire (PCR Counsel). D. Russell Barlow, II, Esquire, represented Respondent. At the hearing, Applicant proceeded on the claims in his original and amended application.<sup>1</sup> In

<sup>1</sup> Applicant indicated he was not proceeding on number ten from the amended application.

support of these claims, Applicant testified on his own behalf and presented testimony from Curtis Nelson<sup>2</sup> (Nelson). Respondent presented testimony from Karen Parrott (Plea Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

### PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In November 2018, the Florence County Grand Jury indicted Applicant for Murder, Armed Robbery, Burglary—1<sup>st</sup> Degree, and Criminal Conspiracy (2018-GS-21-2117). Applicant was represented by Assistant Public Defender Karen Parrott. Assistant Solicitor J. Ryan White prosecuted the case.

On April 12, 2019, Applicant pleaded guilty under Alford<sup>3</sup> to the lesser-included offense of Voluntary Manslaughter and Armed Robbery before the Honorable Thomas A. Russo. Applicant pleaded guilty with negotiated concurrent sentences of thirty (30) years for each charge. Judge Russo accepted Applicant's guilty plea and sentenced him as negotiated.

Plea Counsel filed a timely Notice of Appeal, along with a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on April 16, 2019. The Court of Appeals dismissed the appeal by Order filed on July 31, 2019, for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned to the circuit court on August 16, 2019.

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<sup>2</sup> Curtis Nelson was a co-defendant in this case.

<sup>3</sup> North Carolina v. Alford, 400 U.S. 25 (1970).



### FACTS GIVING RISE TO THE CONVICTION<sup>4</sup>

The crime Applicant was convicted of occurred on Christmas Eve in 2017. Applicant and four co-defendants loaded up in a vehicle and drove to Johnny Cameron's (Victim) residence in Lake City with the intent to rob Victim. (Plea Tr. pp. 13–14). When they arrived at Victim's home, two co-defendants remained in the vehicle, while Applicant and the two other co-defendants went and knocked on Victim's door. (Plea Tr. p. 14). When Victim answered the door, he and a co-defendant got into a struggle. Id. During the struggle, gunshots were fired, and Victim was fatally hit three times. Id.

Investigator Tilton with the Florence County Sheriff's Department investigated the case. Investigator Tilton was able to identify and detain three of Applicant's co-defendants. Id. All three co-defendants identified Applicant as the shooter. Id. The co-defendants indicated that all three men who got out of the car at Victim's home were armed with handguns. Id. Applicant was armed with a .40 caliber handgun, and the other two co-defendants were armed with a .380 caliber handgun and a nine-millimeter handgun. Id. In this case, the pathologist would have testified that all three shots that killed the Victim were consistent with a .40 caliber handgun. Id.

On that Christmas Eve night after Victim was murdered, Applicant did not return to his mother's home, where he was living at the time. (Plea Tr. pp. 14–15). Law enforcement began searching for Applicant but was unable to locate him. (Plea Tr. p. 15). Law enforcement went to speak with Applicant's mother, and she called Applicant in their presence on speakerphone. Id. In that phone call, Applicant claimed to be at the beach, informed his mother that he was not returning, and hung up on her. Id. Ultimately, the marshal's task force located and arrested Applicant in Ohio, where he was extradited back to South Carolina. Id.

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<sup>4</sup> This summary is taken from the plea transcript with slight modifications.

### CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective assistance of counsel:
  - a. Involuntary guilty plea;
  - b. Failure to investigate; and
  - c. Failure to move to quash the indictment.

