

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 05 2025

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
J. Cordell Maddox, Circuit Court Judge

Case № 2022-CP-32-3461

David Fredshun Gates, #387073, Appellant,

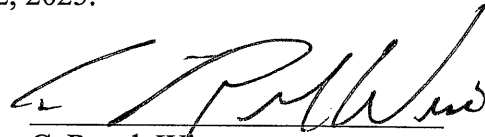
vs.

The State Respondent.

NOTICE OF INTENT TO APPEAL

David Fredshun Gates, #387073 appeals the Orders of Honorable J. Cordell Maddox Order denying Rule 59 Motion filed April 18, 2025 and Order of Dismissal filed August 16, 2024. Appellant received a copy of this decision on May 2, 2025.

May 5^o, 2025



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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 2024 AUG 16 PM 12:11 ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

David Fredshun Gates, #387073,) Case No.: 2022-CP-32-3461

) Applicant,)

) v.)

) ORDER OF DISMISSAL

) State of South Carolina,)

) Respondent.)

This matter comes before this Court by an application for post-conviction relief by Applicant, David Fredshun Gates, filed on October 11, 2022. He is represented by C. Rauch Wise of the South Carolina Bar. He challenges his conviction for trafficking in heroin and sentence of 10 years. He alleges a claim of ineffective assistance of counsel based upon a claim of a conflict of interest due to the fact that his counsel, the late Stanley L. Myers, jointly represented his brother Ladarien Gates at the plea. The Respondent State of South Carolina filed a Return on March 5, 2024 asserting that the allegations of ineffective assistance of counsel will likely require an evidentiary hearing to adequately resolve. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”). On March 22, 2024 the matter was heard before this Court. The Applicant was present and represented by his counsel, Rauch Wise. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, his brother Ladarien Gates, April Muller, and Assistant Solicitor Kyle Smith. After the hearing the Court took the matter under advisement.

Based upon its review of the record, including the testimony, court records and transcript of the guilty plea, this Court finds the application for post-conviction relief must be denied for the reasons set forth below :

Procedural History

Applicant, David Fredshun Gates, is presently confined in the South Carolina Department of Corrections at the Kershaw Correctional Institution, pursuant to orders of commitment from the Lexington County Clerk of Court. During an October 2021 term, the Lexington County Grand Jury indicted Applicant for trafficking in heroin 14 grams or more, but less than 28 grams. 2021GS3203137. Stanley L. Myers, Esq., represented Applicant on the charges.

The plea was a joint plea with his brother Ladarien Gates who was also represented by Mr. Myers. However, they were pleading to separate offenses:

THE COURT: This is for Ladarien; your indictment has been true billed. The date says March 12, 2021. You did have in your possession a quantity of heroin, which puts you at the trafficking offense level. You pleading guilty or not guilty?

MR. GATES: Guilty.

Tr.p. 6-7

THE COURT: All right. And David your indictment has been true billed date says on March 22, 2021. You did have in your possession 14 grams but less than 28 grams also of heroin. You pleading guilty or not guilty?

MR. GATES: Yes, ma'am, guilty.

THE COURT: This is a negotiated plea, 10 years. That means I have to give you 10 years, you understand that, Mr. Gates?

MR. GATES: Yes, ma'am.

Tr.p. 7, l. 11-21.

On January 27, 2022, the Applicant appeared with counsel Myers before the Honorable Debra McCaslin, Presiding Judge. The prosecution was represented by Kyle Smith of the Eleventh Circuit Solicitors office. At that time the Court was advised that the Applicant was

entering a negotiated plea to the lesser offense of trafficking in heroin, 4 grams or more, but less than 14 grams – 1st offense with a negotiated sentence of 10 years. Tr.p. 4, 7. After inquiry of the parties, Judge McCaslin accepted the negotiated plea and sentenced the Applicant to 10 years. Applicant did not appeal.

This Court has before it and reviewed the following:

1. Lexington County Clerk of Court records, including the indictment, sentencing sheet, arrest warrant, notice of appearance, Motion for Brady and other favorable material, Request for Rule 5 material, and the State's Request for Discovery;
2. Guilty Plea Transcript of January 27, 2022; and
3. SCDC Records.

