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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Letitia H. Verdin, Circuit Court Judge

Case No. 2019-CP-36-00466

Theia Darion McArdle, #367770, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Comes now, Nancy C. Fennell, counsel for Appellant, Theia Darion McArdle, who appeals the Order of the Honorable Letitia H. Verdin, filed with the Newberry County Clerk of Court on February 3, 2025. Counsel for Appellant received written notice of entry of this Order on February 18, 2025.

February 26, 2025

s/ Nancy C. Fennell
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STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Theia Darion McArdle, #367770 Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2019-CP-36-00466 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Theia Darion McArdle ("Applicant") on September 16, 2019, and amended on June 18, 2021. The Court convened an evidentiary hearing into the matter on August 3, 2022, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Nancy c. Fennell, Esquire. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's trial counsel, Charles V. Verner, Esquire ("Counsel"), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant has not met her burden of proving she is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. During the April 2015 term, the Newberry County Grand Jury indicted Applicant for homicide by child abuse (2015-GS-36-00133). Charles V. Verner, Esquire ("Counsel") represented Applicant.

Solicitor David Stumbo and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On April 4–8, 2016, Applicant's jury trial was held before the Honorable Frank R. Addy, Jr. The jury convicted Applicant as indicted, and Applicant was sentenced to thirty years' imprisonment. Applicant timely appealed her conviction. By an unpublished opinion filed December 5, 2018, the South Carolina Court of Appeals affirmed Applicant's conviction. *State v. McArdle*, Op. No. 2018-UP-439 (S.C. Ct. App. filed December 5, 2018). Applicant subsequently filed a petition for a writ of certiorari in the South Carolina Supreme Court. By order dated June 28, 2019, the South Carolina Supreme Court denied Applicant's petition for a writ of certiorari.

Factual Summary

At 1:35 a.m. on December 30, 2014, Richard Bowman walked into the Newberry County Memorial Hospital Emergency Room (ER) carrying Victim. Victim was unresponsive, not breathing, and leaking brown vomit from his nose and mouth. Medical staff grabbed Victim and attempted resuscitation in a nearby room. Moments later, Applicant walked into the ER. Lisa Frick, the ER's on-duty registration clerk, attempted to collect information about the incident from Applicant and Bowman. Applicant claimed Bowman was Victim's biological father. Bowman disputed the claim which led to a verbal altercation between the two. Applicant eventually conceded the point, but claimed Bowman was "the only father [Victim's] ever had." Applicant also provided Frick with an incorrect address and claimed she did not possess a photo ID or Victim's Medicaid card because her purse had been stolen. (R.p.26, line 9 –R.p.37, line 2).

Meanwhile, Dr. Duncan Holaday, an emergency physician at the hospital, began treatment on Victim. Immediately, Dr. Holaday knew Victim's condition was dire after observing: (1) Victim was not breathing; (2) he did not have a pulse or neurological activity; (3) his skin was cold

to the touch and discolored; and (4) the vomit around his nose and mount had dried and congealed. Dr. Holaday and the nurses in the room attempted to restart Victim's breathing but found large amounts of brown, congealed material obstructing his airway. Dr. Holaday knew his chances of resuscitating Victim at this point were "nearly zero," but continued emergency treatment for approximately thirty minutes until he finally pronounced Victim dead at 2:06 a.m. After informing Applicant of Victim's death, he went back and reviewed Victim's body and noticed severe bruising around his abdomen, genitals, and his head. Dr. Holaday concluded Victim's injuries were likely the result of "non-accidental," blunt force trauma. (R.p.66, line 12–R.p.78, line 9).

Shortly after Victim's death, deputy coroner John Pollard arrived at the hospital. Dr. Holaday and the head nurse briefed Pollard on Victim's apparent injuries. After viewing Victim's body himself, he determined Victim's death was likely the result of criminal behavior and notified law enforcement of the situation. He also separated Applicant and Bowman for future police questioning. After SLED arrived and took pictures of Victim's injuries, he took the body to Dr. Janice Ross for an autopsy. (R.p.51, line 4–R.p.56, line 25).

