



ALAN WILSON
ATTORNEY GENERAL

February 28, 2025

The Honorable Winnifa Brown-Clark
Orangeburg County Clerk of Court
PO Box 9000
Orangeburg, SC 29115-9000

Re: Shelly T. Faulling, # 197178 v. State of South Carolina
Case No.: 2018-CP-38-01551

FILED FOR RECORD
WINNIFA B. CLARK
2025 MAR -6 A 11:41
CLERK OF COURT
ORANGEBURG, SC

Dear Ms. Brown-Clark,

Enclosed please find the original Order Denying Applicant's Motion to Alter and Amend signed by the Honorable Kristi Curtis, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions regarding this matter, please let me know.

Sincerely,

Danielle Dixon
Assistant Attorney General

DD/l
Enclosure

cc: David B. Tarr, Esquire

Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiff's Rule 59(e) Motion is respectfully denied.

IT IS SO ORDERED.

February 21, 2025
Sumter, South Carolina.



The Honorable Kristi F. Curtis



FILED FOR RECORD
WINNIFA B. CLARK

ALAN WILSON
ATTORNEY GENERAL

February 28, 2025

The Honorable Winnifa Brown-Clark
Orangeburg County Clerk of Court
PO Box 9000
Orangeburg, SC 29115-9000

Re: Shelly T. Faulling, # 197178 v. State of South Carolina
Case No.: 2018-CP-38-01551

Dear Ms. Brown-Clark,

Enclosed please find the original Order Granting Belated Review Pursuant to White v. State and Dismissing all other grounds signed by the Honorable Kristi Curtis, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions regarding this matter, please let me know.

Sincerely,

Danielle Dixon
Assistant Attorney General

FILED FOR RECORD
WINNIFA B. CLARK
2025 MAR - 6 A 11: 41
CLERK OF COURT
ORANSEBURG, SC

DD/lb
Enclosure

cc: David B. Tarr, Esquire

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
)
 Shelly T. Faulling, SCDC #197178,)
)
 Applicant,)
 v.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-38-01551

**ORDER GRANTING BELATED
 REVIEW PURSUANT TO
 WHITE V. STATE AND
 DISMISSING ALL OTHER GROUNDS**

FILED FOR RECORD
 WINNIEFORD CLARK
 2025 MAR 19 4:11:42 PM
 CLERK OF COURT
 ORANGEBURG, SC

This matter is before the Court by way of two applications for post-conviction relief (PCR) filed by Shelly T. Faulling (Applicant) on December 10, 2018. Applicant filed his application in Orangeburg County (2018-CP-38-1551) challenging convictions following a jury trial of two counts of manufacturing /distribution of methamphetamine, third or subsequent. He also filed an application in Calhoun County (2018-CP-09-00163) challenging a guilty plea conviction of manufacturing/distribution of methamphetamine, third or subsequent. By Order dated February 7, 2023, the Calhoun County Action was consolidated into the Orangeburg County action with the consent of both parties.

On May 17, 2023, an evidentiary hearing convened before the Honorable Kristi Curtis. Applicant was present and represented by David Tarr, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the close of the hearing, counsel for Applicant—in lieu of argument—asked this Court to order the parties to submit competing orders. This Court denied that request. Thereafter, counsel for Applicant requested to brief the issue of whether Applicant was denied due process when the Detention Center did not forcibly transport him to trial after he refused transport. This Court provided Applicant additional time to brief this issue and Respondent time to respond. After receiving submissions from the parties and following a thorough review of the transcript and testimony and evidence presented at the hearing, this Court

finds Applicant is entitled to a belated direct appeal of his trial pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). This Court further finds Applicant did not meet his burden of proof on the remaining allegations and denials and dismisses those with prejudice.

PROCEDURAL HISTORY

Orangeburg County Trial

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In December 2017, the Orangeburg County Grand Jury indicted Applicant for possession with intent to distribute (PWID) methamphetamine, third or subsequent offense (2017-GS-38-0375). On December 12, 2017, a jury trial convened before the Honorable Edgar W. Dickson. Deborah J. Butcher, Esquire, represented Applicant. Assistant Solicitor Ashley Cornwell prosecuted the case. Applicant was not present and was tried in his absence.

At the conclusion of trial, the jury found Applicant guilty as indicted. Following the verdict, Judge Dickson sealed the sentence. On December 14, 2017, Applicant appeared before Judge Dickson and was sentenced to thirty years.