On August 27, 2020, Applicant, through PCR Counsel, filed amendments to his application for post-conviction relief and alleged the following:

1. Prior to the guilty plea, Applicant's counsel failed to explain the details of the Applicant's guilty plea and sentencing to applicant.
2. Applicant's counsel failed to provide a copy of the state's evidence to the Applicant.
3. Applicant's counsel failed to meet with applicant a sufficient number of times to properly review the evidence.
4. Applicant's counsel failed to ensure that the sentencing sheets were properly filled out to indicate the status of the charges.
5. Applicant's counsel failed to interview co-defendants Curtis Nelson and Anthony Hudson regarding these charges.
6. Applicant's counsel failed to interview Amos Cameron or Barbara McGill, who were present during the incident.
7. ~~Applicant's counsel failed to interview Johnny Cameron, who provided information to law enforcement.~~<sup>5</sup>
8. Applicant's counsel failed to interview Sgt. Josie Royal and inmate William Dilmer and Quant Bryant regarding a letter related to co-defendant Curtis Nelson.
9. Applicant's counsel failed to interview inmate Carl McDowell regarding a letter reported as being from applicant.
10. ~~Applicant's counsel failed to retain a ballistics expert or a DNA expert to review the evidence in this case.~~<sup>6</sup>
11. Applicant's counsel coerced the applicant into entering the guilty plea by stating to the applicant that he could not "win a trial."

Applicant proceeded on all of the amended allegation claims at his evidentiary hearing.

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<sup>5</sup> Allegation number seven was stricken from the record as it was a mistake. Johnny Cameron was the murdered Victim in this case, so Plea Counsel could not be deficient for not interviewing the decedent. See Plea Tr. pp. 15–16.

<sup>6</sup> As noted *supra* fn. 1, Applicant withdrew allegation number ten.

SUMMARY OF RELEVANT PCR EVIDENTIARY TESTIMONY

*APPLICANT'S TESTIMONY*

On direct examination, Applicant testified that Plea Counsel never discussed the details of his plea and the sentencing that he would face. (PCR Tr. pp. 6–7). Applicant testified that Plea Counsel only met with him three or four times, and she provided him with his discovery. (PCR Tr. p. 7). Applicant testified that he felt Plea Counsel did not meet with him a sufficient number of times. Id. Applicant testified that he was confused and had a question about his sentencing sheets not being "filled out properly," but Plea Counsel did not answer his question. (PCR Tr. pp. 7–8).

Applicant testified that Plea Counsel never interviewed or justified why she did not interview co-defendants Curtis Nelson and Anthony Hudson. (PCR Tr. p. 8). Applicant testified that Plea Counsel did not hire a private investigator. Id. Applicant testified that Plea Counsel never told him anything about interviewing Amos Cameron, Barbara McGill, or Johnnie Cameron. Id. Applicant testified that Plea Counsel never told him anything about interviewing Sgt. Josie Boyle, inmate William Dilmer, or Quant Bryant regarding letters being seized and used by the State. (PCR Tr. p. 9). Applicant testified that Plea Counsel never told him anything about interviewing Carl McDowell regarding letters attributed to Applicant. Id.

Applicant testified that Plea Counsel told him he would lose at trial, and when someone says that to you, then they are not "trying to fight for you." Id. Applicant testified that he wanted Plea Counsel to interview his co-defendants. Id.

On cross-examination, Applicant testified that he met with Plea Counsel three or four times. (PCR Tr. p. 11). Applicant testified that he recalled reviewing discovery with Plea Counsel. Id. Applicant testified that he and Plea Counsel did not review all the evidence the State had against him, just the evidence she had when they reviewed it. (PCR Tr. p. 12). Applicant testified

that he recalled Plea Counsel discussed the elements of the crimes he was charged. Id. When questioned whether Plea Counsel discussed possible defenses with Applicant, he responded that his "defense was going to trial." Id. Applicant testified that Plea Counsel "was supposed to have been making a plan, but she ain't never came back. She was just, like, you need to take this plea right here." Id.

Applicant testified that his sentencing sheets were not filled out correctly. Id. Applicant testified that he could not remember how that prejudiced him because he had not seen the sentencing sheets in a while. (PCR Tr. pp. 12–13). Applicant was shown Defendant's Exhibit No. 1, his sentencing sheets, and he testified that the sentencing sheets he had in his possession were different because they did not have "checks in the boxes or none of that." (PCR Tr. p. 13). Applicant testified that he did not have the sentencing sheets he was referring to in court with him. Id.

