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DEC 20 2024  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Marshall D. Lee, #389231,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-11-00505

**ORDER OF DISMISSAL  
WITH PREJUDICE**

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2024 DEC -2 A 8:05  
BRANDY W. MOBLE

Presiding Judge: Hon. R. Lawton McIntosh  
Applicant's Attorney: Rodney W. Richey, Esq.  
Respondent's Attorney: Shayla Joan Flores, Esq.  
Trial Counsel: Michael A. Berry, Esq.  
Date of Hearing: September 3, 2024

This matter comes before this Court by way of Marshall D. Lee's (Applicant) application for Post-Conviction Relief (PCR) timely commenced on July 21, 2023. Respondent, the State of South Carolina, filed its Return on April 16, 2024, requesting an evidentiary hearing to resolve the claims set forth in the application.

On September 3, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable R. Lawton McIntosh. Applicant was present and represented by Rodney W. Richey, Esquire. Assistant Attorney General Shayla Joan Flores, represented Respondent. Applicant proceeded on the allegations within his original and amended PCR applications. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Michael A. Berry, Esquire (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 any form of relief. Accordingly, this Court denies relief and dismisses this action with prejudice.

### **PROCEDURAL HISTORY**

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Cherokee County Clerk of Court. During its June 2020 term, the Cherokee County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2023-GS-11-0619). Applicant was represented by Michael Anthony Berry, Esquire. Deputy Solicitor Adrienne Elizabeth Barry of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 17, 2022, Applicant appeared before the Honorable R. Keith Kelly and pled guilty as indicted. Judge Kelley sentenced Applicant to a negotiated sentence of 30 years' imprisonment on the murder charge and a term of five years' imprisonment for the possession of a weapon during the commission of a violent crime, to run concurrently.

Applicant did not appeal his convictions or sentences.

### **FACTS GIVING RISE TO CONVICTION**

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

Your Honor, this began on September 24, 2019, when Jamie was reported missing to the Charlotte-Mecklenberg Police Department by one of her friends. They phoned the police department and stated that Jamie was going to Charlotte. She worked as an escort, and she was going to Charlotte to work. And they had not heard from her when she was supposed to be in contact. Law enforcement also spoke with Jamie's family, and they also stated that they had not received contact from Jamie after the morning of the 24th. So the investigation began in Charlotte. They were provided identifying information, and they were able to determine that Jamie checked into a hotel in Charlotte. She had made it there. They were able to track her credit card transactions. She had been to restaurants in the

area. And they were actually able to find her car on a tag reader. So they knew that she had made it to Charlotte when she said she was going to be there. When they went to the hotel, she had not checked out. The hotel had taken her items out of her hotel room and packed them into a storage unit. They were able to get an exigent circumstances warrant for one of her cell phones. When they got that, they were able to determine that the last phone calls and the last text messages that Jamie had sent had been to a Marshall Lee. And they were able to ping her phone and show that she had actually made it to Mr. Lee's residence. Your Honor, that has been marked as State's Exhibit 1. Mr. Berry has been provided that in discovery. I believe that is without objection. And on that map, Your Honor, what it shows is her phone comes to the address of 2420 Union Highway, which is the address of Mr. Lee. It actually makes it to the front door. At some point the phone turns off between 10:00 and 11:00. It remains off for about an hour-and-a-half. They're able to determine that Jamie has made it to Charlotte, and then she has made it to 2420 Union Highway, located here in Cherokee County. They're able to determine that is Marshall Lee's residence. They're able to look at the phone number to just verify that it is Mr. Lee and it is. And they notify officers with the Gaffney Police Department that there is information that Jamie may have had contact with Mr. Lee. Gaffney then goes to Mr. Lee's residence, and they speak with him. He states that he was supposed to meet her but she never showed. They noted that Mr. Lee was extremely nervous when he was speaking with them. Something didn't feel right to them. So they notified the Sheriff's Office here in Cherokee County and let them know what they had been told by law enforcement in Charlotte and what they had observed. And Cherokee County gets a search warrant for Mr. Lee's property based off of that information. When they go there, Mr. Lee is at that location. They actually go on September the 26th of 2019. Mr. Lee is at that residence with his wife and his two children. The two children are told to leave. And law enforcement notices when they round the house that something is dead. So they know that something is out in a gully behind Mr. Lee's residence. They actually go into the woods and are able to ultimately find a body laying under an artificial Christmas tree and a layer of insulation, Your Honor. And what I have done, I have marked State's Exhibits 2, 3 and 4. And this is where they ultimately find Jamie's body. That has also been shared with Mr. Berry in discovery. I believe that is without objection. What they do is they removed the Christmas tree. They take pictures throughout the uncovering. And what they ultimately find is the body of Jamie. It was extremely decomposed at that time. The coroner arrives. They take her and an autopsy is performed on her. And what the autopsy reveals, she is shot one time in the stomach. There's an exit wound

