STATE OF SOUTH CAROLINA COUNTY OF MARION	)	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Erick M. Willard, #265040, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2020-CP-33-00248 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. George M. McFaddin, Jr.
Applicant's Attorney:	Joshua A. Bailey, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsel:	W. Vickery Meetze, Esq. Franklin Chandler, Esq.
Appellate Counsel:	Katherine H. Hudgins, Esq.
Solicitors:	Fitzlee H. McEachin, Esq.
Date of Hearing:	December 14, 2022
Court Reporter:	Krystal J. Smith

This matter comes before the Court by way of Erick M. Willard's (Applicant) application for post-conviction relief (PCR) filed on May 6, 2020. Respondent, the State of South Carolina, made its Return on October 28, 2020, requesting an evidentiary hearing to resolve the claims as set forth in the application. On November 28, 2022, Applicant, through appointed post-conviction relief counsel, Joshua A. Bailey, Esquire (PCR Counsel), filed an Amendment to Post-Conviction Relief Application asserting additional claims of ineffective assistance of Trial Counsel.

An evidentiary hearing was convened on December 14, 2022, at the Florence County Courthouse before the Honorable George M. McFaddin, Jr. Applicant was present and represented by PCR Counsel. Assistant Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded forward on the claims set forth in his amended application and withdrew the allegations within his initial PCR application. In support of these claims, Applicant

testified on his own behalf, and Respondent presented testimony from W. Vickery Meetze, Esquire.

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 pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the July 2017 term of the Marion County Grand Jury for Trafficking Cocaine, Possession with the Intent to Distribute Cocain Base, Possession with the Intent to Distribute Methadone Schedule IV, and Possession with the Intent to Distribute Marijuana (2017-GS-33-00322). Applicant was represented by Twelfth Circuit Assistant Public Defenders W. Vickery Meetze and Franklin Chandler, Esquires. Fifth Circuit Assistant Solicitor Fitzlee H. McEachin, Esquire, prosecuted the case.

Applicant proceeded to a jury trial from November 13–14, 2017, before the Honorable William H. Seals, Jr. The jury convicted Applicant as indicted. Judge Cole sentenced Applicant to thirty (30) years imprisonment for Trafficking Cocaine, thirty (30) years imprisonment for Possession with the Intent to Distribute Cocaine Base, twenty (20) years imprisonment for Possession with the Intent to Distribute Methadone Schedule I-V, and ten (10) years imprisionment for Possession with the Intent to Distribute Marijuana. Additionally, Judge Seals ordered Applicant to pay a fine of fifty thousand ($50, 000) dollars for the Trafficking Cocaine conviction.

Applicant filed a timely Notice of Appeal. Appellate Defender Katherine H. Hudgins perfected Applicant's appeal by filing an Anders[1] brief to the South Carolina Court of Appeals on the following issue:

> Did the trial judge err in refusing to suppress a purported statement made by Appellant claiming ownership of drugs when the purported statement was not recorded or corroborated by any other evidence other than the testimony of another agent?

The case was submitted on briefs to the South Carolina Court of Appeals on November 15, 2018. On March 11, 2020, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Erick M. Willard, Op. No. 2019-UP-062 (S.C. Ct. App. filed March 11, 2020). The Remittitur was returned to the circuit court on May 5, 2020.

FACTS GIVING RISE TO THE CONVICTION

In the early morning hours of March 3, 2017, agents with the Marion County Combine Drug Unit, as well as the Marion County SWAT, executed a search warrant at the Applicant's residence in Marion County. (Trial Tr. p. 48). Major Crawford was securing the back of the home as other agents were initiating the execution of the search warrant. (Trial Tr. p. 56). Major Crawford observed someone inside the residence throw something out of a window in the back of the house. (Trial Tr. p. 58). Major Crawford secured the objects, including two bags filled with a white substance, and waited for Agent Collins, the agent leading the search, to collect them. (Trial Tr. p. 61).

Meanwhile, other agents entered the residence and found five suspects, including Applicant. Agent Collins noticed some money and a napkin containing some white pills on Applicant's bedside table. (Trial Tr. p. 77). Agent Collins then entered Applicant's bathroom and

[1] Anders v. California, 386 U.S. 738 (1967).

found a white powdery substance on the sink. (Trial Tr. p. 77). Agent Collins found a knife and small blue baggies in the sink and an off-white-rock-like substance, consistent with cocaine base crack, stuck down in the drain of the sink. (Trial Tr. p. 77). Agent Collins also found marijuana inside a coat in Applicant's bedroom closet. (Trial Tr. p. 82). Agent Collins searched the rest of the home and found narcotics in various other places as well as drug paraphernalia consistent with selling drugs. (Trial Tr. p. 85). Once all of the evidence was seized, Agent Collins went to the den, where the five suspects were located, and read them their Miranda[2] rights. (Trial Tr. p. 98). After affirming they understood their rights, Applicant spoke up and took "ownership of everything in the house and outside of the house because he didn't want anybody else to go to jail." (Trial Tr. p. 98–99).