Applicant testified that he asked Plea Counsel to interview his four co-defendants and that it was her job to have interviewed them. (PCR Tr. pp. 13–14). Applicant testified that he did not have co-defendants in his case but agreed that four people were charged with him out of the same event. Id. Applicant was questioned as to whether he asked Plea Counsel to interview all the people stated in his amended application, to which he answered in the affirmative. (PCR Tr. pp. 13–16).

Applicant testified that it was his signature on the affidavit of defendant for guilty plea that Plea Counsel reviewed with him. (PCR Tr. p. 18; see also Def. Ex. No. 2). Applicant testified that he did not remember telling the plea judge he was satisfied with Plea Counsel's representation. (PCR Tr. p. 18). Applicant testified that he did not remember telling the plea judge no one was



forcing him to plead guilty. Id. Applicant testified that he did not remember telling the plea judge he was pleading guilty of his own free will. (PCR Tr. p. 19).

On redirect examination, the following colloquy occurred while Applicant reviewed Defense Exhibit. No. 1:

- Q: Just, Mr. Pringle, going back to the sentencing sheets that were marked Defense Exhibit 1, do you recall reviewing these boxes about whether or not the charges indicted or whether or not it's a waiver of presentment and being confused about that on those sheets because they're not marked? Do you recall that?
- A: Yes, sir.
- Q: Okay. So you reviewed the boxes on the sentencing sheets, and are any of them marked?
- A: No, sir.
- Q: So it didn't tell you whether or not it was as indicted or whether or not it was a waiver of presentment?
- A: Yes, sir.
- Q: And were you confused by that?
- A: Yes, sir.
- Q: Okay. And did you ask your attorney to explain that to you?
- A: Yes, sir.
- Q: Did she fail to do that?
- A: Yes, sir.

(PCR Tr. pp. 19–20).

#### *CURTIS NELSON'S TESTIMONY*

On direct examination, Curtis Nelson (Curtis), a co-defendant, testified that he was present when Victim was murdered, and Applicant was not present. (PCR Tr. p. 21). Curtis testified that Applicant was not involved in Victim's murder. (PCR Tr. pp. 21–22). Curtis testified that he would have shared that information with Plea Counsel if she had asked him. (PCR Tr. p. 21). Curtis testified that Plea Counsel never attempted to contact him. Id.

On cross-examination, Curtis testified that he was not one of the initial three co-defendants law enforcement picked up; rather, he was picked up in a home invasion in Darlington County.



(PCR Tr. p. 23). Curtis testified that he never gave a statement to anyone that implicated Applicant in the murder of Victim. (PCR Tr. pp. 23–24).

*PLEA COUNSEL'S TESTIMONY*

On direct examination, Plea Counsel testified that she was appointed in this case. (PCR Tr. p. 25). Plea Counsel testified that Applicant was arrested in February of 2018, and her notes indicate their first phone call was on March 6<sup>th</sup>, so she was appointed within a month after Applicant's arrest. Id. Plea Counsel testified that she represented Applicant for a little over one year. Id. Plea Counsel testified that she could not give a definitive number on the times she met with Applicant, but she had "eight pages worth of notes from [her] telephone calls with him, meetings with him, sending him discovery, and working on his behalf on this case." Id.

Plea Counsel testified that Applicant's version of the facts was as follows:

[Applicant] told me that he went in the [Victim's] house, so he was guilty of the burglary, but he denied being the shooter. The State's contention the whole way along, as well as his co-defendants, was that he was a -- he was the shooter, but he denied that he was the shooter. So that was the reason why it was also in his best interest to consider possibly the Alford plea, because while he would be guilty, he would be comfortable and the Court would be comfortable accepting possibly the burglary plea for a guilty, which would have been burglary first, which carries 15 years to life. Given his contention and what he was telling me, it wouldn't have been appropriate for me to have put him forward for a straight guilty plea on the murder since he said he did not do that.

(PCR Tr. pp. 27–8). Plea Counsel testified that Applicant admitted that he was present the night of Victim's murder. (Plea Tr. p. 28).