Applicant filed a *pro se* notice of appeal. By order filed March 29, 2018, the South Carolina Court of Appeals dismissed the appeal, finding Applicant failed to timely serve and file a notice of appeal. The remittitur was sent April 16, 2018.

Calhoun County Guilty Plea

On January 11, 2018, Applicant appeared pro se before the Honorable Edgar Dickson and pled guilty to Orangeburg County charges of PWID methamphetamine, third offense; and failure to stop for a blue light (2017-GS-38-376, -377). That same day, Applicant waived venue and pled guilty to Calhoun County charges of PWID methamphetamine, third offense; failure to stop for a blue light; driving under a suspended license; and driving without registration (2017-GS-9-23, -

24, -27, 28). Applicant pled pursuant to a negotiation that all charges would run concurrent with his December 2017 conviction and he would not receive additional time. (Plea 4). The plea court accepted the negotiation and sentenced Applicant to thirty years for each PWID methamphetamine charge; three years for each failure to stop charge; and time-served for the remaining charges. These sentences were all concurrent to the sentence Applicant received in his December 2017 trial. Applicant did not appeal his guilty plea.

CURRENT APPLICATIONS

On December 10, 2018, Applicant filed PCR applications in both Orangeburg County and Calhoun County raising the following, identical claims:

(a) Attorney conflict of interest: Attorney refused to quit before trial, I tried to have her removed during pretrial but it was unsuccessful. She quit immediately after guilty verdict which left me with hostile representation before and no representation after. During which time the prosecutor deemed me pro se even though I didn't fully understand the Faretta Warning.

(b) Attorney failed to disqualify jurors during voir dire: Voir dire is picking a jury, anyone who knows you personally, has a grudge, or is your friend, etc. is supposed to be automatically disqualified by the Judge.

(c) Attorney forced me to go pro se: I have no intention of proceeding without a lawyer. I repeatedly asked for nonconflicting counsel and was ignored, which resulted in me being forced into pro se and tried in my absence illegally.

The State filed a return and a motion for a more definite statement.

On May 8, 2023, Applicant filed an amended application in his Orangeburg County Action alleging:

(a) Trial proceeded in Mr. Faulling's absence: Mr. Faulling was in custody at the Orangeburg County Detention Center when his trial was held at the Orangeburg County Courthouse. He was not transported to Court by the Jailers. Therefore, he was denied his fundamental right to be present at his trial.

(b) Ineffective assistance of counsel due to Ms. Butcher's failure to object to trial proceeding in Mr. Faulling's absence: Trial counsel Butcher moved for a continuance due to the fact the jail did not transport Mr. Faulling to court, but she did not object to the trial proceeding in his absence or to the judge failing to grant her continuance request.

(c) Mr. Faulling did not knowingly and voluntarily waive his right to appeal: Mr. Faulling's trial counsel Deborah Butcher moved to be relieved as his counsel and was relieved after sentencing, but prior to filing a notice of intent to appeal. The Notice of Appeal was not timely filed and therefore Mr. Faulling's appeal was dismissed.

That same day, Applicant filed an amended application in his Calhoun County Action alleging:

(a) Guilty Plea was made after Faretta warnings tainted by legal advice given by an attorney with an actual conflict of interest. Attorney giving advice was assistant solicitor who was actively prosecuting Mr. Faulling at the time advice was given. Mr. Faulling pled guilty pro se, due to the fact that his appointed counsel was relieved prior to his guilty plea. The Solicitor Ashley Cornwell gave Mr. Faulling legal advice prior to and during his guilty plea, while laboring under an actual conflict of interest as she was the prosecutor in the case.

By order dated February 7, 2023, the Calhoun County PCR action was consolidated into the Orangeburg County PCR action. At the hearing, Applicant proceeded only on the allegations of his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony.¹ After a careful review, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of

¹ This Court will reference PCR testimony where relevant below.

facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Orangeburg Trial in Absentia

a. Due process

At the PCR hearing, Applicant's primary allegation centered on his argument that he was denied due process when the Detention Center did not forcibly transport him to his trial.² This Court finds Applicant did not establish a due process violation.

Procedural due process requires "adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review." State v. Dukes, 404 S.C. 553, 558, 745 S.E.2d 137, 140 (Ct. App. 2013).