in her right lower back. And then she is shot twice in the head, Your Honor. Both of those bullets or fragments were found lodged in her head during the autopsy. When they find Jamie, Mr. Lee is in one of the detective's cars at the time. He maintains that she never showed. And then it becomes: Well, she said that she was here, she texted me. And when I looked out the window, she wasn't there. And then it becomes: I don't remember what happened. So Mr. Lee gives several statements throughout this investigation. And it begins with: He never saw her, she never arrived. And then it becomes: She arrived but then she left. And the ultimate statement or the next statement is that she arrived, and after she arrived he blacked out. And when he came to, he had a gun laying next to him. There were dogs barking in his backyard. And he went to see what the dogs were barking at. He saw a trail of blood. He followed that trail of blood, and there was her body. And he covered it up with the insulation and the Christmas tree. And the last statement that Mr. Lee gives is a statement where she showed up. She stated that she had a flat tire. He went out there to help her with the flat tire, and there was a man with her. He doesn't know in his statement if he came with her or if she picked him up on the road somewhere. When he is helping change the tire, he states that the man attempted to rob him. He runs to his house. The man chases him, and he is able to get into his house, get his wife's .22 pistol. When he comes outside, the man is attempting to come on to the porch. When he sees Mr. Lee with the gun, he runs around the house and goes into the woods but Jamie is still there in the front yard. He states she attempted to grab him. He threw her off and shot her. And he goes into the woods. And when he can't find the man, he comes back to Jamie. She's still alive, and he shoots her twice more. In preparing this case, we received photographs from the hotel where Jamie's clothing was. There's no clothing belonging to a man. There's no items belonging to a man in those belongings. We have phone records for Jamie. There's no conversation between her and a man that would indicate that someone was coming with her. So we don't actually know what happened on the 23rd, Your Honor, between Mr. Lee and Jamie. We do know that he shot her, and she is dead.

(Plea Tr. pp. 7 - 11).

#### **CURRENT ACTION BEFORE THIS COURT**

In his application for post-conviction relief filed on July 21, 2023, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.

- a. Failure to Investigate.<sup>1</sup>
- i. "I told my public defender Mr. Whechel not long after I was arrested that there was a drink cup in the victims (*sic*) car from QT store. Mr. Whechel left the Cherokee County Public Defenders office a few month (*sic*) later. I was given a new Public Defender Mr. Berry. I told him the same thing. I was told that there really know (*sic*) way to pin point what QT the victim stopped at. But if the law can pin point the victims (*sic*) phone at my address why couldn't they do the same with what QT she stopped at. And the video from that store could prove without a doubt (*sic*) that there was in fact a male subject was (*sic*) with the victim, also why was there know (*sic*) finger pints done where I said the male subject touched the victims (*sic*) car as well touched (*sic*) my truck? That is two big factors that could prove I was acting in self defense."
1. "victim came to my home with a male friend."
  2. "victim had a flat tire"
  3. "I changed tire (more on additional paper)" "[t]he male and I changed the tire"
  4. "The male and I got into a fight"
  5. "The male thoug (*sic*) a pip (*sic*) at me near the back of my home"
  6. "victim came at me from behind me"
  7. "I shot at same time as victim grabed (*sic*) me. Victim was trough (*sic*) in between me and male subject and she got shot by accident"
  8. "Yes, I got scared and did not know what to do and tried to cover it all up."

Applicant raised the following additional allegations in an amended application received by Respondent on August 26, 2024:

1. Trial Counsel was ineffective for failure to investigate the charges and facts of the case.
2. Trial Counsel was ineffective for not properly communicating with him about his case.
3. Trial Counsel was ineffective for not presenting a self-defense in his case.

