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S.C. SUPREME COURT

NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case #2020-CP-40-3535

The State, Respondent,

v.

Devonte Ke'won Anderson Appellant.

NOTICE OF APPEAL

Devonte Ke'won Anderson, appeals the decision of the Court, in the order dated September 12, 2024, a filed copy of which was retrieved by counsel from the South Carolina Public Index on March 6, 2025, where Mr. Anderson was denied his request for Post-Conviction Relief. Mr. Anderson was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 3/6/25

Timothy L. Griffith, Esquire
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
D. Russell Barlow II, Esquire
Assistant Attorney General
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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Devonte Ke'won Anderson, #366425, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2020–CP–40–3535 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. Maité Murphy
Applicant's Attorney:	Timothy L. Griffith, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Plea Counsel:	Aimee J. Zmroczek, Esq.
Date of Hearing:	January 9, 2024
Court Reporter	Elizabeth B. Harris

This matter comes before the Court by way of Devonte Ke'won Anderson's (Applicant) application for post-conviction relief (PCR) filed on July 27, 2020, challenging his guilty plea. Respondent, the State of South Carolina, made its Return on March 12, 2021, requesting an evidentiary hearing to resolve the claims as set forth in the application.

An evidentiary hearing was convened virtually on Webex on January 9, 2024, before the Honorable Maité Murphy. Applicant was present and represented by Timothy L. Griffith, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded forward on the claims set forth in his original application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Aimee J. Zmroczek, 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 relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the September 2017 term of the Richland County Grand Jury for Armed Robbery (2017-GS-40-5355), Attempted Murder (2017-GS-40-5356), Posession of a Weapon During the Commission of a Violent Crime (2017-GS-40-5357), and Criminal Conspiracy (2017-GS-40-5358). Subsequently, Applicant was indicted at the September 2018 term of the Richland County Grand Jury for Unlawful Possession of a Weapon by Person Convicted of a Violent Felony (2018-GS-40-4073). Applicant was represented by Aimee J. Zmroczek, Esquire. Assistant Solicitor R. Vance Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

On May 15, 2019, Applicant appeared before the Honorable G. Thomas Cooper, Jr., for a stand-your-ground (SYG) hearing. Judge Cooper denied Applicant's request to judicially dismiss the charge. On January 16, 2020, Applicant pled guilty, pursuant to a negotiated plea agreement with the State, before the Honorable DeAndrea G. Benjamin.[1] Judge Benjamin sentenced Applicant to concurrent terms of eighteen (18) years for Armed Robbery, eighteen (18) years for ABHAN, five (5) years for Possession of a Weapon During the Commission of a Violent Crime, five (5) years for Criminal Conspiracy, and five (5) years for Unlawful Possession of a Weapon by a Person Convicted of a Crime of Violence. Applicant did not appeal.

[1] In exchange for Applicant's guilty plea, the State agreed to allow Applicant to plead to the lesser included offense of Assault and Battery of a High and Aggravated Nature (ABHAN) rather than Attempted Murder. The State also agreed to drop an unrelated Criminal Sexual Conduct with a Minor—3rd Degree charge (2017A4010600712).

FACTS GIVING RISE TO THE CONVICTION

The incident giving rise to the charges occurred on June 26, 2017. The facts in support of the plea were articulated by the State at Applicant's plea hearing, as follows:

> Mr. Anderson and his two Co-Defendant brothers, Aaron and Khaliq Brown, and an unidentified person, go to a hotel, the Baymont Inn off I-77, kind of over near Fort Jackson. They responded to an online posting on the now defunct website, Backpage. And that posting was for sex. And they contacted this girl who posted for sex on Backpage to come as though they were going to come to the hotel room to have sex with her. Devonte Anderson goes in the room. And once he is in there, he pulls out a gun to rob the victim, this girl, Chisholm Loca, the victim. She then pulls out what turns out to be a pellet gun in defense. The two of them start to fight. And they scrap in the room. As this is happening, Aaron and Khaliq, his Co-Defendants, we see on surveillance footage coming down the hallway to the room putting gloves on. So their role was going to be while he had her at gunpoint, they were going to go through her things and get her money. That same camera that shows the Brown brothers coming down the hallway shows Devonte Anderson and the victim spilling out of the room. And in this scrap, in this fight, he manages to wrench her phone out of her hand. And he runs off, and the Brown brothers run off. And they tell the clerk, somebody got shot back there. The victim staggers out into the lobby and falls down. She was shot in the gut. She ended up having her spleen removed, multiple surgeries to her abdomen. And she is in the hospital for a month. The Brown brothers and Devonte Anderson are initially identified because of footage in the hotel, the Brown brothers. Someone recognizes them, I think an SRO. They catch up -- well, Devonte Anderson shoots himself in the hand too. So they catch up with the Brown brothers and Devonte Anderson. He had been shot in the hand. He ends up talking to Investigator Wise. He says that he came there for sex. He sort of skirts around that there was -- you know, he doesn't disagree that he was there to rob her, but he never really admits to it. One of the Brown brothers, Aaron, though, tells Investigator Wise, eventually admits that they went there with the plan to rob this victim.