Later, in an investigation of Applicant, Bowman, and Victim's home, officers found vomit stains on Victim's tee shirts and a pillow in his bed. Forensic analysis of the items identified the DNA in the stains as Applicant's. (R.p.171, line 1–R.p.177, line 25; R.p.772, line 10–R.p.774, line 16; R.p.1073; R.pp.1074–80).

Medical Testimony

Dr. Holaday testified he believed Victim had been dead before arriving at the ER that night, but he was unsure of exactly how long Victim had been beyond resuscitation. However, based on his review of the autopsy report and his own recollection of that night, he estimated Victim had succumbed to his injuries less than two hours before his arrival because rigor mortis/stiffness had

not yet occurred in Victim's body. Dr. Holaday further testified he believed Victim's head injury was likely the result of abuse and it did not occur immediately before death: he explained the bleeding on Victim's brain, a subdural hemorrhage[1], occurred over some period of time, possibly as a result of multiple head injuries, and once the build-up put enough pressure on the brain Victim's respiration processes would have slowly shut down over an additional period of time. (R.p.70, line 8–R.p.71, line 25; R.p.78, line 25–R.p.83, line 15; R.p.95, lines 7–9; R.p.99, line 18–R.p.100, line 25; R.p.104, line 13–R.p.108, line 9).

Dr. Holaday also discussed Applicant's other injuries. According to Dr. Holaday, the bruises, including the one on Victim's forehead, were readily observable and incurred some period of time before Victim was brought to the hospital. Additionally, the autopsy had discovered Victim had extensive internal injuries, a ruptured small intestine, which Holaday opined would have killed Victim within days. (R.p.75, line 21–R.p.77, line 23; R.p.89, line 22–R.p.95, line 23).

Dr. Janice Ross also testified at trial and described the numerous injuries she found during Victim's autopsy. She agreed with Dr. Holaday's assessment that Victim experienced bleeding in his brain area which created pressure and ultimately led to the cessation of his respiratory functions. She added that Victim also experienced cerebral edema, in which the brain itself swells in reaction to blunt force trauma as well as the subdural hemorrhage. She was unable to determine how long the subdural hemorrhage and been pooling in Victim's brain area, noting she could not determine with certainty how long before the Victim's death he suffered the blow which caused the bleeding, but that the pooling blood reached critical levels up to an hour before Victim's death. Similarly, she could not determine whether the fatal head trauma occurred before or after the

[1] At trial, Dr. Ross explained a subdural hemorrhage involves bleeding in the subdural space, an area located between the membrane covering the brane and the skull. Once the blood pools, it is classified as a subdural hematoma. (R.p.721, line 23–R.p.722, line 8).

remainder of Victim's injuries. She also claimed Dr. Holaday's calculation of Victim's death as occurring up to two hours before his arrival at the hospital could have been correct, but rigor mortis is inexact and factors such as sleep may extend the process of rigor mortis by hours. (R.p.721, line 8–R.p.724, line 20; R.p.726, lines 16–24; R.p.728, line 15–R.p.730, line 10; R.p.734, line 2–R.p.735, line 2; R.p.740, line 17–R.p.742, line 4; R.p.754, lines 7–16).

The only metric Dr. Ross could use to roughly determine Victim's time of death or time of injury was the fact he had food in his stomach, which indicated he suffered an injury sufficient to stop digestion within an hour of eating. She explained a head injury or a traumatic injury in the abdomen could both cause this effect and there was no way to tell whether the head injuries, internal organ injuries, or some combination thereof caused the cessation of digestion. However, she admitted the abdominal injury was probably the sole or primary cause of the cessation of Victim's digestive functions based on the speed at which they shut down. Thus, it was possible the head trauma occurred earlier in the day than the blow which ruptured the small intestine. She opined Victim could have been healthy enough to eat at least as early as 5:00 p.m. Additionally, Dr. Ross agreed Victim's severe stomach injury would have killed him within one or two days. (R.p.724, line 20–R.p.726, line 3; R.p.730, lines 11–25; R.p.737, line 2–R.p.738, line 3; R.p.745, lines 4–23; R.p.755, line 8–R.p.757, line 20).