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<sup>1</sup> Applicant sets forth his allegations in a memorandum attached to his application for post-conviction relief. Respondent construes these allegations to be a claim that Plea Counsel was ineffective for failing to investigate the facts and circumstances surrounding the crime for which he was charged.

4. Trial Counsel was ineffective for not moving to suppress statements that the Applicant gave law enforcement.
5. Trial Counsel was ineffective for inducing the Applicant to plead guilty under the threat of a life sentence.
6. Trial Counsel was ineffective for not presenting a defense of accident.

Applicant requests relief in the form of having his "murder charge dropped down and less time."

Before this Court is the Cherokee County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of Applicant's current PCR action.

#### STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act<sup>2</sup> (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on 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[.]

S.C. Code Ann. § 17-27-20(A).

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<sup>2</sup> S.C. Code Ann. §§ 17-27-10 to -160.

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 not sufficient 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 at 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; 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 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. The second, or "prejudice" prong, however, "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 decision making" 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 was able to observe 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 he presented well-remembered testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing generally **not credible and not persuasive**. This Court further finds applicable the strong presumption that at all stages of Plea 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, 104 S.Ct. 2052; 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. 2-12); 2. Applicant clearly indicated he was satisfied with his attorneys (Plea Tr. pp. 6-7); 3. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 4-5); 4. Applicant indicated he had enough time with his attorneys (Plea Tr. p. 6); 5. Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. p. 6); 6. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 5-6); 7. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 3); 8. Applicant understood the range of sentencing (Plea Tr. pp. 3-4); 9. Applicant did not disagree with the facts surrounding the State's case against him, and apologized (Plea Tr. pp. 12-15); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 12).

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

**Allegation 1: Plea Counsel Failed to Investigate**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the charges and facts surrounding the case. Specifically, Plea Counsel should have investigated a cup that was allegedly in the victim's car from "the QT store;" and the fingerprints that allegedly existed on his and the victim's cars. This Court finds these allegations are without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); see id. at 457, 710 S.E.2d at 64–65 ("While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.").

"In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691; cf. Green v. French, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. See Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited

to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690– 91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

Based on the record before this Court and Plea Counsel's **credible** testimony, this Court finds that Plea Counsel's investigation was reasonable. See Taylor, 404 S.C. at 364, 745 S.E.2d at 104 (citing Wiggins v. Smith, 539 U.S. 510, 522– 23 (2003)). This Court will not credit Applicant's present claim that he would have gone to trial absent Plea Counsel's alleged failure to investigate, as Applicant has failed to present evidence of any discoverable matters or defenses Plea Counsel would have discovered had he been more prepared. This Court further finds Applicant has offered little more than mere speculation, and speculation does not meet Applicant's burden. Therefore, the Court finds Applicant failed to adequately show that he would have opted to go to trial but for Plea Counsel's lack of investigation.

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

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, and he performed a reasonable investigation. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 2: Plea Counsel Failed to Properly Communicate.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to properly communicate with him about his case. This Court finds this allegation is 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).

At Applicant's plea hearing, the following colloquy between Applicant and the plea court occurred:

- Q: You know what you're doing here today?  
A: Yes, sir.  
Q: And he's been sworn, madam clerk?  
A: (The Clerk) Yes, sir.

Q: Mr. Lee, the Government says in the indictment 2020-GS-11-0619, that you did, in Count 1, that you did in Cherokee County, South Carolina between the dates of September 23rd and 26th of 2019, feloniously, willfully, and with malice aforethought killed Jamie -- is it Buser? [...] By shooting the victim and that the victim died as a proximate result thereof. In violation of South Carolina law. Count 2 alleges that you did in the same county and state and same date possess a firearm during the commission of a violent crime as defined by state law, that being murder, in violation of South Carolina law. The Grand Jury considered the matter and returned a true-billed indictment. As to Count 1, on the murder, it's my understanding that you are offering to plea as indicted. It is violent by definition. It is most serious by definition. It carries from 30 years up to life without possibility of parole. You and your lawyer and the Government have negotiated a 30-year sentence to run concurrent with Count 2. Is that your understanding?

A: Yes, sir.

