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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

Daniel Coble, Circuit Court Judge

Case #2020-CP-40-5786

The State, Respondent,

v.

Bouvia A. Sales Appellant.

NOTICE OF APPEAL

Bouvia A. Sales, appeals the decision of the Court, in the order dated August 14, 2024, a filed copy of which was retrieved by counsel from the South Carolina Public Index on March 6, 2025, where Mr. Sales was denied his request for Post-Conviction Relief. Mr. Sales 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
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Attorney for Appellant (relieved)
Will not be representing on appeal

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STATE OF SOUTH CAROLINA COUNTY RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Bouvia A. Sales, #382266, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2020–CP–40–5786 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. Daniel Coble
Applicant's Attorney:	Timothy L. Griffith, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Plea Counsel:	Alicia D. Goode, Esq.
Date of Hearing:	September 11, 2023
Court Reporter:	Elizabeth B. Harris

This matter comes before the Court by way of Bouvia A. Sales' (Applicant) application for post-conviction relief (PCR) filed on December 10, 2020. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on March 5, 2021, requesting an evidentiary hearing to resolve the claims set forth in the application.

On September 11, 2023, an evidentiary hearing convened at the Richland County Courthouse before the Honorable Daniel Coble. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by Timothy L. Griffith, Esquire (PCR Counsel). 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 presented testimony from his sister, Natalie Middleton. Respondent presented testimony from Fifth Circuit Public Defender Alicia D. Goode, Esquire.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Richland County Clerk of Court. During the August 2017 term, the Richland County Grand Jury indicted Applicant for Murder (2017–GS–40–5201), Burglary–1st Degree (2017-GS-40-5205), and Possession of a Weapon During the Commission of a Violent Crime (2017-GS-40-5203). Fifth Circuit Public Defender Alicia D. Goode (Plea Counsel) represented Applicant. Assistant Solicitor Carter R. Potts of the Fifth Circuit Solicitor's Office prosecuted the case.

On January 29, 2020, Applicant appeared before the Honorable DeAndrea G. Benjamin and pled guilty under Alford[1], pursuant to a negotiated plea agreement to Voluntary Manslaughter, Burglary–1st Degree, and Possession of a Weapon During the Commission of a Violent Crime. Judge Benjamin accepted Applicant's plea and sentenced him to a negotiated term of twenty-five (25) years for Voluntary Manslaughter and Burglary–1st Degree, to run concurrently, and five (5) years for Possession of a Weapon During the Commission of a Violent Crime, to run consecutively. Applicant was given credit for nine hundred sixty-four days (964) of time served.

Applicant did not appeal his conviction and sentence.

[1] North Carolina v. Alford, 400 U.S. 25 (1970).

FACTS GIVING RISE TO THE CONVICTION

The facts in support of the plea were articulated by the State at Applicant's plea hearing as follows:

> Thank you, Your Honor. This incident took place on April 8th of, 2017. Your Honor, the victim, Marlon Button -- Butler, Sr., and his son, Marlon Button [sic] Jr., came home around 1:45 AM to their house on Candwenn Court here in Richland County. When they got there, they saw the front door of the house had been forced open. There was a light that was off when they left that was now on. They decided to go inside. They immediately noticed the house had been burglarized. One item missing was a 50-inch Vizio TV.
>
> As they headed upstairs, Your Honor, the son lagged behind the father, and Marlon, Jr., saw his father enter a bedroom on the right-hand side. He then heard his father say whoa, whoa, and then gunshots. Marlon, Jr., hid behind the wall and decided to make a run for it. As he ran out of the home, he heard and felt shots being fired after him. He then went and called 911 and met law enforcement at the residence. Marlon, Jr., never saw the person who fired that gun.
>
> Once law enforcement entered, entered the home, they found mattresses overturned, cushions pulled off couches; multiple doors had been forced open, and the glass door at the front of the house that was intact when victims arrived had now been lying shattered; shell casings all over the hallway upstairs; and the victim lying faced down on the floor of the bedroom. Your Honor, they retrieved the serial number from the TV that was stolen and contacted Vizio to have it flagged.
>
> The next day, Marlon, Jr., called back law enforcement and said there were other items in the home that could -- that should not have been there, most prominently a can of Pepsi in the incident location, in that bedroom. Crime scene photos the night before revealed the Pepsi can was there when law enforcement initially investigated.
>
> After processing that can, Your Honor, the DNA eventually came back to this defendant, Bouvia Sales, with around the rim of the cup and on the inside. Your Honor, without that, this case would have been a whodunit. Investigator Duckett, Montgomery of the CPD, Your Honor, did an excellent job, and I'm going to go into a little bit about their investigation, more about the evidence in the case.