Plea Counsel testified that she reviewed discovery with Applicant multiple times. Id. Plea Counsel testified that Applicant wanted a YOA sentence on voluntary manslaughter, and she explained that it was impossible. Id. Plea Counsel testified that Applicant inquired if he could get non-violent voluntary manslaughter, and she explained that there was no such thing. Id. Plea

Counsel testified that if Applicant got voluntary manslaughter, the benefit would be that it would be 85% and not day for day like murder. Id. Plea Counsel testified that she explained to Applicant that because a man was killed during the burglary, he could get life on the charge. (PCR Tr. p. 29). Plea Counsel testified that their defense at trial would be a mere presence, but the counter to that is the hand of one is the hand of all. Id. Plea Counsel testified that Applicant may not have understood everything, but she went over everything multiple times with him, and if Applicant had a question, she was sure he would have asked her. (PCR Tr. p. 30).

Plea Counsel testified that the sentencing sheets entered as Defense Exhibit No. 1 were indeed Applicant's sentencing sheets. (PCR Tr. pp. 30–31). Plea Counsel was asked if the boxes not being checked prejudiced Applicant, and she replied, "No, because I had talked with him about the fact that this voluntary manslaughter is a lesser included. The armed robbery is as indicted. And I also did the guilty plea affidavit with him that goes into detail, including at one about the fact that something is a lesser-included." (PCR Tr. p. 31).

Plea Counsel testified that she did not recall Applicant explicitly asking her to interview all of the co-defendants. (PCR Tr. pp. 31–32). Plea Counsel testified that she spoke to Curtis Nelson's attorney, Ralph Wilson Sr., and Charlie Roberson's attorney, Marshall Weaver. (PCR Tr. p. 32). Plea Counsel testified that she received information through law enforcement, preliminary hearings, and bond hearings on the positions of the three co-defendants cooperating with law enforcement. Id. Plea Counsel testified that because the three co-defendants were cooperating with law enforcement, she already knew their positions and that they were all pointing at Applicant as the person who pulled the trigger. Id.

Plea Counsel testified that there was no reason for her to interview Amos Cameron because he was very angry and upset and made that perfectly clear at his bond hearing. (PCR Tr. pp. 32–

33). Plea Counsel testified that nothing would have been gained by talking to Amos Cameron because he only wanted to see Applicant in a body bag. (PCR Tr. p. 33). Plea Counsel testified that Applicant did not ask her to interview Barbara McGill or Sgt. Josie Boyle. Id. Plea Counsel testified that Applicant did not ask her to interview William Dilmer, and Mr. Dilmer was someone who was providing law enforcement with kites Applicant was sending to Charlie Roberson telling him to change his story. (PCR Tr. pp. 33–34). Plea Counsel testified Applicant did not ask her to interview Quant Bryant. (PCR Tr. p. 34). Plea Counsel testified that Applicant did not ask her to interview Carl McDowell, and Mr. McDowell was the first to cooperate with law enforcement. Id.

Plea Counsel was asked if she told Applicant he could not win at trial, and she replied with the following:

I did tell him it would be extremely hard. I think I did tell him that, yeah, I didn't believe that he could win at trial because of all of the charges that were against him. I also told him that one of the things that he needed to consider was that I knew his name from a previous case from 2014 where he had been involved in robbing a drug dealer and that drug dealer had been shot, and it was a group of people that all went. And I represented one of his co-defendant, Michael Woods, in that case. He knew exactly who I was talking about. And he and I talked about the fact that in this case, they the State was not considering him to be the mastermind of this situation. Even though they considered him the shooter, they didn't consider him to be the mastermind. But if they put together that he had been involved in an exact situation like this just a couple of years previous, that he had just gotten out of jail at DJJ doing a bid, then they would consider him possibly as being more of the mastermind of this situation, and I really didn't want that to be something that would come out. Now, would it have possibly been used in court as part of the trial? No, it would have been a prior bad act. We would have certainly tried to keep it out. But did it influence or could it have influenced negotiations? Yes.