Dr. Ross noted Applicant's subdural hemorrhaging could have been caused by a single or multiple blows and the bruising on the exterior of Victim's head indicated the locations of the blow(s) which killed him, and Victim could have been injured over a period ranging from minutes to numerous hours. (R.p.738, line 13–R.p.739, line 19).

Dr. Ellen Riemer, a forensic pathologist with the Medical University of South Carolina, testified for the defense. She agreed Victim's death resulted from the blunt force injuries to the

head and noted Victim had at least three to four "impacts" in that area, of which any single or combination of blows may have contributed to the sum total of bleeding on the brain. She also concurred with the earlier testimony claiming: (1) Victim's bruises indicated injuries that occurred in the same general timeframe, but specified this timeframe could have been between zero and thirty-six hours of his death; (2) the injury to Victim's small intestine would have killed him within a matter of days; (3) the subdural hematoma could have built up over several hours and would have killed Victim within an hour after forming by causing his physiological functions to slowly shut down over that period; and (4) she could not definitively determine the time at which Victim died. (R.p.841, line 6–R.p.851, line 6; R.p.857, line 4–R.p.860, line 18; R.p.868, lines 10–22; R.p.890, line 24–R.p.892, line 24).

Dr. Riemer claimed Victim's various injuries occurred in the same timeframe, which she further defined as "a series of hours." She concluded the final head injury likely occurred after dinner because Victim would not have ate while under the effects of the head injury, but admitted the stomach injury may have caused the cessation of digestion. She also conceded Victim may have suffered his injuries before eating dinner, which could have led to a loss of appetite or vomiting afterwards. (R.p.852, line 4–R.p.856, line 19; R.p.870, line 4–R.p.871, line 20; R.p.872, line 8–R.p.874, line 4; R.p.879, line 6–R.p.881, line 18).

Bowman's Testimony

Bowman testified as a State's witness. He met Applicant in March 2013, after he was discharged from the military. Within weeks they began dating and moved in together. On or around November 8, 2014, Bowman, Applicant, and Victim moved from Ashville, North Carolina to Enoree, South Carolina. By the time they arrived in South Carolina, Applicant through prostitution, became the sole breadwinner for the family. The three lived in a trailer, with Bowman

and Applicant sharing a bedroom and Victim sleeping on an inflatable mattress in the living room. The other bedroom was given to various cats Applicant brought into the home. (R.p.336, line 15–R.p.345, line 17).

Bowman claimed Applicant routinely hit Victim as a form of corporal punishment and recalled numerous instances of such that in the days leading up to Victim's death. On the morning of December 27, Applicant hit Victim on the back of the head several times because he put his shoes on incorrectly, with one of the blows causing Victim to fall and hit his head on a coffee table. Later, she punched him in the chest when he had difficulty buckling his seatbelt and punched him again when he made a comment about Applicant being a prostitute. On December 28, Applicant hit Victim in the chest because he shot her with a toy gun while she was asleep. She hit him yet again because he played too roughly with another child at a local McDonald's. That night, Applicant punched Victim in the genitals after he mimicked Bowman taunting Applicant and grabbing his own genitals. (R.p.347, line 14–R.p.356, line 24).

Bowman further recalled several instances of abuse which occurred on December 29. Applicant struck Victim for the first time that day with a punch to his chest when he woke her up. Later that morning, Victim bit Applicant and in response she spanked him and bit him back. Around lunchtime, Applicant punched Victim in the stomach several times after he knocked a laptop computer off a coffee table. One of the blows caused Victim to fall to the ground and hit his head. That afternoon, while in the car, Applicant struck Victim again over frustration with his inability to properly dress himself, spanking him and "popp[ing]" him on the back of the head several times. She punched his chest twice later that evening, sometime before dinner, when he repeated comments made by Applicant while she was on the phone. (R.p.358, line 16–R.p.363,

line 15; R.p.365, line 7–R.p.366, line 18; R.p.573, line 1–R.p.574, line 8; R.p.586, line 13–R.p.587, line 10; R.p.590, line 17–R.p.591, line 12).