Following jury selection, trial counsel moved for a continuance based on Applicant's absence. Both the solicitor and trial counsel acknowledged that Applicant had been notified that trial was set for the December 11th term of court in front of Judge Dickson on November 20, 2017. According to trial counsel, she had repeatedly informed Applicant of his trial date. In fact, she met with him the day before trial and informed him again. In addition, the State arranged for Applicant to be transported from the Detention Center. Despite this, Applicant refused to be transported. During the motion, trial counsel reminded Judge Dickson about Applicant's prior motion to relieve counsel and the deteriorating relationship between her and Applicant. After hearing arguments, Judge Dickson found Applicant had adequate notice of his trial and the consequences of failing to attend. Consequently, he denied trial counsel's motion for a continuance, and the trial proceeded in Applicant's absence over counsel's objections.

² The State had arranged for him to be transported, but Applicant refused to be transported.

Here, Applicant had both notice of the trial date and an opportunity to be transported and heard. At the PCR hearing—consistent with the trial transcript—both the solicitor and trial counsel testified the State arranged for transport but Applicant refused to be transported. Both also testified that Applicant was advised on the record at a prior hearing of his trial date and that trial would proceed in his absence if he did not attend. This Court finds credible counsel and the solicitor's foregoing testimony that Applicant had notice and the opportunity to be transported but refused transport. Based on the foregoing, Applicant had both adequate notice and an opportunity to be heard. Further, counsel was present at trial to confront adverse witnesses and introduce any evidence that may have been admissible and favorable to Applicant. Finally, Applicant was afforded a jury trial, and the State maintained the burden of proof. Thus, Applicant was not denied due process.

This Court rejects Applicant's argument that he was denied his right to be at his trial, which constituted a structural error. Had Applicant been *denied* his right to be present, he would have been deprived of due process. However, the facts here do not support a finding that Applicant was denied his right to be present at his trial. Both counsel and the solicitor credibly testified that Applicant was advised on the record of his trial date and that the trial would occur *in his absence* if he chose not to attend. The State arranged for transportation, but Applicant—after being advised of his trial date and that trial would proceed in his absence—refused it.

It strains credibility to suggest a criminal defendant can (1) refuse transport arranged by the State and then (2) obtain a new trial at a later date if the Detention Center does not forcibly transport him. In short, due process requires notice and the opportunity to be heard. Applicant was provided both. Permitting him to refuse transport and then obtain a new trial years later would serve as an incentive for other criminal defendants to likewise refuse transport to their trial—and

subsequently seek to obtain a new trial at a later date if they are not forcibly transported. Based on the foregoing, Applicant has not established a due process violation, and this claim is denied.

b. Ineffective assistance of counsel

Applicant next contends counsel was ineffective for not objecting to the trial proceeding in Applicant's absence. He further avers that although counsel moved for a continuance after Applicant was not transported, she did not object to the trial proceeding in his absence or to the judge failing to grant her continuance request. This allegation lacks merit.

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. In evaluating allegations of ineffective assistance of counsel, courts apply the two-pronged test in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment, and an applicant must overcome this presumption to receive relief. Id. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Prior to trial, counsel moved for a continuance on the basis Applicant was not present. The trial court denied the request. (Tr. 27-33). Thus, this Court finds counsel properly preserved for appeal the issue of whether the trial court erred in denying the motion to continue, and counsel did not need to further object. Counsel thus was not deficient, nor was Applicant prejudiced.

To the extent counsel needed to object to trial proceeding in Applicant's absence to preserve it for appeal, this Court finds Applicant cannot show prejudice from counsel's failure to object to the trial proceeding in his absence. Specifically, it is not reasonably likely a further objection to the Court's ruling would have changed the trial court's decision to proceed in Applicant's absence—especially when the trial court considered both whether Applicant had notice of the trial date and whether Applicant had been informed that trial could proceed in his absence. Based on the transcript, Applicant was informed of both (1) his trial date and (2) that trial would proceed in his absence if he did not attend. (Tr. 27-33). Likewise, according to the transcript, the State arranged to have him transported to Court, but Applicant refused. (Tr. 27-33). Based on this, it is not reasonably likely the appellate court would have reversed the trial court's denial of a motion for a continuance had this issue been properly preserved and raised on direct appeal. See Ravenell, 387 S.C. at 455, 692 S.E.2d at 557 (“The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion.”); id. (“Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth.”); id. (“It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence.”); id. at 455, 692 S.E.2d at 557-58 (“A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence.”); id. at 456, 692 S.E.2d at 558 (“The judge must make findings of fact on the record that the defendant

(1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend.”).