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 Trial Counsel:
   a. ~~"Trial counsel was ineffective . . . for failing to object and preserve for appellate review. Inconsistent testimony by Agent Bobby Crawford."~~
   b. ~~"Trial counsel rendered ineffective assistance of counsel by failing to object to the State's key witnesses continually giving perjurous [sic.] testimony (Mooney v. Holohan, and in *Agurs*.)"~~
   c. ~~"Trial counsel was ineffective . . . [for] failing to pursue all available defenses, available to the applicant."~~[3]

On November 28, 2022, Applicant, through PCR Counsel, amended his PCR application adding the following additional claims for relief:

[2] Miranda v. Arizona, 384 U.S. 436 (1966).
[3] Applicant withdrew the allegations from his initial application at the evidentiary hearing. (PCR Tr. p. 6).

d. Trial Counsel failed to move to suppress Applicant's statement as involuntary on the grounds of an implied threat.
   i. The implied threat was that everyone would be charged and arrested unless someone claimed ownership.
e. Trial Counsel failed to move to suppress any drugs found outside of Applicant's bedroom.
   i. Applicant contends his statement was meant for only the drugs in his bedroom, and Trial Counsel failed to move to suppress the drugs outside his bedroom where he lacked dominion and control.

Applicant requests relief in the form of vacation of his conviction and sentence and for a new trial to be ordered.

Before this Court is the Marion County Clerk of Court records from the underlying convictions and sentences, Applicant's SCDC records, the trial transcript, the appellate records, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[4] (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 under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

[4] S.C. Code Ann. §§ 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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 not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; 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 v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden,

counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S.at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

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 was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

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), SCRCP (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

This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his 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).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1d: **Trial Counsel failed to move to suppress Applicant's statement as involuntary on the grounds of an implied threat.**

Allegation 1b: **Counsel failed to move to suppress any drugs found outside of Petitioner's bedroom.**

Allegation: **Failure to preserve for appeal.**[5]

Applicant alleged Trial Counsel was constitutionally ineffective for failing to move to suppress his statement as involuntary on the grounds of an implied threat. Specifically, Applicant contends that the implied threat was from law enforcement that everyone was going to be charged and arrested unless someone claimed ownership. Additionally, Applicant avers Trial Counsel was constitutionally ineffective for failing to move to suppress the drugs found outside Applicant's bedroom. Lastly, Applicant contends Trial Counsel failed to preserve these issues for appellate review. This Court finds these allegations are without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence

[5] This allegation was raised at the evidentiary hearing and not within Applicant's pleadings.

admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d

203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

To show prejudice where counsel fails to preserve an issue, an applicant must show the trial court would have sustained an objection and the unpreserved issue would have been successful on appeal. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018). A PCR court must view the trial court's ruling on an issue through the same lens applied on appeal, giving appropriate deference to the trial court's findings. Milledge, 422 S.C. at 380, 811 S.E.2d 804.

Trial

At trial during opening statements, Trial Counsel presented the following to the jury:

> Again, you're not going to see a recording of that initially, no dash cam, no body cam, no audio recording. And the reason why is they don't want you to see the context of that admission. They don't want you to know that they threatened Mr. Willard. They charge everyone in the house with the same crime innocent or not unless someone took ownership. Being it was Mr. Willard's residence, felt he had to.

(Trial Tr. p. 52).

During the Jackson v. Denno[6] hearing, the following occurred:

[6] Jackson v. Denno, 378 U.S. 368 (1964).

MR. MEETZE: Judge, for the record, we would make the motion that the statement that attributes Mr. Willard be excluded. There's no corroborating evidence in regards to that statement having been made with regards to any kind of audio or video recording or anything like that. No other statements from anybody else in the location. And based on that for the record, we object to it being entered as evidence.

THE COURT: All right. I'm going to find that the defendant was properly Mirandized and he gave the statement freely and voluntarily. Certainly, you can cross-examine to the great detail in the regard.

(Trial Tr. p. 42).

Q: And not to embarrass you, Agent Collins, I'm going to need you to read the Miranda rights that you read to those individuals that night?