Later that night, Victim was unable to finish his dinner. After a few bites of food, he vomited. Victim appeared very ill and unable to "communicate anything at the time." Applicant witnessed Victim get sick. Bowman gave Victim a bath to clean the vomit on him and noticed the bruising on his testicles. He informed Applicant of the bruising but she was dismissive of the injury. Victim defecated in the bathtub and Applicant told Bowman to spank him. Bowman did, and Victim hit his head on the side of the tub. Bowman claimed Victim's head did not hit the tub hard. After the bath, Bowman put Victim to bed on the air mattress and fell asleep in his room. Applicant went to Spartanburg to meet with a client. After Applicant got home, she asked Bowman to accompany her on her next call due to her lack of familiarity with Newberry and the client. Victim, who woke when Applicant returned home, was brought along for the trip. He was upset, tired, and unable to speak clearly. Applicant struck him two additional times after placing him in his carseat. The trio left for Newberry sometime after 11:00 p.m. Throughout the drive, Victim was "whining," but fell asleep when they neared their destination. After Applicant exited the car for her appointment, Victim and Bowman fell asleep. Bowman woke up at one point and noticed Victim was not snoring. He shook him, and Victim mumbled a response. Bowman went back to sleep until Applicant returned, at which point he informed her he thought Victim might have sleep apnea. They tried to wake Victim, but he was unresponsive. They noticed "brown stuff" coming out of his nose and mouth and took him to the local hospital. (R.p.363, line 16–R.p.365, line 6; R.p.367, line 1– R.p.383, line 23; R.p.581, lines 16–22).

Applicant's Testimony and Statements

Applicant testified she had never seen Bowman strike or physically harm Victim, but had seen Bowman use "harsh [] words" with him. She acknowledged that North Carolina DSS had temporarily removed Victim from her custody from April 2013 until May 2014, after an incident in which she struck Victim. She also explained Bowman and Victim had their own bathroom on the other side of the house. She was not aware of Victim's bathing habits and claimed Bowman bathed Victim. (R.p.902, line 5–R.p.903, line 4; R.p.911, line 16–R.p.913, line 1).

Applicant's description of December 29th differed in several respects from Bowman's. That morning, she woke up around 9:00 a.m. and called internet providers in an attempt to obtain internet service for the trailer. She woke up and made breakfast for Victim. Later that morning, she went to a Family Dollar store in Laurens, South Carolina to obtain a prepaid Visa card so she could pay for various things, including internet installation, in the coming weeks. She, Victim, and Bowman spent the rest of the morning watching movies. After lunch, Applicant and Bowman argued over finances, an argument which lasted most of the afternoon and concluded with Applicant telling Bowman she hated him. She did not tell Bowman of her plans to leave him, for fear he would damage property in an explosive rage. (R.p.903, line 5–R.p.904, line 2; R.p.906, line 21–R.p.915, line 23)

Victim helped Applicant prepare dinner, with meal prep beginning around 6:30 p.m. Applicant, Victim, and Bowman began eating around 7:30 p.m. Applicant left to get gas around 8:00 p.m., returned briefly around 8:30 p.m. to drop off a stray cat she obtained and immediately left again for an appointment with a prostitution client in Spartanburg. She stayed with the client at least an hour, and returned home sometime before 11:19 p.m. When she entered the trailer, she saw Victim asleep in his bed. She found Bowman asleep in their bed, and demanded he accompany her to her next call because it involved a client and location with which she was unfamiliar. While

she freshened up, she ordered Bowman to put Victim in his carseat. She left for her appointment around 11:41 p.m. and arrived at the home in Newberry sometime around 12:30 a.m. Throughout the car ride, Applicant heard Victim snoring and making other "sleep sounds." After finishing her appointment, Applicant returned to the car. Applicant's testimony regarding the events from this point onward mirrors Bowman's. Although she admitted she paid little attention to Victim after her return from Spartanburg, she claimed she did not see any bruising or other indications Victim was injured until she finished her appointment with Holmes, which was sometime around 1:00 a.m. (R.p.916, line 4–R.p.949, line 24).