Q: Count 2, about the possession of a weapon, you're pleading as indicted. It's non-violent by definition. It carries with it five years. You, your lawyer, and the Government negotiated a five-year concurrent sentence. Is that your understanding?

A: Yes, sir.

Q: Sir, you have a right to a trial by jury, and that's why I'm here this week. I'm assigned here for jury trial. We have a jury coming in tomorrow morning. Your case is first up. Do you want a trial tomorrow morning beginning at 9:00 a.m.?

A: No, sir.

(Plea Tr. pp. 3-4).

At the evidentiary hearing on direct examination, Applicant testified he met with Plea Counsel approximately three times. Applicant testified Plea Counsel did not supply him with a copy of his discovery until two years into their relationship. Applicant testified that Plea Counsel did explain what the State would have to prove if he went to trial. Applicant testified that he discussed the statements he gave to law enforcement with Plea Counsel prior to entering his guilty plea. Applicant testified that he discussed his negotiated thirty-year day for day sentence with Plea Counsel.

On direct examination, Plea Counsel credibly testified he met with Applicant more than ten times. Plea Counsel credibly testified that he discussed a defense of self-defense with Applicant. Plea Counsel credibly testified to his denial of Applicant's allegation that he erroneously advised Applicant regarding self-defense. Plea Counsel credibly testified that it was hard to try Applicant's case due to the amount of evidence the State had against him. Plea Counsel credibly testified that he advised Applicant that pleading guilty was in his best interest, based upon his experiences and previous historical verdicts. Plea Counsel credibly testified that it was likely that Applicant could have been sentenced to life had he proceeded to trial.

On cross examination, Plea Counsel credibly testified that he has been practicing criminal law for thirteen years. Plea Counsel credibly testified that he was appointed to represent Applicant in August of 2020. Plea Counsel credibly testified that he and Applicant discussed his case, and that Applicant was active and involved in those discussions. Plea Counsel credibly testified that he was unable to get the Solicitor to reduce Applicant's charges. Plea Counsel credibly testified that the State had a strong case against Applicant including: cellphone evidence; messages between Applicant and the victim from an online messaging site; evidence that the victim was traveling from a hotel in Charlotte, NC; evidence that Applicant met with the victim; evidence that Applicant's son moved the victim's car from Applicant's property after the commission of the crime; and the various statements that Applicant gave to law enforcement.

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. See Boykin supra. Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's alleged erroneous 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).

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 he met with Applicant several times and thoroughly informed Applicant of his charges, the elements of the crimes, and potential trial strategy of self-defense. 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 proceed with 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 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); Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) ("Brevity of time spent in consultation, without more, does not establish that counsel was ineffective.").

Furthermore, this Court finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to explain the strengths of the State's case, for failing to explain the elements of murder, and for failing to discuss a trial strategy. Plea Counsel **credibly** testified that he and his team thoroughly explained what the State had stacked against him, the elements of murder, and their potential trial strategies.

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: Plea Counsel Failed to Present Defense of Self-Defense.**

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel where he failed to present a defense of self-defense.

At the evidentiary hearing on direct examination, Applicant testified that after doing

research on his tablet while incarcerated, he did not believe the facts of his case aligned with a murder charge. Applicant testified that he met the victim online, as he had done with other individuals prior. Applicant testified that he had never had issues with anyone, until the victim arrived at his home accompanied by another man. Applicant testified that the shooting was an accident. Applicant testified that on the night of the shooting, he was changing victim's tire when a man attacked him.

Applicant testified that Plea Counsel informed him that he could not prove another man was there. Applicant testified that he informed Plea Counsel about a bar that was thrown at him and about a cup that was allegedly in the victim's car. Applicant testified to his belief that Plea Counsel should have had the scene tested for fingerprints to prove the existence of a man at the scene.

At the evidentiary hearing, Plea Counsel **credibly** testified that he discussed a defense of self-defense with Applicant. Plea Counsel **credibly** testified to his denial of Applicant's allegation that he erroneously advised Applicant regarding self-defense. Plea Counsel **credibly** testified that Applicant gave multiple versions of the events including some that referenced self-defense. Plea Counsel **credibly** testified to his understanding of Applicant's primary version of events was that Applicant shot the victim, then chased the man who was allegedly with the victim on the scene before returning to the victim's body where he shot her two additional times while she was lying on the ground.