In May, Your Honor, about a month later, this defendant was arrested for outstanding warrants in Cayce, and Investigators Duckett and Montgomery went to go talk to him. He invoked his right to remain silent and they – but they told him anyway he was a suspect in a homicide, and at that point he requested an attorney.

They then pulled his jail phone calls from that night, and he had placed a phone call to a woman named Kenyatta Mitchell. He told her that CPD investigators came to speak with him about a homicide, but he didn't tell them anything. Kenyatta immediately responded with so burn everything from that night, and Bouvia said that he didn't want to talk about it.

Search warrants were served for various Facebook pages for people connected with Mr. Sales, including Lillian Corley, the mother of his child. She had a conversation with this defendant on April 12th, four days after the murder, and they had this following conversation. This defendant: You ruined me. She responded: No. You ruined you. He said: No fucking with you. Dead. I killed a man. Since you were so cold and heartless to me, I have no
remorse.

Later on, Your Honor, in June Vizio responded the TV that they had flagged that had been reported missing in the burglary had reappeared, had reconnected to the internet. Investigators did a search warrant on the home the TV went to; it belonged to a woman named Sharia [ph.] Green. They executed the search warrant on her home, Your Honor, and made contact with her. She said she had bought the TV from a named -- man named Alexander Robinson. Mr. Robinson was at the same address as the phone number that Mr. Sales had called for Kenyatta Mitchell.

After talking with him, Your Honor, he told that -- investigators that this defendant was living with him at the time of the incident, and that this defendant confessed to him about the murder and confirmed the timeline about what happened. He said that he got the TV from him and that's why he sold it to Ms. Green. He also said that a man named Derrick Nance had also been involved in the
burglaries.

A search warrant was served at the jail, and investigators recovered Derrick Nance's cell phone. He had had his location services turned on, so his phone was tracking where he was at all time. They were able to see that he was in the area of the incident between 12:30 and 1:42 AM, and from 1:42 to 2 AM he was driving to the Robinson home. And as I said, this incident occurred about 1:45 in the morning.

> Investigators interviewed Nance at this time after -- the second time. The first time, he denied any involvement. In the second interview, Your Honor, he gave himself -- he gave a statement implicating himself in the burglary and confirmed the timeline of the phone. That he had left Mr. Sales in the home by himself. That he had gone got back to the Robinson home without him. He then came to try and pick up Mr. Sales after he dropped off the items, and he saw the blue light at the house. At that point, he kind of abandoned ship. Your Honor, those are the facts of the case, Your Honor.

(Plea Tr. pp. 5-9)

CURRENT ACTION BEFORE THIS COURT

Applicant timely commenced this PCR action on December 10, 2020, in which he alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Plea Counsel
   a. "Counsel failed to investigate."
   b. "Counsel failed to motion for speedy trial."
   c. "Counsel failed to motion for bond hearing."
2. "Due Process violation"

On September 2, 2023, PCR Counsel emailed amendments to Applicant's application to include the following allegations:

1. Plea Counsel was pregnant and didn't come to see him but once every 6 months – was not really into his case – because of her workload
2. Applicant initiated the Alford plea, not Plea Counsel.
3. Plea Counsel failed to investigate – Applicant named multiple alibi witnesses that she never found or interviewed.
   a. If Plea Counsel had talked to the alibi witnesses Applicant would have gone to trial if it came to that with those witnesses.
4. Week of Applicant's arraignment, he and his co-counsel discussed the case – but it seemed that they didn't believe him and assumed he was guilty of at least something.