Plea Tr. 8–10.

CURRENT ACTION BEFORE THIS COURT

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

1. **"Ineffective counseling"**
   a. I have copies of text messages from my attorney to my sister proving my attorney lack of due diligence and concern for my best interests. Inconsistencies in my motion which should have been brought to light and taken into consideration during the actual plea bargaining process.
   b. Conflict of interest

Applicant requests relief in the form of "an adjustment of my time less than my current sentence. I will submit to a lesser sentence not to exceed over 15 years, 8 years would be gradually accepted for my relief."

PCR Counsel amended his allegations by email to include the following:

> Mr. Anderson saw a plea agreement for 10-20 years but his lawyer – the day of the plea had scratched out the 10-20 and put 15-20. He feels that was ineffective in that he expected the minimum of 10. He got 18. He thinks the Judge would have given him less with the lower limit.

At the PCR evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective Assistance of Counsel
   a. Applicant signed a plea agreement for 10-20 years, and Plea Counsel modified Applicant's plea agreement from 10-20 years to 15-20 years before Applicant's plea without advising of the change.
   b. Plea Counsel refused to remove herself from Applicant's case.
   c. Plea Counsel failed to investigate facts of Applicant's case.
   d. Plea Counsel met with Applicant a handful of times.
   e. Plea Counsel failed to provide discovery.
   f. Plea Counsel never showed Applicant the video footage of his case, and neither did the private investigator.
   g. Plea Counsel ignored the fact the victim could not initially point out Applicant in the photo line-up.

h. Plea Counsel did not notice the victim's name was spelled Chineou Nwokah on his attempted murder indictment but spelled Chisom Nwokah on his armed robbery indictment.
i. Plea Counsel ignored that the Victim could not point Applicant out in a photo lineup.
j. Plea Counsel failed to raise a defense.

Before this Court are the Richland County Clerk of Court records regarding Applicant's convictions, Applicant's SCDC records, the plea transcript, the stand-your-ground transcript, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[2] (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).

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.

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

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), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland 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 Plea 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), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

This Court further finds applicable the strong presumption that at all stages of 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; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Plea Counsel informed Applicant of the charges against him, the possible punishment, and Applicant's constitutional rights prior to his plea (Plea Tr. 7); 2. Plea Counsel agreed with Applicant's decision to plea (Plea Tr. 7); 3. Applicant was not under the influence of medication, drugs, or alcohol at the time of his plea (Plea Tr. 8); 4. Applicant agreed to the State's recitation of the facts giving rise to his plea (Plea Tr. 11); 5. Applicant understood the possible sentences he could receive and that the court could run the sentences consecutively (Plea Tr. 11–12); 6. Applicant understood his constitutional rights and waived his rights (Plea Tr. 13); 7. Applicant was satisfied with Plea Counsel's representation (Plea Tr. 13–14); 8. Plea Counsel met with Applicant a sufficient number of times prior to his plea (Plea Tr. 14); 9. Applicant was not forced, threatened, or coerced into pleading guilty (Plea Tr. 14–15); 10. Applicant was not offered anything in exchange for his plea other than the State's offer (Plea Tr. 14–15); 11. Applicant pled freely and voluntarily (Plea Tr. 14–15); 12. Applicant understood the plea court's questions and answered the plea court's questions truthfully (Plea Tr. 15); 13. Applicant had no questions for the plea court concerning his plea proceedings (Plea Tr. 15); 14. The plea court found there was a substantial factual basis for Applicant's plea and found that Applicant's plea was given freely, voluntarily, knowingly, and intelligently (Plea Tr. 15).

APPLICANT'S ACTIONS AT THE PCR EVIDENTIARY HEARING

Out of an abundance of caution, this Court addresses Applicant's actions at the PCR evidentiary hearing. After Applicant testified on direct and cross-examinations, the following occurred as Plea Counsel was on direct examination:

> Q. Zmroczek. Mr. Anderson told us that he was presented with a, a plea deal of ten to twenty. Is that your recollection?
> A It is not.

APPLICANT: Done. I'm going to take my eight years to 2032. I've had it. She's lying, bruh. My first plea was ten to twenty. November 2018 I went -- I remember like it was yesterday. I with Tyrone Derrick. She suggested the immunity trial. I thought about it. I sat in the chair long and hard about ten minutes talking about it. She said we should try it. The victim is nowhere to be found. I got to hire a private investigator; the solicitor got to hire a private investigator. I suggested the immunity trial. She broke it down to what grounds are we needed to win in the trial. I thought about it. I said you know what? I feel good about my lawyer. I heard about human beings chasing lawyers in trial courts forever. So, I feel good about her representing me with a trial. So, she went upstairs in a little bit and told -- and told him what was going on.