Further, Plea Counsel **credibly** testified that the State had a strong case against Applicant including: cellphone evidence; messages between Applicant and the victim from an online messaging site; evidence that the victim was traveling from a hotel in Charlotte, NC; evidence that Applicant met with the victim; evidence that Applicant's son moved the victim's car from

Applicant's property after the commission of the crime; and the various statements that Applicant gave to law enforcement. Plea Counsel **credibly** testified that he was unable to get the Solicitor to reduce Applicant's charges.

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. This Court finds the record is without any evidence that Applicant's charge of murder was not an appropriate charge. The record provides Applicant gave at least four versions of events of the incident to law enforcement. At a minimum, this Court finds that Applicant is **not credible**. In one of Applicant's iterations on the events during the incident, the victim and a male showed up at his home with a flat tire. As Applicant assisted in changing the tire, the male attempted to rob him. Allegedly, Applicant ran to his home with the man chasing him. Applicant then retrieved a .22 caliber pistol and exited his home as the male was attempting to come on to the porch. The male saw the gun and fled to the woods.

Applicant allegedly then searched in the woods but could not find the male assailant. The victim was in the front yard. Applicant alleges that when he returned she attempted to grab him and he threw her down and shot her. Applicant alleges he went back to the woods in search of the male thereafter. When he could not find the male, he returned to the victim and shot her twice more in the head. The victim was subsequently found buried under debris in the woods close to Applicant's home. Applicant alleges, under this version of events, that had Plea Counsel further investigated evidence that potentially existed, Applicant could have proved without a doubt that there was a male subject with the victim at the crime scene.<sup>3</sup> Applicant contends this could have

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<sup>3</sup> The State presented that they discovered no evidence of the existence of a male suspect during their investigation at Applicant's plea hearing. "In preparing this case, we received photographs from the hotel where Jamie's clothing was. There's no clothing belonging to a man. There's no items belonging to a man in those belongings. We have phone records for Jamie. There's no

proved he was acting in self-defense in murdering the victim.

This Court construes this allegation to be that Plea Counsel was ineffective for waiving Applicant's right to an immunity hearing under S.C. Code Ann. §§ 16-11-440(C) and 16-11-450. The "Protection of Persons and Property Act" (the Act) provides that "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force." S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.] "State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Where a defendant seeks treatment under § 16-11-440(C), it is not enough for a defendant to establish that he was "not engaged in an unlawful activity" and was in a "place where he has a right to be." Rather, "[c]onsistent with the Castle Doctrine and the text of the Act, *a valid case of self-defense must exist*, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity" save the duty to retreat. Id., 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing

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conversation between her and a man that would indicate that someone was coming with her." (Plea Tr. p. 11).

on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997).

That a defendant was engaged in unlawful activity at the time of the incident does not in and of itself defeat a claim for immunity. Rather, where a defendant was engaged in unlawful activity at the time of the incident, the trial court must consider whether the unlawful activity was the proximate cause of the incident. A person who is otherwise acting lawfully is not deprived of the right to self-defense by merely incidental illegality. State v. Glenn, 429 S.C. 108, 120-21, 838 S.E.2d 491, 497-98 (2019) (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994)).

Even construing the facts presented in the light most favorable to Applicant, the facts are not sufficient to warrant the issue of self-defense being considered. The second element required to establish self-defense is an actual belief that the individual is in imminent danger of losing his life or sustaining serious bodily injury. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). Victim's autopsy revealed that she was shot one time in the stomach and twice in the head. (Plea Tr. p. 10). During Applicant's plea hearing, the version of facts accepted by both Applicant and the court as the truth established "[Applicant] states [Victim] attempted to grab him. He threw her off and shot her. And he goes into the woods. And when he can't find the man, **he comes back to [Victim]. She's still alive, and he shoots her twice more.**" (Plea Tr. pp. 10-11) (emphasis added). Therefore, it is clear that Applicant was not in any imminent danger of losing his life or sustaining serious bodily injury at the time that he killed Victim.

Accordingly, in addition to finding Applicant's testimony **not credible**, this Court further

finds that Applicant has failed to establish facts sufficient to warrant the issue of self-defense being considered. This Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 4: Plea Counsel Failed to Suppress Applicant's Statements to Law Enforcement.**

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel because he failed to move to suppress Applicant's statements to law enforcement. This Court finds this allegation is without merit.