A: This is the card that we always have on us suspect rights, Miranda warning. If you have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you are being questioned. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning if you want. You can decide at any time to exercise these rights and not answer any questions or make statements. Do you understand these rights I've explained to you? And that was the question that ask I each individual that was in the room which they said they stated, yes, they understood their rights.

Q: Was Mr. Willard one of those individuals?

A: Yes, he was.

Q: Did he indicate he understood his rights?

A: He did.

Q: Was there anything about Mr. Willard that caused you concern to think that he didn't understand what you were telling him?

A: No, sir.

Q: Okay. So after you read him the rights, you said there was a second part to it?

A: Yes. The last question having these rights in mind do you wish to talk to us now. Then I went to all five subjects and they all stated, yes, they wish to speak to law enforcement.

Q: Okay. And that at that point in time what was the next thing that happened?

A: At that time Mr. Willard spoke up --

MR . MEETZE: Your Honor, I'm going to renew my previous objection with regards to that.
THE COURT: Overruled.
Q: Mr. Willard spoke up and said?
A: Mr. Willard spoke up and said that he was taking ownership of everything in the house and outside of the house because he didn't want anybody else to go to jail. '

(Trial Tr. pp. 97–99).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he and three other persons shared a home with three bedrooms. (PCR Tr. p. 8). Applicant testified that his name was not on the rental agreement and he just had a bedroom. Id. Applicant testified that none of the bills in the home were in his name, and nothing but the bedroom tied him to the residence. Id. Applicant testified that he told Agent Collins that he did not know anything about any drugs in the house and "whatever was in [his] room was [his]." (PCR Tr. p. 10). Applicant testified that he made the statement of ownership of the drugs in the house because he knew the stuff in his room was just a small amount. Id. Applicant testified that they did have a Jackson v. Denno hearing, but Trial Counsel did not move to suppress based on an implied threat.

Applicant testified that Trial Counsel did not move to suppress the drugs outside his bedroom. (PCR Tr. p. 11, ll. 14–16).

On cross-examination, Applicant testified that he asked Trial Counsel to suppress the drugs and the statement because he had witnesses coming to testify. (PCR Tr. p. 13). Applicant testified that he only took ownership of the drugs in his bedroom and not the rest of the house. (PCR Tr. p. 16).

On direct examination, Trial Counsel testified that his strategy at trial was a reasonable doubt strategy as Applicant never indicated any sort of coercion or intimidation to him. (PCR Tr.

p. 20). Trial Counsel testified that he did not think the statement by law enforcement that if no one takes ownership of the drugs, then everyone is being arrested was an implied threat. (PCR Tr. p. 21). Trial Counsel testified that the statement was pretty normal and that law enforcement can and does arrest everyone on scene at times. Id. Trial Counsel testified that he did not see a viable suppression motion to have the drugs suppressed. Id. Trial Counsel testified that they did attempt to suppress the statement, but the places they searched for the drugs was reasonable. (PCR Tr. pp. 21–22). Trial Counsel testified he did not move to suppress the drugs because he did not think there was a basis for it. (PCR Tr. pp. 22–23). Trial Counsel testified that he stood by his representation. (PCR Tr. p. 23).

On cross-examination, Trial Counsel testified that he did not move to suppress the statement on the grounds of implied threat. (PCR Tr. p. 23). Trial Counsel testified that he did not move to suppress the drugs outside Applicant's bedroom. (PCR Tr. pp. 23–24).

Findings

As an initial matter, this Court finds Trial Counsel's testimony on this matter **credible** and Applicant's testimony **not credible** and **not persuasive**. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Notably, Applicant provided no legal authority to support his allegations. Further, this Court finds that any motion to suppress the drugs based on an implied threat or a motion to suppress the drugs outside Applicant's bedroom would have been non-meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a

futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Additionally, while this was not pleaded within Applicant's initial PCR application or his amended application, there was testimony elicited from Trial Counsel that he did not preserve the issue of failure to move to suppress the drugs outside Applicant's bedroom for direct appeal. In the context of a direct appeal, this Court must determine if this issue had been preserved, would it have been successful on appeal? This Court finds that even if this issue had been preserved, it would not have been successful on appeal. Applicant's statement to law enforcement that all the drugs were his was admitted over objection. Any objection to drugs outside of the bedroom would clearly have been overruled as well. Also, this Court cannot determine a legal basis Trial Counsel would have utilized to exclude the drugs outside Applicant's bedroom based on the admitted statement that all the drugs—including those outside Applicant's bedroom—belonged to Applicant. This Court need not address the issue of preservation on the statement because Trial Counsel did argue for suppressing it and contemporaneously objected at trial.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

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

|CONCLUSION 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 16 **day of** Sept, **2024.**

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

Florence, South Carolina