Further, trial counsel and the solicitor testified at the PCR hearing that Applicant had previously appeared before Judge Dickson, and Judge Dickson informed him of his trial date and that trial would proceed in his absence if he did not attend. This Court finds the foregoing testimony credible. Ultimately, Applicant had notice of his trial date that it would proceed in his absence if he did not attend. The State arranged transport, but Applicant refused to be transported. Thus, regardless of whether counsel adequately preserved this issue, Applicant cannot show prejudice because it is not reasonably likely a further objection would have (1) changed the court’s denial of the motion to continue or (2) caused the appellate court to reverse this issue.

c. Belated Appeal

Applicant contends he did not knowingly and voluntarily waive his right to appeal his trial. This Court agrees.³

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967).” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted). Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme

³ Respondent conceded this issue.

Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39-40 (1974).

Here, counsel was relieved at the conclusion of this trial in absentia. After sentencing, Applicant attempted unsuccessfully to file a notice of appeal, but it was dismissed as untimely. This Court finds the evidence does not show Applicant knowingly and voluntarily waived his right to a direct appeal. Thus, Applicant is entitled to a belated appeal pursuant to White.

Calhoun County Guilty Plea

a. Conflict of Interest

Applicant contends he pled guilty after receiving Faretta warnings that were “tainted by legal advice given by an attorney with an actual conflict of interest.” Specifically, he avers assistant solicitor that was actively prosecuting him provided legal advice. He further contends he pled guilty due to the fact that his appointed counsel was relieved prior to his guilty plea. This Court further finds Applicant did not prove this ground.

Initially, Applicant has not established a conflict of interest. At the plea hearing, Applicant acknowledged the solicitor did not represent him. (Plea 9). Applicant was also repeatedly advised of his right to counsel—which he repeatedly waived. (Plea 9-14). In short, Applicant pled guilty with the full understanding he was not represented by the solicitor and he had the right to appointed counsel. Because Applicant himself relayed to the plea court that he understood the solicitor was not his attorney, this Court finds Applicant did not prove the solicitor was engaged in a conflict of interest or that a conflict of interest rendered his plea involuntary.

b. Faretta warning

After the close of evidence, Applicant moved to amend his application to allege he did not understand the Faretta warnings. This motion was granted over Respondent’s objection. This Court

construes this as an allegation that Applicant's plea was rendered involuntary because he did not understand the Faretta warnings. This Court further finds Applicant did not prove this ground.

At the plea hearing, the plea court advised Applicant of the dangers of proceeding pro se, and Applicant indicated he understood. (Pl. 10-14). In fact, the plea court had Applicant read and sign a document acknowledging he had all questions answered regarding self-representation and did not want an attorney. (Pl. 13-14). Further, a review of the plea transcript shows Applicant was actively engaged in the plea process and asked several questions of the plea court. For example, Applicant asked for clarification on the CDR code on his sentencing sheet to ensure it would be a non-violent offense. (Pl. 23-24). Applicant also requested credit for time served and made a motion to reduce the sentence he received at trial. (Pl. 26-27, 31-34). Finally, Applicant sought guidance on retrieving his boss's gun from law enforcement and a vehicle purchased by his mother. (Pl. 36-37). Nothing in the plea transcript suggests Applicant lacked the ability to understand the process or what was going on. Applicant has not met his burden of proof in this regard, and this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant is entitled to a belated appeal of his Orangeburg County trial pursuant to White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39-40 (1974). This Court further finds Applicant has not established any other constitutional violations that would require this Court to grant relief. Thus, Applicant's remaining allegations are denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek

appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant shall be remanded to and remain in the custody of the State;
2. Applicant is granted the right to seek a belated appeal of his Orangeburg County trial in accordance with White v. State. Counsel for Applicant is directed to file the appropriate notice of appeal within thirty days of receipt of written notice of the entry of this order, and
3. Applicant's remaining allegations are denied and dismissed with prejudice.

AND IT IS SO ORDERED THIS 3rd day of February, ²⁰²⁵~~2024~~.

Kristi Curtis

KRISTI CURTIS
Presiding Judge
First Judicial Circuit

Spartanburg, South Carolina