However, Applicant's testimony differed in several respects to the statements she made in the hours after Victim's death. Immediately after Victim was pronounced dead, Applicant called her mother, Patrice McArdle ("Patrice") and told her she and Bowman were at home when Bowman had found Victim unconscious in his bed and that they believed he had aspirated on his own vomit and died of asphyxiation. (R.p.613, line 6–R.p.614, line 17; R.p.618, lines 1–13; R.p.619, line 3–R.p.620, line 2).

Several hours after her phone call to her mother, Applicant met with Detective Allison Moore of the Newberry Police Department and SLED Agent Kellie Williams and provided written and oral statements regarding the events leading up to Victim's death. Notably, Applicant told the officers: (1) Bowman was "always kind" to Victim and treated him "no different than his own [child]"; (2) she loved Bowman; (3) Applicant's first prostitution call of the day occurred near dusk, around 5:00 p.m., after which she returned home and made dinner with Victim's help; (4) prior to her Newberry prostitution call, she was only away from Victim and her home for approximately an hour and a half to two hours that day; (5) Applicant, Bowman, and Victim ate around 8:30 p.m.; (6) Victim ate most of his dinner that night; (6) Victim could use the restroom

on his own, but she and Bowman would help Victim wipe himself afterwards; (7) she had helped Victim pull down his training diaper and use the bathroom that day; (8) there was "[n]o way in hell" the bruising observed by Detective Moore represented every one of Victim's injuries; (9) the only time Victim could have received his injuries was on December 27, three days before his death, when Applicant, Bowman, and Victim visited Patrice and Victim fell while skating; (10) Applicant had no knowledge of any of Victim's bruises; and (11) Victim often used her bathroom. (R.p.216, line 14–R.p.220, line 9; R.p.225, line 11; R.p.226, line 16–R.p.255, line 3; R.p.302, line 9–R.p.313, line 3; R.p.317, line 2–R.p.318, line 15; R.p.613, line 6–R.p.614, line 17; R.p.618, lines 1–13; R.p.619, line 3–R.p.620, line 2).

Present Application

On September 16, 2019, Applicant filed her initial PCR application, raising the following allegations:

(1) "Richard Bowman was with minor alone during fatal assault."
(2) "GPS records place me in another city during the fatal assault hours."
(3) "Bowman's original confession stated his assault on minor was while I was gone and that he never told me."

As requested relief, Applicant requests "a reduction to ten years violent with credit time served from arrest date December 30, 2014."

On June 18, 2021, Applicant amended her application to include the following allegations of ineffective assistance of counsel:

1. Counsel failed to provide Applicant with the entire contents of her discovery motion prior to proceeding to trial; specifically, Counsel did not provide photographic evidence that was used against her at trial.
2. Counsel failed to provide Applicant with evidence regarding the nature of the injuries sustained by the child and to discuss issues related to that evidence prior to proceeding to trial.
3. Counsel failed to cross-examine or impeach Bowman with prior inconsistent statements or to use handwritten notes provided by Applicant.

4. Counsel failed to introduce carvings made by Bowman in the wall of his holding cell related to the child.
5. Counsel failed to discuss potential defenses related to Applicant's prior mental health diagnoses.
6. Counsel failed to pursue a change of venue despite the publicity the case received in the community.
7. Counsel failed to fully prepare with Applicant all the defenses available to her.
8. Counsel failed to use Applicant's prior mental health diagnoses as mitigation during sentencing.

At the evidentiary hearing, Applicant proceeded only on Allegations 1, 2, 5, 6, and 7 from her amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of Counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as

having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. "This does not require

a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Allegation 1: Failure to provide discovery

Applicant argues Counsel was ineffective for failing to provide the entire contents of the discovery file to her prior to trial. Specifically, Applicant contends that there were photographs shown at trial that were not provided to her in discovery. The Court finds this allegation meritless.

At the evidentiary hearing, Applicant testified she was mailed a copy of the discovery materials, but that all the photographs had been removed. She also claimed Counsel never brought the discovery to her in person or went over it with her prior to trial.

