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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from York County
Court of Common Pleas

Honorable J. Mark Hayes , Circuit Court Judge

Case No.: 2022-CP-46-02666

Jackie Ray Childers, #301213.....Appellant,

v.

THE STATE .....Respondent.

NOTICE OF APPEAL

Jackie Ray Childers, #301213, appeals the order dated October 2, 2024, of the Honorable J. Mark Hayes denying his Post-Conviction Relief application. Appellant received written notice of entry of this order on Oct. 10, 2024.

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ALAN WILSON
ATTORNEY GENERAL

October 2, 2024

Shawana Burris, Esquire
331 E. Main St., Ste. 200
Rock Hill, SC 29730

Re: Jackie R. Childers, Jr., 301213 v. State of South Carolina
2022-CP-46-02666

Dear Ms. Burris:

Enclosed is a copy of the filed **Order of Dismissal** for the above-captioned case, signed by The Honorable J. Mark Hayes and filed with the York County Clerk of Court.

Sincerely,

Zachary W. Jones
Assistant Attorney General

ZWJ/dl
Enclosures

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Jackie Ray Childers, #301213, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2022-CP-46-02666 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Jackie Ray Childers ("Applicant") on September 2, 2022. The Court convened an evidentiary hearing into the matter on February 26, 2024, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and was represented by Shawana Burris, Esquire. Assistant Attorney General Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections. Applicant was indicted at the June 2021 term of the York County Grand Jury for first-degree burglary and possession of a weapon during the commission of a violent crime (2021-GS-46-00833 and -00833A), armed robbery (2021-GS-46-00834), kidnapping (2021-GS-46-00835), criminal conspiracy (2021-GS-46-00837), and murder (2021-GS-46-03401). Applicant was represented by Geoffry M. Dunn, Esquire ("Counsel"). Senior Solicitor Matthew W. Shelton, of

the Sixteenth Circuit Solicitor's Office, prosecuted the case. On February 22, 2022, Applicant appeared before the Honorable Daniel D. Hall, circuit court judge, and pled guilty[1] as indicted to all charges except No. 2021-GS-46-03401, on which he pled guilty to the lesser included offense of voluntary manslaughter pursuant to a plea agreement. Following a thorough plea colloquy, Judge Hall sentenced Applicant in accordance with the plea agreement to a negotiated aggregate sentence of thirty years' imprisonment. Applicant filed a timely notice of appeal, and the court of appeals requested a written explanation of appealable issues pursuant to Rule 203(d)(1)(B)(iv), SCACR. Counsel replied that he could not identify any appealable issues. The court of appeals permitted Applicant to submit a *pro se* written explanation, which Applicant did. The court of appeals issued an order finding that Applicant's written explanation was insufficient and dismissing the appeal. The remittitur was sent on May 27, 2022.

II. Facts Giving Rise to the Conviction

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

> This incident occurred on December 25th of 2020 in the nighttime hours at the residence of Billy and Sarah Childers on Smith Ford Road in Hickory Grove, York County, South Carolina. Jackie Childers and his two codefendants, Travis Baxter and Virginia Ratcliffe, conspired to and did rob Billy Childers and his wife, Sarah Childers, at their home that Christmas night. The plan was that Virginia drop the two men off a little ways from the house. They walked through the woods to the house while Virginia effectively lured Billy Childers outside of the house. She went to the door, knocked on the door and complained of having car trouble. She asked for water to be put into the radiator.
>
> Billy came outta the house with a jug of water in hopes of being able to help Virginia when he was attacked from behind by Travis Baxter and Jackie Childers. They knocked him to the ground and tied him up. And during the commotion Billy's wife, Sarah Childers, who was inside the house during this -- this part of the

[1] On all charges, Applicant pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

incident -- she came to the door to see what was happening. Billy yelled for her to go inside and lock the door. When she tried to do so, the evidence showed that Travis Baxter then chased after her, crashed through the glass door of the house and assaulted her. Sarah was made to take off her robe and her hands were tied behind her back. The evidence shows that Travis Baxter was primarily responsible for that part of the criminal activity as in going after Ms. Sarah, having her disrobe and tying her up.