Before this Court are the Richland County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from SCDC, Applicant's guilty plea transcript, and the records of Applicant's current 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 upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
> 2. That the court was without jurisdiction to impose sentence;
> 3. That the sentence exceeds the maximum authorized by law;
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

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. 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).

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

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 decisionmaking" 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).

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), 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

As an initial matter, this Court finds the testimony of Natalie Middleton generally **not credible** and **not persuasive**. This Court finds Plea Counsel's testimony generally **credible** and **persuasive**. This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in her 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. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 11-13); 2. Applicant understood the details and circumstances of the negotiated plea (Plea Tr. pp. 3-4; 15-16); 3. Applicant clearly

indicated he was satisfied with Plea Counsel (Plea Tr. p. 15); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 13-14); 5. Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 14); 6. Applicant indicated Plea Counsel had gone over all the evidence and potential defenses (Plea Tr. pp. 14-15); 7. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. p. 15); 8. Applicant was not on drugs or medications that would affect his ability to understand the plea proceedings (Plea Tr. p. 5); 9. Applicant understood the sentencing range (Plea Tr. pp. 11-13); 10. Applicant agreed with the allocation of the facts surrounding the State's case (Plea Tr. pp. 5-10); 11. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. pp. 15-18).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Plea Counsel failed to investigate.
Allegation: Plea Counsel failed to investigate alibi witnesses.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to investigate. Specifically, Applicant alleged Plea Counsel failed to investigate his alibi witnesses and the Facebook messages. This Court finds these allegations are without merit.

Strickland v. Washington 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. 668, 691 (1984). "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). At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard. v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing

to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Moreover, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence that could have been discovered by a more thorough investigation. 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 [Applicant] would have requested counsel pursue had counsel more fully prepared for the trial").

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he asked Plea Counsel to investigate his alibi witnesses. (PCR Tr. p. 6). Applicant testified that he told Plea Counsel to contact his alibi

witnesses, whose names were Biale Jenkins, Kenneth Archie (aka Juvie), DJ[3], and Halerio Jones[4]. Applicant testified that after having been transferred to Lee County, he spoke with his friend, Anthony Robinson, who was now deceased, from the "street" who was with Biale Jenkins (Jenkins). (PCR Tr. p. 7). Applicant testified that he asked Jenkins whether he remembered the last time they saw each other. (PCR Tr. p. 8). Applicant testified that he was playing cards with Jenkins on the night of the incident. (PCR Tr. p. 8). Applicant testified that his Plea Counsel did not "believe in his innocence from beginning to end" and did not "put forth her best effort." (PCR Tr. p. 8).

Applicant testified that he also asked Plea Counsel to investigate the domain of the Facebook messages because he was concerned about who wrote the messages. (PCR Tr. p. 6). Applicant testified that his phone was in custody, and he asked Plea Counsel to investigate the IP addresses and where it was logged. (PCR Tr. p. 6). Applicant testified that his phone was "logged on somebody's Wi-Fi" and did not work on the cell towers. (PCR Tr. p. 6).

On cross-examination, Applicant testified that Plea Counsel failed to investigate multiple alibi witnesses such as Jenkins, Kenneth Archie (aka Juvie), Horatio, and DJ, who would have provided an alibi. (PCR Tr. p. 16). Applicant testified that he recalled that Facebook messages were used in his trial. (PCR Tr. p. 17). Applicant testified that the only cell phone records used were for the State's witness, Derek Nance (Nance). (PCR Tr. p. 17). Applicant testified the cell phone records pinged Nance at different locations. (PCR Tr. 17).

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[3] This Court notes that at the evidentiary hearing, Applicant testified he did not know DJ's real name and only knew DJ by his Facebook name. (PCR Tr. p. 7).