In his amended application, Applicant raised the allegation that Plea Counsel was ineffective in his representation, where he did not motion to suppress the various statements that Applicant gave to law enforcement. Notably, Applicant entered his guilty plea the day before he was set to go to trial, waiving his right to present any defenses he may have had the opportunity to present there. Irrespective of that fact, Applicant provided no further evidence to support his claim during his evidentiary hearing.

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. This Court finds the record is without any evidence that Applicant's statements could have been suppressed had Applicant wished to proceed to trial or that Applicant would have proceeded to trial but for Plea Counsel's alleged failure. The record reflects that Applicant pled freely, knowingly, intelligently, and voluntarily. Applicant admitted he discussed his charges with Plea Counsel (Plea Tr. pp. 6-7). Applicant testified that he understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 4-5). Applicant admitted that he had enough time with his attorneys (Plea Tr. p. 6). Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. p. 6). Applicant acknowledged no

promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 5-6). Applicant testified that he was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 3). Applicant understood the range of sentencing (Plea Tr. pp. 3-4). Applicant agreed with the facts surrounding the State's case against him and apologized (Plea Tr. pp. 12-15). Applicant informed the court that he did not wish to proceed to a jury trial as he was scheduled to do the following day (Plea Tr. p. 4). Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 12).

Applicant has failed to establish any prejudice from the alleged failure to communicate with him the prospects of suppressing his statements to law enforcement. Specifically, he has failed to substantiate the claim that he would have proceeded to trial but for Plea Counsel's alleged failure. Applicant has failed to show how the motion would have been successful and has also failed to support his argument with any corroborating evidence. Thus, any assertion of prejudice is not objectively reasonable. See Fugit, 703 F.3d at 260 (4th Cir. 2012) (internal quotation marks omitted) cert denied, 134 S.Ct. 999 (2014) citing Padilla v. Kentucky, 559 U.S. 356, 372 (2009). ("The challenger's subjective preferences, therefore, are not dispositive; what matters is whether proceeding to trial would have been objectively reasonable in light of all of the facts." Fugit, at 260).

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

### **Allegation 5: Involuntary Guilty Plea.**

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntarily rendered. Specifically, Applicant alleges Plea Counsel coerced his guilty plea by informing him that he would receive a sentence of thirty-years' imprisonment if he proceeded to trial.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding 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.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the

analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel told him he would receive a thirty-year sentence if he proceeded to trial. Applicant testified that Plea Counsel told him how to answer the court's questions at his guilty plea hearing. This Court finds Applicant's testimony on this matter **not credible**.

Plea Counsel **credibly** testified that he discussed Applicant's negotiated thirty-year day for day sentence with him. Plea Counsel **credibly** testified that he would never tell a client how to answer questions at their plea hearing, and that Applicant's answers were his own. Plea Counsel **credibly** testified that he reviewed discovery with Applicant. Plea Counsel **credibly** testified to discussing the case with Applicant, and that Applicant was active and involved in those discussions. Plea Counsel **credibly** testified that he reviewed Applicant's constitutional rights with

him. Plea Counsel **credibly** testified that he did not coerce or threaten Applicant to induce his guilty plea.

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, 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 v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). 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).

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court of any of the issues he now alleges against Plea Counsel. 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.

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 6: Plea Counsel Failed to Present Defense of Accident.**

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel because he failed to present a defense of accident. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that after doing research on his tablet while incarcerated, he did not believe the facts of his case aligned with a murder charge. Applicant testified that he met the victim online, as he had done with other individuals prior. Applicant testified that he had never had issues with anyone, until the victim arrived at his home accompanied by another man. Applicant testified that the shooting was an accident. Applicant testified that on the night of the shooting, he was changing victim's tire when a man attacked him.

Applicant testified that Plea Counsel informed him that he could not prove another man was there. Applicant testified that he informed Plea Counsel about a bar that was thrown at him and about a cup that was allegedly in the victim's car. Applicant testified to his belief that Plea Counsel should have had the scene tested for fingerprints to prove the existence of a man at the scene.