The evidence shows that Jackie Childers then brought Billy inside the house with his hands tied behind the back, tied behind his back, and put him on the floor next to Sarah inside of their house while they began stealing the things that they had come for. The two men made Billy and Sarah lie face down on their living room floor with their hands tied behind their back and threatened to kill them and told them not to look at them while they were taking what they wanted. Jackie and Travis stole a cash box with approximately $300 in it, a .380 revolver and some jewelry from Billy and Sarah. They also took the keys to their Honda C.R.V. which they ultimately left in.

When they left the house Jackie and Travis got in the Honda and drove it away from the crime scene. A short time later they crossed paths with Virginia Ratcliffe who had driven away from the house in the C.R.V. In fact, as she was pulling outta the driveway, according to her statement to the police, is when Baxter was crashing through the door to the house after Sarah. So Virginia never went in the house. She was part of luring Billy outta the house. And as you'll see in a moment, she did benefit from it as well. Virginia was driving Jackie's vehicle which is -- was his Explorer, and that's the vehicle they came to in the house. Travis Baxter was driving the C.R.V. that belonged to Billy and Sarah. After the incident when Travis crossed paths with Virginia, he flashed the lights as was their plan to let her know that it was them. He then pulled the C.R.V. over and abandoned it on the side of the road. Travis and Jackie then got out of the C.R.V., got into the Explorer with Virginia. Jackie got into the driver's seat of his vehicle, and Virginia and Travis rode with him as passengers. They drove away, divided up the stolen property and dropped Travis off a short distance away.

Sometime later Sarah Childers -- it was a short time later -- it was determined that Sarah Childers had a heart attack during the incident from the emotional trauma inflicted by this awful ordeal. She was taken to the hospital later that night and she ultimately died from the trauma she suffered during the heart attack. Dr. Batalis who is a pathologist at M.U.S.C. in Charleston would have testified at trial that in his opinion Sarah Childers died from a homicide by heart attack brought on by the extreme stress and trauma of the incident that Christmas night.

York County Sheriff's Office investigated this case for over a month pursuing a number of leads until they finally caught a break in the case. They discovered that Jackie had tried to sell a gun to a friend shortly after the incident, and they also found that Virginia had pawned the stolen .380 at a pawn shop in North Carolina. They were able to recover that weapon and Billy was able to identify it as his gun.

Warrants were obtained for Virginia and Jackie. They were located in Paducah, Kentucky, where they had fled shortly after the incident. They were caught by the Paducah Police Department on or about January 24th of 2022. Sheriff's detectives Wong and Gates who are present in the courtroom went to Paducah and interviewed Virginia Ratcliffe. Virginia told detectives everything that had happened and was very forthcoming with them. She implicated herself as well as Travis and Jackie. Virginia told detectives that Travis Baxter took a gun to the robbery. It's also clear from the evidence Billy Childers had told the police that he thought both men had a gun, and clearly they stole a gun as well during this. So there were two guns in play during this incident for sure, but perhaps three. And the fact that Travis had a gun and took a gun to the robbery, Billy's account corroborated what Virginia told. There were a number of things during the investigation that police were able to determine that Virginia's account of what happened was consistent with everything they discovered at the crime scene including being able to identify Travis Baxter whose blood was left on the scene and was identified through D.N.A.

(Plea Tr. pp.16–20).

III. Current Application

In his PCR application, Applicant raises the following allegations:

1. Conflict of interest:
   a. "Past court transcripts where I've been in front of Judge Hall will show him asking about members of my family. The so-called victims are members of my family and Judge Hall and Solicitor Shelton used a magistrate judge as a speaker for the victims at my bond hearing who also works in the same building as Shelton and Hall and knows me and the victims and that magistrate is Ray Long. Attorney Dunn knew all of this and let it happen."
2. Ineffective counsel:
   a. Failed to move to quash indictments.
   b. Refused to present physical evidence.
   c. Refused to present Applicant's statement.
   d. Refused to move for a change in venue.
   e. Failed to investigate the autopsy report or to argue that the victim died of natural

causes.

f. Misinformed Applicant of sentence.

3. Subject Matter Jurisdiction:
   a. Elements of the crime were not met because there was no weapon.
4. Illegal sentence

As relief, Applicant requests "vacate, time reduction, new trial."