Counsel testified he had given Applicant a bound copy of the discovery, with pagination and a table of contents. Counsel acknowledged that he was not able to include graphic photographs in the copy of discovery he sent to Applicant because of the policies of the detention center; however, he was able to bring the photographs with him and review them in person with Applicant, along with the rest of the discovery. Counsel testified he would have gone through the discovery page-by-page with Applicant. Counsel recalled that Applicant passed him a note claiming that she had not seen some of the photographs presented at trial, but he testified those photographs were fairly benign or substantially the same as other photographs he had already reviewed with her;

therefore, there was no prejudicial surprise to the defense from any photographs not shown prior to trial.

The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, as to this issue. The Court finds Counsel adequately provided and explained the discovery materials to Applicant prior to trial; therefore, Counsel's performance was not deficient. In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant has failed to specifically identify *which* photographs she was allegedly not provided prior to trial, and she has not explained how seeing those photographs earlier would have affected the outcome of the proceeding.

For these reasons, the court finds Applicant has not met her burden of proving Counsel was ineffective as to this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRCP. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 2: Failure to provide and review evidence of Victim's injuries

Applicant argues Counsel was ineffective for not going over the medical evidence related to Victim's injuries with her prior to trial. The Court finds this allegation is without merit.

At the evidentiary hearing, Applicant acknowledges she received medical documentation and autopsy reports related to Victim's death prior to trial; however, she testified she found the medical jargon confusing and was not able to understand which of Victim's injuries resulted in his death. She claimed Counsel never went over the medical documentation or photos of Victim's injuries with her. Applicant testified she did not fully understand the medical evidence until it was broken down into layman's terms by the pathologist at trial.

Counsel testified he provided all the autopsy reports in the copy of the discovery materials he sent to Applicant. He also testified he went over the discovery and photographs with Applicant, including any autopsy photos. Counsel hired his own expert witness, Dr. Ellen Riemer, to review the autopsy, and he testified that he discussed the results of that independent report with Applicant. Counsel testified the autopsy showed the child had bleeding in the brain and choked on vomit, and that there were multiple blows to the child that could have been independently fatal. Counsel testified that, in layman's terms, Victim's death was caused by a severe beating, and he believed Applicant understood that. Counsel testified the theory of the defense was that Bowman inflicted the fatal beating while Applicant was not at home and that Applicant would not have noticed anything wrong with Victim until later that night. Counsel testified the medical evidence regarding Victim's time of death tended to line up with Applicant's alibi, and he was able to use that timeline in his closing argument to the jury.

The Court finds Counsel's testimony credible as to this allegation, and Applicant's contrary testimony not credible. Accordingly, the Court finds Counsel adequately went over the State's medical evidence with Applicant and even obtained an independent review of the autopsy report, which he also discussed with Applicant; therefore, Counsel was not deficient. Furthermore, the Court finds Applicant has not shown how she was prejudiced by her alleged failure to understand

the medical evidence. Based on the Court's review of the record, and Counsel's testimony at the evidentiary hearing, the Court finds the medical testimony in this case arguably supported Counsel's strategy of arguing the fatal beating occurred while Applicant was out of the house and Victim was alone with Bowman.

Because Applicant has failed to prove either deficiency or prejudice as to this claim, this allegation is denied and dismissed with prejudice.

Allegation 5: Failure to discuss mental health-based defenses

Applicant alleges Counsel was ineffective for failing to discuss the possibility of a mental health-related defense. The Court finds this allegation to be meritless.

At the evidentiary hearing, Applicant testified that she has in the past been diagnosed with PTSD, anxiety, social anxiety, and depression. Counsel testified he was aware of Applicant's mental health problems dating back to her teen years, as well as her PTSD from prior spousal abuse. He testified that, despite her mental health history, Applicant appeared to be very bright, and she was very active in her own defense; Counsel did not have any concerns about her competency. Nevertheless, a mental health evaluation was performed, which found Applicant criminally responsible and competent to stand trial. (Trial Tr.p.39, lines 6–24).