(PCR Tr. pp. 34–35). Plea Counsel testified that she was adequately prepared to defend Applicant if they had gone to trial. (PCR Tr. p. 35).



Plea Counsel testified it was Applicant's choice to plead guilty. Id. Plea Counsel testified that she agreed with the decision to plead guilty once she got the solicitor's office to do it as voluntary manslaughter and armed robbery under Alford. Id. Plea Counsel testified that there was nothing further to investigate. (PCR Tr. pp. 35–36). Plea Counsel testified that she stood by her representation of Applicant. (PCR Tr. p. 36).

Plea Counsel testified that she did contact Curtis Nelson's attorney, but that attorney never contacted her back, and she cannot make contact with someone who is represented by counsel. Plea Counsel further testified Curtis Nelson would not have helped Applicant and provided the following:

It would have simply made it -- I mean it would have made me then question the whole story again, but I would have had to have confronted Mr. Pringle about the fact that he had told me that he had gone in. And so therefore -- and yet again try and reconcile the kites that are being sent, the stories that have been told, and what would have happened. And as I explained to him also during my negotiations or excuse me -- my talks with him is if you want a trial, then it's a jury question as to who they believe as to what stories come out. And that's a -- that's a jury question, but it's a risk.

(PCR Tr. p. 37).

On cross-examination, Plea Counsel testified that her notes reflected the following:

Okay. On June the 8th of 2018, I have a note that says I saw [Applicant] at the jail. I said saw D at the jail today, which is defendant. [Applicant] wanted to know why they were making it seem like it was a drug deal gone bad at the bond hearing. Told him in some ways that was better for him. The victim's brother, who was at the bond hearing, was also a witness. Victim himself said it wasn't, that it was a robbery from the start since y'all came in with masks on. [Applicant] wanted to know what I thought would happen. Would he walk away free? Told him it's a bad case because someone died. Told him what I really think is that he learned how to do this from Michael Woods at that the robbery where he got juvie time for this in part. The difference was that in that case the victim didn't die. I also told him that he didn't learn the lesson from that case, which is your co-defendants will turn on you and talk, and they

are doing so here. He smiled and he says, so am I going to do time? I said, yeah, the question is how much? He said, well, Woods is already home. I said and told him that was what was different because the guy didn't die. I also told him not to discuss all of this on the phone. I told him I already knew that there was a connection between the two before the bond hearing. I told him I would put in for his preliminary hearing.

(PCR Tr. pp. 38–39). Plea Counsel testified that she knew Applicant was present and in Victim's house when Applicant smiled at her. (PCR Tr. p. 40). Plea Counsel continued to look through her notes for where she recorded Applicant told her he was present at the crime and stated the following:

All right. March 6th -- 19th, I saw him at the jail, discussed his case. He got his Rule 5 supplement, the motion for reconsideration of his bond denial yesterday. I talked with him about thinking about his whole case and the issues with all of the charges, because for him to walk away totally from his case free, we have to beat all of them, and I don't think that's likely with the burglary and armed robbery charges. The reason why I've written that is because he's told me he's guilty on those. It may be possible to beat the murder because they're not sure who the shooter is really and there are multiple guns, but there's no question about going in the house to do the robbery and not being invited there for that purpose, and so many are talking. The victim's brother will say they came in with guns to rob people. So to think about all that. He asked about PCR and getting a time cut. I explained that PCR just puts a person back to square one. He is still asking about 15 years and that he will take that and run. Explained the years on voluntary and murder and 85% versus every single day, as well as the time that burglary and armed robbery carry too.

(PCR Tr. pp. 41–42).

Plea Counsel testified that Amos Cameron was Applicant's family member and that he had no sympathy for any of the parties involved. (PCR Tr. p. 43). Plea Counsel testified that in her experience, people who are mad at a person you represent will not help your client's case. Id. Plea Counsel testified that she did not contact Amos Cameron. Id. Plea Counsel testified that she did



not interview William Dilmer because she had his statement that he provided to law enforcement, and she did not think he would change his story. (PCR Tr. pp. 43–44).