IV. Findings of Fact and Conclusions of Law

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

1. Conflict of Interest

In his PCR application, Applicant claims Judge Hall and Senior Solicitor Matthew Shelton had a conflict of interest because they knew people involved in his case and because Applicant had appeared in front of Judge Hall before. At the evidentiary hearing, Applicant testified that Judge Hall claimed to know Applicant's uncle, the surviving victim of the crime. Applicant also testified that he believed Judge Hall hated Applicant's father because of the crimes his father was charged with while Judge Hall was a solicitor.

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP.

The Court finds Applicant has failed to meet his burden of proving that a "conflict of interest" existed. None of these alleged facts amount to a conflict of interest that would disqualify either Judge Hall or Solicitor Shelton. *See, e.g.*, *State v. Hawes*, 423 S.C. 118, 141–44, 813 S.E.2d 513, 525–27 (Ct. App. 2018) (holding the mere fact that an assistant solicitor and her husband were fact witnesses and neighbors of the victim did not require disqualification of the Fifth Circuit Solicitor's Office or prejudice defendant's right to a fair trial); *Barry v. Sigler*, 373 F.3d 835, 836 (8th Cir. 1967) ("Merely because a trial judge is familiar with a party and his legal difficulties through prior judicial hearings . . . does not automatically or inferentially raise the issue of bias."); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (holding a party claiming an unconstitutional risk of bias carries a "difficult burden of persuasion" and "must overcome a presumption of honesty and integrity in those serving as adjudicators"); 16C C.J.S. *Constitutional Law* § 1706 ("The fact that the same judge presides over various phases of a criminal prosecution involving the same defendant, or hears both of two cases against the defendant, does not necessarily constitute a denial of due process.").

The mere fact that Solicitor Shelton, in the course of his prosecution of Applicant, became acquainted with the surviving victim and the victims' family is neither surprising nor disqualifying. There is no evidence that Solicitor Shelton's familiarity with the victims caused him to develop an improper bias against Applicant or to compromise any of Applicant's rights.

Likewise, there is nothing in the record to substantiate Applicant's self-serving speculation that Judge Hall was biased against him, whether because of Judge Hall's purported knowledge of the victims or because of past crimes committed by Applicant's father. Neither alleged fact suffices to overcome the presumption of judicial honesty and integrity, as is required to prove an unconstitutional risk of bias. *Withrow*, 421 U.S. at 47. Moreover, it is not clear how any purported

bias could have affected Applicant's conviction or sentence in this case: Applicant entered an *Alford* plea and received a negotiated sentence. There was no dispute, either as to guilt or as to punishment, for Judge Hall to adjudicate.

In addition, by Applicant's own admission, this issue was known to Applicant at the time he entered his guilty plea, and he could have raised the issue then. By not raising this claim prior to entering his guilty plea, Applicant has waived the issue. *See, e.g., Jamison v. State*, 410 S.C. 456, 468, 765 S.E.2d 123, 129 (2014) (holding a guilty plea constitutes a waiver of all nonjurisdictional defects and claims of violations of constitutional rights); S.C. Code Ann. § 17-27-90 (providing that "[a]ny ground [for post-conviction relief] . . . knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence . . . may not be the basis for a subsequent [PCR] application . . . ."). Accordingly, the Court finds this allegation must be denied and dismissed with prejudice.

2. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are similarly without merit. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625

(quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *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 prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United*

States v. Basham, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, 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, 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."). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); *see Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that

caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *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)).

The transcript of the plea proceeding reflects that Applicant repeatedly stated under oath that he was freely entering his *Alford* plea knowingly, voluntarily, and intelligently. (Plea Tr. p.12, lines 13–18; p.13, lines 9–18). Applicant also signed a plea waiver form indicating that he had discussed with Counsel all of the rights he would be giving up by entering the plea, that he understood those rights, and that he agreed to give them up in exchange for the negotiated plea. (Plea Tr. pp.7–8). Applicant affirmed that he had been given a copy of the discovery by Counsel, that he had plenty of time to discuss the case with Counsel, and that he had no complaints about Counsel's representation. (Plea Tr. p.12, line 19–p.13, line 8).