Applicant has not met her burden of proving Counsel was ineffective as to this issue. Counsel credibly testified, and the record of Applicant's trial confirms, that a mental health evaluation was performed and that Applicant was found competent and criminally responsible. Therefore, the Court finds Counsel was not deficient for failing to adequately pursue Applicant's mental health issues. Furthermore, Applicant has failed to present or argue any defenses related to mental health that could have been raised at trial. The mere fact that a defendant has been diagnosed with PTSD, anxiety, social anxiety, depression, or other mental illnesses does not, by

itself, establish a valid mental health defense. In order to prove prejudice from Counsel's alleged deficiency, Applicant must at least explain how further discussion of her mental health issues might have resulted in a different outcome at trial; Applicant has not offered any such explanation. Therefore, the Court also finds Applicant has not established any prejudice from Counsel's conduct as to this issue. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 6: Failure to pursue a change of venue

Applicant alleges Counsel was ineffective for failing to pursue a change of venue, which Applicant claims was required because of the publicity her case received in the community. Applicant claims the publicity could have biased the jury against her. The Court finds this allegation to be meritless.

Counsel credibly testified—and the transcript of Applicant's trial confirms—that members of the jury pool were questioned about whether they had any prior knowledge or had seen or read anything in the news about Applicant's case. Four jurors answered that they had. Of those jurors, two were removed by the trial court. Another, Juror No. 10, was struck by Counsel. The fourth, Juror No. 170, informed the court that she had not heard anything "intimate" about the case and that she was willing to put aside anything she had heard and judge the case solely on the evidence presented at trial. (Trial Tr.p.13, line 24–p.18, line 4; p.26, lines 3–8). The Court finds that a change of venue based on the jury's exposure to publicity concerning the case was unnecessary because the issue was adequately addressed on *voir dire*. Furthermore, Applicant has not produced any evidence to substantiate her claim that the jury was improperly influenced by media coverage of the case.

Accordingly, the Court finds Counsel's performance was not deficient and Applicant was not prejudiced as to this issue. This allegation, therefore, is denied and dismissed with prejudice.

Allegation 7: Failure to prepare all available defenses

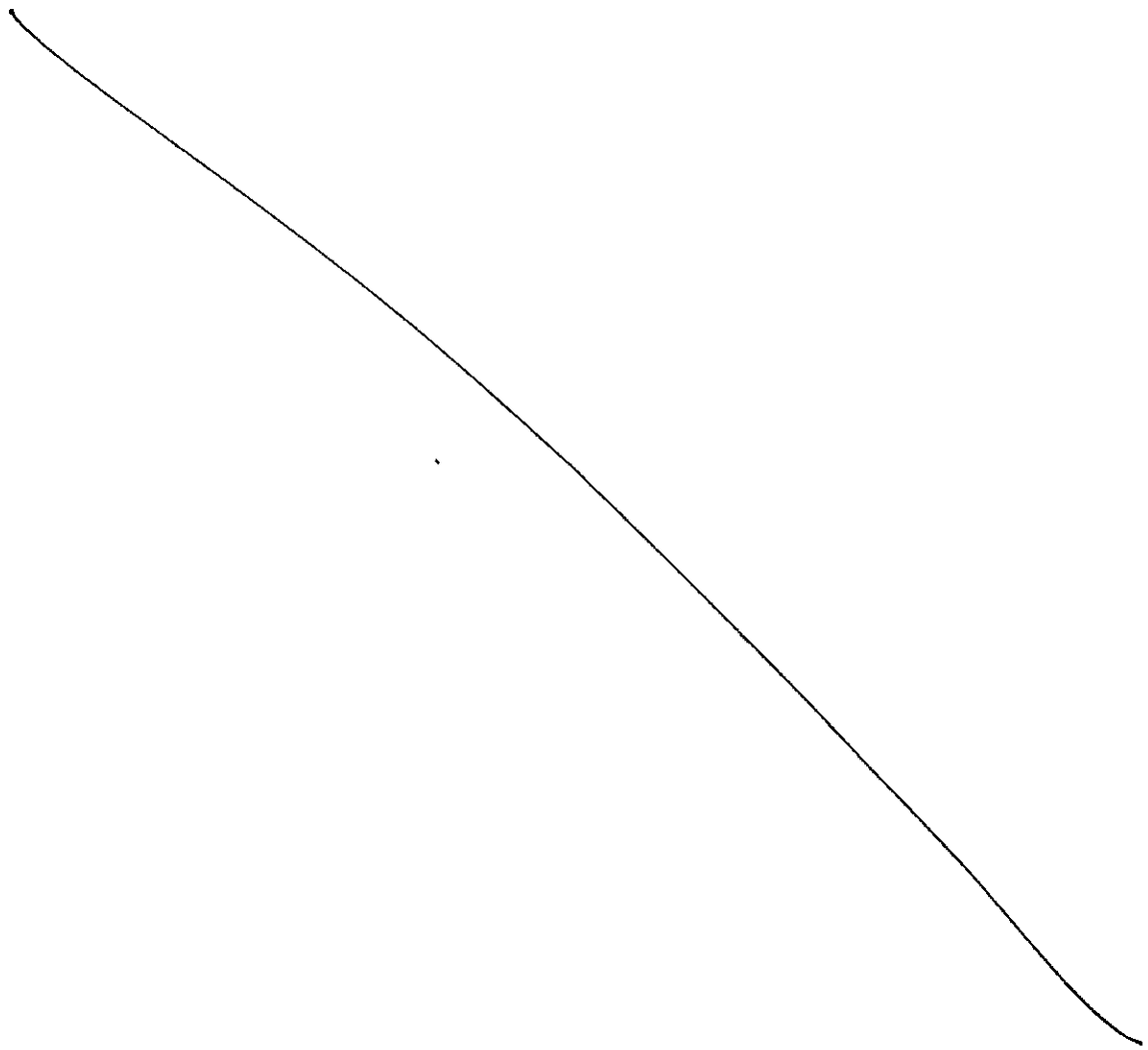
Applicant alleges Counsel was ineffective for failing to prepare all available defenses. The Court finds this allegation to be meritless.