Plea Counsel testified that she did not notice the check mark boxes were blank on the sentencing sheets. (PCR Tr. pp. 44–45). Plea Counsel testified that it was something she usually checked for before a plea. (PCR Tr. p. 45). Plea Counsel testified that Applicant did not ask her about the check marks on the sentencing sheets. (PCR Tr. p. 45). Plea Counsel testified that, in her opinion, she would not have gained anything useful in interviewing Barbara McGill. (PCR Tr. pp. 45–46). Plea Counsel testified that she did tell Applicant that he would likely not win on all the charges at trial because some were weak cases and others were strong cases. (PCR Tr. p. 46).

On redirect examination, Plea Counsel testified that her notes were just summarizations and not verbatim of her meetings. (PCR Tr. pp. 46–47).

#### STANDARD OF REVIEW

The Uniform Post–Conviction Procedure Act<sup>7</sup> (the Act) provides that any person who has been convicted of a crime may seek post–conviction relief based 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

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<sup>7</sup> S.C. Code Ann. §§ 17–27–10 to –160.

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. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is insufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 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 due to counsel's deficient performance. Id. at 687-88; 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 "[without 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)).



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 that counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

However, the second, or "prejudice" prong "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's 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, 367 (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) (emphasis added).

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

#### *INITIAL FINDINGS*

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where she presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. Also, this

Court finds Nelson's testimony **not credible** or **persuasive**. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

From the record, this Court makes the following findings: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4–5); 2. Applicant understood the details and circumstances of an Alford plea (Plea Tr. pp. 5–8); 3. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 13); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 9–12); 5. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 12–13); 6. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 13); 7. Applicant understood the sentencing range (Plea Tr. p. 12); 8. Applicant was clearly advised of his right to appeal (Plea Tr. pp. 11–12); 9. Applicant agreed with the allocation of the facts surrounding the State's case against him, and he still wanted to plead guilty (Plea Tr. pp. 13–16); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 16).

***INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS***

**Allegation 2: Failure to Provide a Copy of Discovery**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to provide him with a copy of discovery. This Court finds this allegation is without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. 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)).

#### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that Plea Counsel did provide him with a copy of his discovery. (PCR Tr. p. 7).

On cross-examination, Applicant testified that he recalled Plea Counsel reviewing and providing discovery to him, just not the entire file. (PCR Tr. pp. 11-12). However, Applicant then testified that he did not know what was not provided in his discovery. (PCR Tr. p. 12).

On direct examination, Plea Counsel testified that she provided and reviewed discovery with Applicant. (PCR Tr. pp. 27-28).

#### **Findings**

Without presenting further proof of Plea Counsel's alleged failure to review all the discovery with him or provide him with a copy, Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, supra. In addition,



Applicant has not presented any new evidence or defenses that could have been discovered by Plea Counsel's further review of the discovery, nor has he explained how further review would have changed his decision to plead guilty, and instead, he would have gone to trial. Hill, 474 U.S. at 59; see Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (holding an applicant must show what new evidence or other defenses he would have asked counsel to pursue had counsel more thoroughly gone over the discovery materials with him) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836. 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)).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's preparation and review of discovery, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that, but for Plea Counsel's errors or omissions, he would not have pled guilty and would have insisted on going to trial. See Hill, *supra*.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

### **Allegation 3: Failure to Meet a Sufficient Number of Times**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Plea Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.")

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that Plea Counsel met with him three or four times. (PCR Tr. p. 7).



On cross-examination, Applicant testified to the same that Plea Counsel only met with him three or four times. (PCR Tr. p. 11).

On direct examination, Plea Counsel credibly testified that she could not give a number as to how many times she met with Applicant, but she had "eight pages worth of notes from [her] telephone calls with him, meetings with him, sending him discovery, and working on his behalf on this case." (PCR Tr. p. 25).

### Findings

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). Plea Counsel's credible testimony indicates she met with Applicant several times. 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).



Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time spent in consultation with Plea Counsel, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea. This Court further finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. See Campbell, Olson, and Easter, supra.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that, but for Plea Counsel's errors or omissions, he would not have pled guilty and would have insisted on going to trial. See Hill, supra.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 4: Failure to Ensure that the Sentencing Sheets Were Properly Filled Out to Indicate the Status of the Charges**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to ensure the sentencing sheets were properly filled out to indicate the status of the charges. This Court finds this allegation is without merit.

**PCR Evidentiary Hearing**

On direct examination, Applicant testified that the sentencing sheets were not filled out properly, and he asked Plea Counsel about it. Applicant testified that Plea Counsel never explained the sentencing sheets to him. (PCR Tr. pp. 7–8).



On cross-examination, Applicant was given Defendant's Exhibit No. 1, and testified that those sentencing sheets were not the sentencing sheets he had, but he did not have them with him. (PCR Tr. p. 13).

On direct examination, Plea Counsel testified that Defendant's Exhibit No. 1 was the sentencing sheets for Applicant. Plea Counsel testified that the unchecked box did not prejudice Applicant because it was a lesser included offense, which she explained to Applicant. (PCR Tr. p. 19).

On recross-examination, Applicant again testified that Defendant's Exhibit No. 1 was not the sentencing sheets he had. (PCR Tr. p. 20).

#### **Findings**

This Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. This Court further finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that, but for Plea Counsel's errors or omissions, he would not have pled guilty and would have insisted on going to trial. See Hill, supra.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 5: Failure to Interview Co-Defendants Curtis Nelson and Anthony Hudson**

**Allegation 6: Failure to Interview Amos Cameron or Barbara McGill**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to interview co-defendants Curtis Nelson and Anthony Hudson. Additionally, Applicant alleges Plea Counsel was

constitutionally ineffective for failing to interview Amos Cameron and Barbara McGill. This Court finds these allegations are without merit.

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See, e.g., Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that



counsel was not deficient by failing to call alibi witnesses when two witnesses who testified at PCR hearing did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See, e.g., Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated or bolstered defendant's credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

#### **PCR Evidentiary Hearing**

##### **Curtis Nelson and Anthony Hudson**

On direct examination, Plea Counsel testified that she spoke to Curtis Nelson's attorney, Ralph Wilson Sr., and Charlie Roberson's attorney, Marshall Weaver. (PCR Tr. p. 32). Plea Counsel testified that she received information through law enforcement, preliminary hearings, and bond hearings on the positions of the three co-defendants cooperating with law enforcement. Id. Plea Counsel testified that because the three co-defendants were cooperating with law enforcement, she already knew their positions and that they were all pointing at Applicant as the person who pulled the trigger. Id.

##### **Amos Cameron and Barbara McGill**

On direct examination, Plea Counsel testified that there was no reason for her to interview Amos Cameron because he was very angry and upset and made that perfectly clear at his bond hearing. (PCR Tr. pp. 32–33). Plea Counsel testified that nothing would have been gained by

talking to Amos Cameron because he only wanted to see Applicant in a body bag. (PCR Tr. p. 33). Plea Counsel testified that Applicant did not ask her to interview Barbara McGill. Id.

### Findings

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, supra. This Court finds Plea Counsel's credible testimony on these witnesses forecloses any finding of deficiency on her part. Furthermore, prejudice from Plea Counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR evidentiary hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4<sup>th</sup> Cir.1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). The applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that, but for Plea Counsel's errors or omissions, he would not have pled guilty and would have insisted on going to trial. See Hill, supra.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 8: Failure to Interview Sgt. Josie Boyle, Inmate William Dilmer, and Quant Bryant Regarding a Letter Related to Co-Defendant Curtis Nelson**

**Allegation 9: Failure to Interview Inmate Carl McDowell Regarding a Letter Reported as Being From Applicant**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to interview Sgt. Josie Boyle, inmate William Dilmer, and Quant Bryant regarding a letter related to co-defendant Curtis Nelson. Applicant also alleges Plea Counsel was constitutionally ineffective for failing to interview inmate Carl McDowell regarding a letter reported as being from Applicant. This Court finds these allegations are without merit.