Applicant's sworn statements during the plea colloquy clearly establish that Counsel provided adequate representation and that Applicant's decision to enter the *Alford* plea was his own informed and voluntary decision, rather than the result of any deficient performance by Counsel. These statements are entitled to a "strong presumption of verity." *Blackledge*, 431 U.S. at 74. The Court must deem such statements "conclusive, unless [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874. With this in mind, the Court now considers Applicant's specific allegations of ineffective assistance:

A. Failure to Quash Indictments

In his application, Applicant claims Counsel was ineffective for failing to move to quash

the indictments. However, Applicant has never proved, or even asserted, any defect in the indictments that would have justified a motion to quash, either in his initial application or in his testimony at the evidentiary hearing. Therefore, the Court finds Applicant has abandoned this issue.

B. Refusal to Present Physical Evidence

Applicant alleges Counsel was ineffective for refusing to present physical evidence that would have established his innocence.[2] At the evidentiary hearing, Applicant specified that the evidence in question was the white hoodie that he was wearing at the time of the break-in.

At the evidentiary hearing, Applicant did not deny that he entered the victim's home with his codefendant, Travis Baxter, and was present when Baxter forced the victims onto the ground and tied them up. However, he insisted that the robbery was not planned; rather, it was a spontaneous decision by Baxter, and Applicant was merely following Baxter's lead. Applicant claimed he deliberately loosened the knot with which Baxter had tied up one of the victims so that

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[2] Since Applicant entered an *Alford* plea, he waived his right to present evidence in his defense. Therefore, Counsel never had an opportunity to introduce any physical evidence on Applicant's behalf, and his failure to do so could not be deficient.

However, at the evidentiary hearing, Applicant clarified that Counsel's disagreements with him about evidentiary issues induced Applicant to plead guilty, rather than go to trial, because he lacked confidence in Counsel's willingness to obey Applicant's instructions. Therefore, the Court construes this as an allegation that Applicant's *Alford* plea was rendered involuntary by Counsel's conduct. The Court notes, however, that just because a defendant's decision to plead guilty was based on his own subjective dissatisfaction with his attorney's tactical choices does not mean his guilty plea was involuntary. *See, e.g., U.S. v. Bowen*, 492 Fed. Appx. 401, 403–04 (4th Cir. 2012) (holding the district court did not "coerce" a defendant into pleading guilty by refusing his request for substitution of counsel, where defendant's conflict with his appointed counsel stemmed from his own obstinacy); *U.S. v. Smith*, 640 F.3d 580, 594 (4th Cir. 2011) (holding a defendant's fears that his attorney was angry with him and might "sabotage" his defense do not, by themselves, render his guilty plea involuntary); *U.S. v. Rodriguez-DeMaya*, 674 F.2d 1122, 1128–29 (5th Cir. 1982) (a defendant's mere assertion that she believed her attorney would not defend her vigorously at trial does not permit her to withdraw her guilty plea).

the victim could get free and call for help after Applicant and Baxter were gone. Applicant also denied having a gun during the incident and denied that it occurred during the nighttime. Applicant testified the white hoodie would have been helpful to his case because it would have proved he was not wearing black, as the victim stated.

The Court finds this allegation is without merit. Applicant failed to introduce the hoodie in question at the evidentiary hearing. Therefore, Applicant has not met his burden of proving he was prejudiced by Counsel's decision. *See, e.g.*, *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018) (holding trial counsel's failure to procure and present evidence cannot be deemed prejudicial unless the omitted evidence is presented at the PCR hearing).

Furthermore, Counsel testified at the evidentiary hearing that he was reluctant to rely on the hoodie for a defense because all it proved was that the victim mistook the color of Applicant's clothes, which was not an important part of the State's case. Furthermore, in order to use the white hoodie to impeach the victim's statement, the defense would have to admit that Applicant was present during the crime. In addition, there was blood on the hoodie that Applicant acknowledged belonged to his co-defendant Baxter when Baxter accidentally cut himself during the robbery. Therefore, Counsel believed the hoodie would likely do more harm than good if Applicant proceeded to trial because it proved Applicant was with Baxter at the scene of the crime. Since neither victim was able to identify Applicant as one of the attackers, Counsel testified that he would have preferred to keep out any physical evidence that would have tied Applicant to the crime scene if the case ever proceeded to trial.

The Court finds Counsel has articulated a valid strategic reason for his pessimistic appraisal of the white hoodie's impact on Applicant's defense; therefore, Applicant has not met his burden of proving Counsel's performance on this issue was deficient. Since Applicant has failed to prove

both prejudice and deficiency, the court finds this allegation must be denied and dismissed with prejudice.