[4] This Court notes that at the evidentiary hearing, Applicant testified that Halerio Jones's name was Horatio Jones. (PCR Tr. p. 7).

Applicant testified that he could not recall agreeing with the State's facts and that they would likely lead to a conviction had he gone to trial. (PCR Tr. p. 18). Applicant testified that he could not recall informing the plea court that Plea Counsel had done everything that she could have done. (PCR Tr. p. 18). Applicant testified he could not recall informing the plea court that he was pleading of his own free will. (PCR Tr. 19). Applicant testified that he could not recall that he informed the plea court that no one was forcing him to plead. (PCR Tr. p. 19).

On direct examination, Plea Counsel testified that Applicant's charges stemmed from the burglary of a house. (PCR Tr. p. 26). Plea Counsel testified that the homeowner came home during the middle of the burglary and was shot and killed. (PCR Tr. p. 26). Plea Counsel testified that the shooter fled and fired at the homeowner's son as he ran away from the house. (PCR Tr. p. 26). Plea Counsel testified that a Pepsi can was collected from the closet in the house where the burglars were located and processed for DNA. (PCR Tr. p. 26). Plea Counsel testified that the DNA on the Pepsi can was run through CODIS and came back to Applicant. (PCR Tr. p. 26). Plea Counsel testified she retained a DNA expert, and discussions with the DNA expert were not fruitful, which did not leave much of a challenge to the DNA evidence. (PCR Tr. p. 30).

Further, Plea Counsel testified she discussed the elements of the charges and reviewed discovery with Applicant. (PCR Tr. p. 25). Plea Counsel testified that she hired an investigator, but Applicant did not provide any concrete information to provide to the investigator as far as alibi witnesses. (PCR Tr. p. 27). Plea Counsel testified that she requested the investigator "interview potential alibi witnesses and witnesses spoken to by law enforcement." (PCR Tr. p. 27). Plea Counsel testified she kept asking for information on his alibi witnesses. (PCR Tr. p. 27). In September 2018, Plea Counsel was given the name Biale Jenkins, and the investigator's attempts to locate Jenkins were unsuccessful. (PCR Tr. p. 27).

Findings

As an initial matter, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. 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 hired two investigators and retained a DNA expert. Plea Counsel **credibly** testified that Applicant did not provide concrete contact information for his alleged alibi witnesses, and the investigator was unable to find anyone from the information Applicant provided them.

Additionally, Applicant has failed to present evidence of any discoverable matters or defenses Plea Counsel would have discovered had she been more prepared. Applicant also did not present credible evidence to this Court regarding Facebook messages. Notably, Applicant did not present any witnesses to this Court to support his contention that Plea Counsel failed to investigate his alibi witnesses. To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

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 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: Plea Counsel failed to move for a speedy trial.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to move for a speedy trial. This Court finds this allegation to be without merit.

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally guaranteed right to a speedy trial. See U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right to a speedy and public trial[.]"). That right is designed to protect against anxiety stemming from public accusations of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused's defense. State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012). However, the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. United States v. Loud Hawk, 474 U.S. 302, 312 (1986). Critically, though, the criminal trial process is designed to move deliberately due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United States v. Ewell, 383 U.S. 116, 120 (1966);

see Beavers v. Haubert, 198 U.S. 77, 87 (1905) ("The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures the rights of a defendant. It does not preclude the rights of public justice.").

In order to trigger a speedy trial analysis, a criminal defendant's trial must have been delayed for a period of time that is presumptively prejudicial, which is necessarily dependent on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 482. Notably, "a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case." Id. In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively prejudicial. See Doggett v. United States, 505 U.S. 647, 652, n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found post accusation delay 'presumptively prejudicial' at least as it approaches one year."). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination "is *not based on the passage of a specific period of time,*" and delay alone is not singularly dispositive. State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant's speedy trial rights have been violated is necessarily dependent on the specific circumstances of the case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the

delay; (3) the defendant's assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably, though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances as may be relevant." Id. "In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

Findings

This Court finds that even assuming, *in arguendo*, the speedy trial analysis was triggered in this case, that Applicant has not established a speedy trial violation from the facts of his case. Applicant was arrested on or about June 9, 2017, and was indicted by the Richland County Grand jury in August 2017. Applicant's trial commenced on January 29, 2020. A portion of Applicant's detainment occurred during the COVID-19 pandemic. Furthermore, Applicant testified at the evidentiary hearing that Plea Counsel said she could not be ready in six weeks for a trial and that he had "let that go." (PCR Tr. p. 7). This Court reasserts its finding that no violation of Applicant's right to a speedy trial occurred in this case.