At the evidentiary hearing, Plea Counsel credibly testified that he discussed a defense of self-defense with Applicant. Plea Counsel credibly testified to his denial of Applicant's allegation that he erroneously advised Applicant regarding self-defense. Plea Counsel credibly testified that Applicant gave multiple versions of the events including some that referenced self-defense. Plea

Counsel **credibly** testified to his understanding of Applicant's primary version of events was that Applicant shot the victim, then chased the man who was allegedly with the victim on the scene before returning to the victim's body where he shot her two additional times while she was lying on the ground.

Further, Plea Counsel **credibly** testified that the State had a strong case against Applicant including: cellphone evidence; messages between Applicant and the victim from an online messaging site; evidence that the victim was traveling from a hotel in Charlotte, NC; evidence that Applicant met with the victim; evidence that Applicant's son moved the victim's car from Applicant's property after the commission of the crime; and the various statements that Applicant gave to law enforcement. Plea Counsel **credibly** testified that he was unable to get the Solicitor to reduce Applicant's charges.

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. This Court finds the record is without any evidence that Applicant's charge of murder was not an appropriate charge. The record provides Applicant gave at least four versions of events of the incident to law enforcement. At a minimum, this Court finds that Applicant is **not credible**. In one of Applicant's iterations on the events during the incident, the victim and a male showed up at his home with a flat tire. As Applicant assisted in changing the tire, the male attempted to rob him. Allegedly, Applicant ran to his home with the man chasing him. Applicant then retrieved a .22 caliber pistol and exited his home as the male was attempting to come on to the porch. The male saw the gun and fled to the woods.

Applicant allegedly then searched in the woods but could not find the male assailant. The victim was in the front yard. Applicant alleges that when he returned she attempted to grab him and he threw her down and shot her. Applicant alleges he went back to the woods in search of the

male thereafter. When he could not find the male, he returned to the victim and shot her twice more in the head. The victim was subsequently found buried under debris in the woods close to Applicant's home. Applicant alleges, under this version of events, that had Plea Counsel further investigated evidence that potentially existed, Applicant could have proved that he accidentally murdered the victim.

However, the record makes clear that Applicant acted intentionally in taking the victim's life. Accordingly, in addition to finding Applicant's testimony **not credible**, this Court further finds that Applicant has failed to establish facts sufficient to warrant the issue of a defense of "accident" being considered. This Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 7: Plea Counsel Failed to File an Appeal.**

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. This Court finds this allegation is without merit.

Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to

think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served."<sup>4</sup> Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

At the evidentiary hearing, Applicant testified that he did not tell Plea Counsel that he wished to appeal his convictions or sentences. Plea Counsel corroborated Applicant's testimony and **credibly** testified that Applicant did not request that he file an appeal.

The Court finds Applicant has not met his burden of proving that he requested an appeal by a preponderance of the evidence. See Rule 71.1(e), SCRCP. Because Applicant has not shown that he actually requested an appeal, Plea Counsel was not ineffective for failing to file one. See Kinard v. State, 418 S.C. 478, 481, 795 S.E.2d 15, 16 (2016).

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<sup>4</sup> White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Furthermore, based upon the record before this Court and testimony presented at the evidentiary hearing, this Court finds Applicant has failed to show extraordinary circumstances existed that would have warranted an appeal. 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**.

**[CONCLUSION PAGE FOLLOWS]**

CONCLUSION

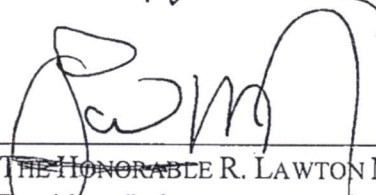
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

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), SCRPC, 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 22 day of November, 2024.

  
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THE HONORABLE R. LAWTON MCINTOSH  
Presiding Judge  
Seventh Judicial Circuit

Anderson, South Carolina

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CHEROKEE COUNTY, S.C.  
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GRANDY W. MOBLEE

CONCLUSION

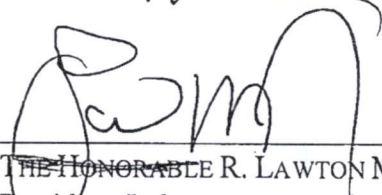
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THE HONORABLE R. LAWTON MCINTOSH  
Presiding Judge  
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