C. Refusal to Present Applicant's Statement

Applicant alleges Counsel was ineffective for refusing to present his written statement concerning Applicant's version of the incident. At the evidentiary hearing, Applicant also complained that Counsel was not willing to let him take a polygraph test. Again, the Court finds Applicant has not met his burden of proving prejudice as to this allegation because he failed to introduce either the written statement or any polygraph test results at the evidentiary hearing. *Garren*, 423 S.C. at 13–14, 813 S.E.2d at 711.

When asked about the polygraph issue, Counsel explained that polygraph tests were not admissible in South Carolina. Counsel knew that Applicant's version of the story differed from the State's version, but he told Applicant it didn't matter because Applicant could still be found guilty under the "hand of one, hand of all" doctrine. However, he did explain Applicant's side of the story to the solicitor in an attempt to mitigate the negotiated sentence. The Court notes that Applicant received a lesser sentence than his co-defendant Baxter, who was sentenced to forty years' imprisonment.

"Generally, the results of polygraph examinations are inadmissible because the reliability of the polygraph is questionable." *State v. Wright*, 322 S.C. 253, 255, 471 S.E.2d 700, 701 (1996). "The general rule is that no mention of a polygraph test should be placed before the jury." *State v. Johnson*, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007). The Court finds Counsel correctly determined that a polygraph examination would not be admissible if Applicant's case were to go to trial, and Counsel advised his client accordingly. In addition, assuming Applicant's written statement was consistent with the version of the story he gave at the evidentiary hearing, the Court

finds Counsel correctly advised his client that his statement would not be helpful to the defense. The Court finds Applicant's self-serving story, in which he attempts to minimize his involvement in the planning and execution of the robbery, is not credible. However, even if the Court were to believe Applicant's claim that the crime was not planned ahead of time, Applicant did not deny that he participated in the home invasion and robbery. Therefore, his story was not exculpatory. Finally, as discussed above, Counsel explained that his defense strategy at trial would have been to deny that Applicant was present at the scene of the crime; obviously, the introduction of Applicant's statement *admitting* to being at the crime scene would have ruined that valid trial strategy.

For these reasons, the Court finds Applicant has failed to prove that Counsel's performance as to this allegation was either deficient or prejudicial. Accordingly, this allegation is denied and dismissed with prejudice.

D. Failure to Move for a Change of Venue

Applicant alleges Counsel was ineffective for failing to move for a change of venue on the ground that Judge Hall was prejudiced against him. The Court finds this allegation is without merit. As already discussed, Applicant has not met his burden of rebutting the presumption of Judge Hall's honesty and integrity, nor has he shown that there was an unconstitutional risk of bias in proceeding before Judge Hall. In addition, at the evidentiary hearing, Counsel testified he would have pursued a change of venue if the case had gone to trial, but he did not believe it mattered for the purpose of a negotiated plea proceeding. The Court finds Applicant has failed to prove either deficiency or prejudice as to Counsel's performance on this issue.

E. Failure to Investigate Victim's Cause of Death

Applicant alleges Counsel was ineffective for failing to investigate the cause of death of

the victim who died following the break-in. In his application for post-conviction relief, Applicant claims that the pathologist's report indicated that the victim "died of a broken heart," and he complains that Counsel should have argued the victim's death resulted from natural causes. The Court finds this allegation is meritless.

During Applicant's plea hearing, the solicitor stated the pathologist gave the victim's cause of death as "homicide by heart attack brought on by the extreme stress and trauma of the incident." (Plea Tr. p.19, lines 13–17). Counsel credibly testified that he spoke to two pathology experts while investigating the case: Dr. Ward and Dr. Owens. Counsel explained that the victim had suffered a heart attack, and he wanted their opinions on whether any of the defendants could be convicted of her murder under the State's theory that the heart attack was caused by the trauma of the home invasion. Ultimately, both experts told Counsel that traumatic experiences could lead to cardiac arrest, and the literature also supported that conclusion.

The Court finds Counsel appropriately consulted with experts to investigate the plausibility of the State's theory that the home invasion caused the victim to suffer a fatal heart attack, which exposed Applicant to a charge of murder. Therefore, the Court finds Applicant has failed to prove this allegation of ineffective assistance.