Moreover, to whatever extent Applicant was not entirely satisfied that he had not received a speedy trial, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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: Plea Counsel failed to move for a bond hearing.

Applicant alleged Plea Counsel was constitutionally ineffective for not moving for a bond hearing.

Findings

No evidence, testimony, or legal authority was presented at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "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)).

Allegation: Plea Counsel failed to meet a sufficient number of times.
Allegation: Plea Counsel was pregnant and did not visit Applicant but once every six months.

Applicant alleged 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), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel's deficient performance was prejudicial. Id.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel only met with him about every six months. (PCR Tr. p. 9).

On direct examination, Plea Counsel testified that from her notes, she counted at least sixteen meetings with the Applicant.

Findings

As an initial matter, this Court finds Plea Counsel's testimony in this matter **credible** and Applicant's testimony **not credible**. 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 her notes reflected that she met with Applicant at least sixteen (16) times. Plea Counsel **credibly** testified that her pregnancy did not affect her ability to represent Applicant. This Court 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, Olson, and Easter, *supra*.

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.

Moreover, to whatever extent Applicant was not entirely satisfied with the number of meetings he had 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 avail himself of the benefit of his guilty plea.

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: Plea Counsel failed to convey one of the plea offers.
Allegation: Applicant initiated the plea offer and not Plea Counsel.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to convey a plea offer to him. Specifically, Applicant alleged Plea Counsel failed to convey the first plea offer of forty (40) years. Also, Applicant avers he initiated the plea offer and not Plea Counsel. This Court finds these allegations to be without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has

held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169-70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining).

Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145. To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

Findings

This Court 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*. It strains credulity to suggest that Applicant suffered any prejudice from this allegation where Applicant's plea deal he received was for less time than that which he claims Plea Counsel was ineffective for not conveying. See Collins, *supra*. This Court finds Applicant cannot

demonstrate that he would have taken the forty-year (40) plea deal had Plea Counsel conveyed that offer to him.

Turning to Applicant's claim that he initiated the Alford plea offer and not Plea Counsel, this Court finds Applicant has failed to meet his burden in proving any deficiency or prejudice from the alleged deficiency. The only testimony on this issue was from Applicant, where he testified that during negotiations, he asked if he could plead "no contest," and that was how an Alford plea was presented. (PCR Tr. p. 11). Applicant presented nothing further to this Court to substantiate any deficiency in Plea Counsel's representation; thus, this Court cannot find Plea Counsel's performance fell below a reasonably objective standard.

Moreover, to whatever extent Applicant was not entirely satisfied with the thirty (30) year plea deal Plea Counsel secured, he was presented the opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea and negotiated thirty (30) year sentence.

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 prejudice to Applicant by the alleged deficiency of Plea Counsel. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: **Week of Applicant's arraignment, he and Plea Counsel discussed the case – but it seemed that they didn't believe him and assumed he was guilty of at least something.**

Applicant alleges that he is entitled to post-conviction relief because the week of Applicant's arraignment, he and Plea Counsel discussed the case – but it seemed that they didn't believe him and assumed he was guilty of at least something. This Court finds this allegation to be without merit.

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*. Applicant's allegation is pure conjecture. Importantly, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Moreover, to whatever extent Applicant was not entirely satisfied 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 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**.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 31 **day of** July **, 2024.**

DANIEL COBLE
Presiding Judge
Fifth Judicial Circuit

Richland, South Carolina