THE COURT: All right, Mr. Anderson, you've had the opportunity to testify.

APPLICANT: But she said -- she said ---

THE COURT: Hold up, Mr. Anderson.

APPLICANT: She said that plea was never offered. I'm going my eighteen. I'm straight. I got eight years left. I'm not here to leak China. Ain't too many people can do that ---

THE COURT: All right. Well, hold on a second, Mr. Anderson.

(WHEREUPON, APPLICANT EXITS THE WEBEX HEARING.)

PCR Tr. 19–20. Applicant, of his own volition, abruptly interrupted the court proceedings and left the hearing.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: Plea Counsel Modified Applicant's Plea Agreement Without Consulting Applicant

Applicant alleged Plea Counsel modified his plea agreement from ten to twenty years to fifteen to twenty years without consulting him before he pled guilty. 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).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel assured him that it was a ten to twenty plea deal. PCR Tr. 8. Applicant testified that he never turned down his ten to twenty-year plea deal. PCR Tr. 9. Applicant testified that when they served him with LWOP, he stated he wanted the ten to twenty. Id. Applicant testified that on the date of his plea, PCR Counsel scratched out the ten to twenty and wrote fifteen to twenty. PCR Tr. 9–11. Applicant testified that he believed if PCR Counsel had not changed the numbers, the plea court would have given him less time. PCR Tr. 11.

On cross-examination, Applicant testified that he was looking for loopholes and "trying to find a way out of things." PCR Tr. 15. Applicant testified that he was satisfied with Plea Counsel's representation and recalled telling the plea court the same. PCR Tr. 16. Applicant testified that he did not tell the plea court he wanted Plea Counsel removed because he did not want to "de-credit" her. PCR Tr. 17. Applicant testified that he just wanted to get the plea done. PCR Tr. 18.

On direct examination, Plea Counsel testified that the ten to twenty plea deal was not what she recalled.[3]

The following colloquy occurred on cross-examination:

> Q. Okay, and did you scratch out the sentencing sheet and write in fifteen to twenty?
> A. So, I, I haven't seen that, but I, I would have to see the handwriting just because I don't have a copy, but it's ---
> Q. It's an allegation. It's actually not on the sentencing sheet.
> A. I never saw it on the sentencing sheet. This is my recollection of the -- of the negotiations. I put those in quotes because there weren't really negotiations. It was always twenty, dead set twenty. It slipped or Eaton said twenty, twenty, twenty and then he tried a different tactic. He said I'll just serve an LWOP notice, and so we did the stand-your-ground hearing. And, I mean, we were going back and forth and back and forth, but it was always twenty. And, and I believe that there were some mitigating factors. He does have -- I think he's got socioeconomic background and some family issues that I think led us to where we are. But at that point we lost the stand-your- ground hearing, you know, I just let him know what the -- what the options were and, I mean, I'm very clear that these were all of his choices.

PCR Tr. 22–23.

Findings

[3] Notably, at this point in the evidentiary hearing, Applicant interrupted the Court and voluntarily left the Webex hearing. PCR Tr. 19–20.

This Court finds the combination of the record and Plea Counsel's **credible** and **persuasive** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Plea Counsel **credibly** testified that she did not mark anything out on the sentencing sheet and the offer was always twenty. Additionally, the record refutes Applicant's claim and provides he was apprised of the time the plea court could give him and Applicant informed the plea court that no one had promised him anything.

Moreover, to whatever extent Applicant thought he was getting less time than he did, he was presented an opportunity to inform the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test— that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill— that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not 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 1b: **Plea Counsel refused to remove herself from Applicant's case.**

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to remove herself from Applicant's case. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel told him she would put a motion in to relieve herself as his attorney. PCR Tr. 12. Applicant testified Plea Counsel never moved to relieve herself as his attorney. Id.

On cross-examination, Applicant testified that he did not tell the plea court he wanted Plea Counsel to be relieved because he was naïve. PCR Tr. 17. Applicant testified that he just wanted to get it over. Id. Applicant testified that he did not want to "de-credit" Plea Counsel because he has a heart and he just felt like Plea Counsel did not "support [him] enough." Id.

On direct examination, Plea Counsel testified that she recalled Applicant asking her to relieve herself once or twice. PCR Tr. 23. Plea Counsel testified that while Applicant mentioned it once or twice, he never followed through with it. Id.