F. Misinformed Applicant of Sentence

Applicant alleges Counsel misinformed him of his sentence. Applicant did not substantiate this allegation in his application for post-conviction relief or in his testimony at the evidentiary hearing. Therefore, the Court finds Applicant has abandoned this issue. In addition, the transcript of the plea proceeding clearly reflects that Applicant was correctly informed of the thirty-year total negotiated sentence before he entered his plea. (Plea Tr. p.6, lines 19–20). Accordingly, this allegation is denied and dismissed with prejudice.

3. Subject Matter Jurisdiction

In his application for post-conviction relief, Applicant appears to argue the plea court was without subject matter jurisdiction to convict him because "the elements of the charge were not met." Elsewhere in his application, he claims that there was "no weapon to show armed robbery." At the evidentiary hearing, Applicant testified that he did not have a gun and that the robbery did not occur in the nighttime, so he could not have been convicted of armed robbery or first-degree burglary as a matter of law.

The Court finds this allegation is without merit. Whether the State could prove every element of the crime with which Applicant was charged has no bearing on the subject matter jurisdiction of the circuit court to accept Applicant's guilty plea. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (holding "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.").

Furthermore, the testimony at the evidentiary hearing clearly established that there was evidence to support the first-degree burglary charge. Solicitor Shelton credibly testified that the crime occurred in the evening hours on Christmas day, one of the darkest days of the year, and that he believed it was certainly dark enough to qualify as "nighttime" for the purposes of first-degree burglary. In addition, he pointed out that the burglary charge could have been proved in multiple ways, even apart from the "nighttime" element: the surviving victim maintained that both attackers were armed with guns; a gun was stolen from the house during the robbery, which Applicant later pawned; and Applicant admitted that his co-defendant had a gun, which meant Applicant could be charged with first-degree burglary under the "hand of one, hand of all" doctrine. For the same reason, the charge of armed robbery was also supported by the evidence, notwithstanding Applicant's claim that he did not bring a gun.

Therefore, the Court finds that this allegation must be denied and dismissed with prejudice.

4. Illegal sentence

Applicant claims he was illegally sentenced "according to [the] court's normal practice." At the evidentiary hearing, Applicant complained that he received a harsher sentence than his co-defendant, Virginia Ratcliffe. He also claimed that there were numerous charges on his "rap sheet" that he did not commit, which caused the solicitor to give him a worse plea offer. The Court finds this allegation is without merit.

Solicitor Shelton credibly testified that Virginia Ratcliffe received a better plea offer primarily because she cooperated with the State and was willing to identify Applicant and Baxter as the two men who entered the victims' house. He also explained that, although she was guilty of participating in the conspiracy by luring one of the victims out of the house so that Applicant and Baxter could get in, she did not enter the house or attack either of the victims, so her lesser sentence reflected her limited involvement. Solicitor Shelton explained that there was a dispute prior to Applicant's guilty plea about whether some of the charges on Applicant's "rap sheet" were committed by Applicant or by Applicant's father, who had the same name. He explained that issue to the plea court at the time Applicant entered the guilty plea. (Plea Tr. p.22, line 24–p.23, line 4). Solicitor Shelton credibly testified that he did not take the disputed criminal history into account when calculating the negotiated sentence. Rather, he testified that the severity of Applicant's sentence was based on the shocking facts of the case: Applicant had attacked and robbed his own elderly relatives during a home invasion on Christmas night, causing one of them to die from a heart attack. Counsel agreed that the disputed charges in Applicant's criminal history did not change the outcome of the plea proceeding "one iota" because the sentence was based on the gravity of the crime, which Counsel characterized as one of the worst home invasions he had ever

been involved with as a criminal lawyer.

The Court finds Applicant has failed to prove this allegation as well. Therefore, this allegation is denied and dismissed with prejudice.

V. 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), 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 if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and

2. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24th **day of** September, 2024.

J. MARK HAYES
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

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

Jackie R. Childers, Jr., #301213 Applicant,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to his counsel of record:

Shawana Burris, Esquire
331 E. Main St., Ste. 200
Rock Hill, SC 29730

This 2nd day of October 2024.

Dellene Lizama
Legal Assistant for Respondent

SWORN to before me this 2nd day of October 2024.

Notary Public for South Carolina.
My Commission Expires: May 28, 2029