At the evidentiary hearing, Applicant did not specify which additional defense theories Counsel allegedly should have presented, nor did she argue how those theories would have resulted in a different outcome at trial. However, Applicant complained that Counsel failed to adequately explore Bowman's dishonorable discharge from the military, his military training, and his abuse of Applicant.

The transcript shows that Counsel did elicit from Bowman, on cross-examination, that he had been other-than-honorably discharged from the military after he "got in trouble." (R.pp.414–15). In addition, both Applicant and her mother, Patrice McArdle, testified that Bowman had often beaten, controlled, and abused Applicant during their relationship. (R.p.614, lines 20–23; p.617, lines 7–21; pp.639–49; p.915, lines 2–23; p.955, line 23–p.956, line 18). Counsel used the evidence of Bowman's abusive behavior in his closing argument to attack Bowman's credibility and to claim Bowman was responsible for inflicting the injuries that killed Victim. (R.p.1010, line 4–p.1011, line 2). Concerning Bowman's military training, Counsel testified at the evidentiary hearing that he did not see how it was relevant.

The Court finds Counsel was not deficient because he adequately explored the evidence that Bowman was abusive and untrustworthy. In addition, the Court finds Applicant has not met her burden of proving that additional development of this well-trod ground would have changed the outcome of her trial. The Court also finds Applicant has failed to establish that Bowman's military training was relevant to the case or that additional exploration of that fact would have

influenced the result of the trial. Therefore, the Court finds this allegation is meritless and mist be denied and dismissed with prejudice.



III. 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 her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 29 **day of** Jan. **, 2023.**

LETITIA H. VERDIN
Presiding Judge
Eighth Judicial Circuit

Newberry, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP3600466

Theia Darion Mcardle		**State Of South Carolina**	
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by: Zachary W. Jones

Attorney for: ☐ Plaintiff ☒ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Letitia H. Verdin	**4150**	01/29/2023
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **02/03/2025**, and a copy mailed first class or placed in the appropriate attorney's box on **02/03/2025**, to attorneys of record or to parties (when appearing pro se) as follows:

Nancy Carol Fennell PO Box 2176 Irmo, SC 29063

Zachary William Jones PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Elizabeth P. Folk - Clerk of Court

Court Reporter:

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

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

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