Findings

This Court finds the combination of the record and Plea Counsel's **credible** and **persuasive** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Plea Counsel **credibly** testified that Applicant mentioned relieving her as counsel once or twice, but he never followed through. Additionally, this Court finds Applicant's testimony **not credible**. Applicant testified that he wanted Plea Counsel to relieve herself, however, he informed the plea court that he was satisfied

with her representation and he testified to this Court that he was satisfied with Plea Counsel and exclaimed Plea Counsel is a good attorney. PCR Tr. 11:23–24, 16:1 – 4. To the extent Applicant relied on text messages between his sister and Plea Counsel, those messages are not before this Court.

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not 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 1c: Plea Counsel failed to investigate the facts of Applicant's case.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the facts of Applicant's case. This Court finds this allegation to be without merit.

Strickland makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. "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 v. Catoe, 372 S.C. 318, 331– 32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted).

However, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597. Further, a PCR applicant must ordinarily present some probative evidence to prevail on a claim of ineffective assistance based on failure to investigate. See Jackson v. State, 329 S.C. 345, 353– 54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial").

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel told him she sent an investigator to see him, but he never saw the investigator.[4] PCR Tr. 13.

On cross-examination, Plea Counsel testified that she had hired a private investigator and a forensic investigator. PCR Tr. 22. Plea Counsel testified that the SYG hearing transcript reflects that she "put a ton of effort" into Applicant's case.

Findings

This Court finds the combination of the record and Plea Counsel's **credible** and **persuasive** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant

[4] This testimony is in direct contradiction to Applicant's PCR application attachment page 1. Therein Applicant wrote that the private investigator met with him in Booth 4 at the Alvin S. Glenn Detention Center for about one hour. See PCR Application Attachment Page 1.

decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant's testimony **not credible**. Plea Counsel **credibly** testified she hired a private investigator and forensic investigator. Plea Counsel **credibly** testified that the SYG hearing transcript reflects that she was well prepared. This Court agrees.

Additionally, as noted *supra*, the Applicant's testimony to this Court today regarding the private investigator never visiting him contradicts what he wrote in his PCR application.

This Court also finds that the Applicant failed to present any evidence of what Plea Counsel would have found had she investigated further. See Jackson, *supra*.

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not 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 1d: **Plea Counsel failed to meet with Applicant a sufficient number of times.**

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

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

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack

of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel only visited him three times prior to his guilty plea. PCR Tr. 13.

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Plea Counsel **credibly** testified that she met with Applicant over twenty times. This Court finds Applicant's testimony that Plea Counsel only met with him three times **not credible**. Furthermore, this Court finds Applicant failed to present any evidence of how additional preparation or communication would have resulted in a different outcome. See Jackson and Skeen, *supra*.

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not 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 1e: **Plea Counsel failed to provide discovery on request.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to provide his discovery on request. This Court finds this allegation to be without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel did not provide his discovery

in jail until eight months before his plea hearing. PCR Tr. 12.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant failed to show what evidence could have been discovered had Plea Counsel provided his discovery to him at an earlier time and has failed to overcome his burden in showing but for Plea Counsel's alleged error that he would have gone to trial and not pled guilty.

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not 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 1f: **Plea Counsel never showed Applicant the video footage of his case, and neither did the private investigator.**

In his original application, Applicant alleged Plea Counsel never showed Applicant the video footage of his case, and neither did the private investigator. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, this Court deems the allegation abandoned.

Allegation 1g: **Plea Counsel ignored the fact the victim could not initially point out Applicant in the photo line-up.**

In his original application, Applicant alleged Plea Counsel ignored the fact the victim could not initially point out Applicant in a photo line-up. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, this Court deems the allegation abandoned.

Allegation 1h: **Plea Counsel did not notice the victim's name was spelled Chineou Nwokah on his attempted murder indictment but spelled Chisom Nwokah on his armed robbery indictment.**

In his original application, Applicant alleged Plea Counsel did not notice the victim's name was spelled Chineou Nwokah on his attempted murder indictment but spelled Chisom Nwokah on his armed robbery indictment. Applicant failed to present any evidence, testimony, or legal

authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, this Court deems the allegation abandoned.

Allegation 1i: Plea Counsel ignored that the Victim could not point out Applicant in the photo lineup.

In his original application, Applicant alleged Plea Counsel ignored that the Victim could not point out Applicant in the photo lineup. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, this Court deems the allegation abandoned.

Allegation 1j: Plea Counsel failed to raise a defense.

In his original application, Applicant alleged Plea Counsel failed to raise a defense. Even assuming *in arguendo* that Applicant raised this claim at the PCR evidentiary hearing, the SYG hearing transcript disputes this allegation wholly. However, Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, this Court deems the allegation abandoned.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 5 **day of** Sept., **2024.**

Maité Murphy

THE HONORABLE MAITÉ MURPHY
Presiding Judge
Fifth Judicial Circuit

Charleston, South Carolina