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard. v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis— and the analysis by the appellate court— is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).



Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See, e.g., Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call alibi witnesses when two witnesses who testified at PCR hearing did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See, e.g., Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated or bolstered defendant's credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

#### **PCR Evidentiary Hearing**

On direct examination, Plea Counsel testified that Applicant did not ask her to interview William Dilmer, and Mr. Dilmer was someone who was providing law enforcement with kites Applicant was sending to Charlie Roberson telling him to change his story. (PCR Tr. pp. 33–34).

Plea Counsel testified that Applicant did not ask her to interview Sgt. Josie Boyle. (PCR Tr. p. 33). Plea Counsel testified Applicant did not ask her to interview Quant Bryant. (PCR Tr. p. 34). Plea Counsel testified that Applicant did not ask her to interview Carl McDowell, and Mr. McDowell was the first to cooperate with law enforcement. Id.

### Findings

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, supra. This Court finds Plea Counsel's credible testimony on these witnesses forecloses any finding of deficiency on her part. Furthermore, prejudice from Plea Counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR evidentiary hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4<sup>th</sup> Cir.1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). The applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to

present specific and compelling evidence that, but for Plea Counsel's errors or omissions, he would not have pled guilty and would have insisted on going to trial. See Hill, supra.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

### Involuntary Guilty Plea

**Allegation 1: Failure to Explain the Guilty Plea and Sentencing Details.**

**Allegation 11: Plea Counsel Coerced Applicant into Pleading Guilty**

Applicant alleges his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the guilty plea and sentencing details, and Plea Counsel coerced Applicant into pleading guilty because she told him he would lose at trial. This Court disagrees and finds these allegations are without merit.

The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on 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. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

This Court finds the combination of the record and Plea Counsel's **credible** testimony at

the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Moreover, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that Plea Counsel failed to properly prepare and investigate or failed to review discovery with Applicant. In fact, the record refutes Applicant's allegations. Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that, but for Plea Counsel's errors or omissions, he would not have pled guilty and would have insisted on going to trial. See Hill, *supra*.



Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above the text "[CONCLUSION AND SIGNATURE PAGE FOLLOWS]".

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

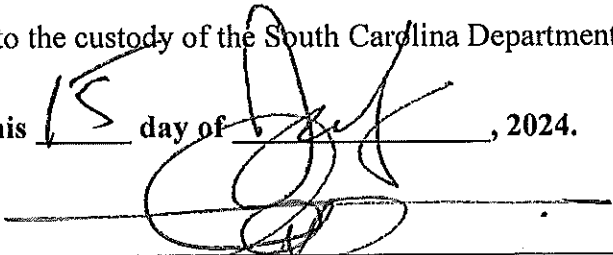
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **denied and dismissed with prejudice**.

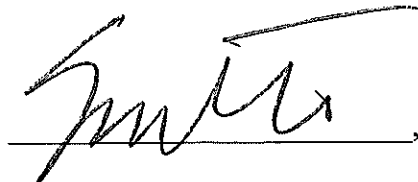
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 15 day of Sept, 2024.

  
\_\_\_\_\_  
GEORGE M. MCFADDIN, JR.  
Presiding Judge  
Twelfth Judicial Circuit

  
\_\_\_\_\_, South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2019CP2103035

Justin Marquise Pringle 2024 JUL 23 PM 3:19 South Carolina State Of

PLAINTIFF(S) DEFENDANT(S)  
Submitted by: Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

7/23/2024

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY

This judgment was entered on July 23rd, 2024, and a copy mailed first class or placed in the appropriate attorney's box on July 24th, 2024, to attorneys of record or to parties (when appearing pro se) as follows:

*[Signature]*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Ola A. Johnson PO Box 549 Lexington, SC 29071  
Dayne C. Phillips 1614 Taylor Street Suite D Columbia, SC  
29201

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*Doris P O'Hara*

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Court Reporter

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Doris Poulos O'Hara - Clerk of Court

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.