Present Allegations

Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel. My attorney had a conflict of interest as he was representing my brother who was a co-defendant in the same crime
 - a. The charges against both my brother and I arose out of the same search of the same residence. I was told that my brother was going to take full responsibility for the drugs found in my house. His testimony would have exonerated me. My lawyer, therefore, could not give my brother and I the same impartial advice. As such, I was denied effective assistance of counsel in violation of Article I, Sec. 14 of the Constitution of the State of South Carolina and the Sixth Amendment to the Constitution of the United States.

FINDINGS AND CONCLUSIONS

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's guilty plea, the records of the Lexington County Clerk of Court regarding the subject

convictions, the application for post-conviction relief, the Respondent's Return. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented during the guilty plea and this evidentiary hearing.

Summary of PCR Hearing Testimony

The Applicant was called as the initial witness in the hearing. He stated that this was his first drug charge, He testified that he was pulled over at traffic stop in 2019. He stated that he was arrested and charged with a distribution charge. At that time he hired Stanley Myers. The Applicant stated he was charged again in 2021. He claimed the warrant was for giving drugs which he claimed did not happen. He stated that his counsel Stanley Myers told him to turn himself in, when he did he was facing a trafficking charge. His brother retained Stanley Myers as well. He stated his brother stayed at a house in Wild Bird where this stuff was found. He claimed that Myers never mentioned anything about a conflict of interest. Applicant claimed Myers told him that there was a video of him in 2017 making the transaction, but Applicant he never saw the video prior to the plea although he asked to see it. He said that he looked at pictures , including one of scales, but claimed he was not shown any picture of him with the drugs or making the drug transaction. He learned that they would take him to trial if he didn't plead to 10 years. He claimed that Myers never told him about his brother pleading and him going to trial. He claimed the Solicitor said he cannot let the brother take the charge because David was too valuable to the State.

On cross-examination, he stated he wanted Stanley to represent him because he was told he was a good lawyer and was soon to be a judge. He wanted him to be his lawyer at his plea, but

claimed he was not aware he was representing his brother. Did not know who was representing his brother before this. He stated he first learned he was representing his brother three (3) days before his plea. He stated that his brother was to assert that all of David's drug charges were on him, not his brother.

However, he pled guilty to drugs found at the Wild Bird address where he had personal possessions, including his passport and some money was in the safe in return to the 10 year sentence. He claimed he had some shoes at Wild Bird also. However, he stated that there were no drugs in the safe. He asserted that there was a warrant for him there and the drugs were in a different room from the safe. He stated that someone's mother was told there was a warrant for him and that is how he learned about the warrant.

Reading the facts of the case as given at the guilty plea, the Applicant stated said he and his brother were working together to traffic and distribute. He noted at the PCR that Wild Bird Lane was not a registered address for him despite what the State said at the plea. He confirmed that he had sworn to tell the truth at the plea and told the judge under oath that he agreed with the state's version of the facts. He acknowledged that the at the plea he was not having an antagonistic defense against his brother at the time. He stated he was in agreement at guilty plea that he and his brother worked together. He confirmed that Stanley never came to him about anything about him testifying against his brother. At the PCR, he claimed he was not involved in any drug activity at the time. However he told the plea court that he was because if he didn't take the plea he would do 25 years. He did not tell that to the plea court. At the joint plea with his brother Ladarien Gates, the Applicant stated he knew he and his brother would get 10 years. He had learned this from Stanley and Solicitor.

His brother Ladarien Gates testified he was arrested in 2021 on drug trafficking charges. Stanley L. Myers represented him who was retained since 2020 for some other charges as well. He testified that he told Stanley his brother had nothing to do with the Wild Bird charges his brother was arrested for. Stanley said let's go into the courthouse. He said he then went upstairs with his brother and they spoke with each other. He claimed that Myers called the solicitor and told him Ladarien was willing to take responsibility on the charges. However, he learned the Solicitor said they would not do it and that David would not get off that easy. He claimed that the State was willing to permit an independent plea for him whether or not David pled guilty or went to trial. He stated that Stanley never addressed a conflict of interest. However, Ladarien stated he was never going to trial because his guilt was a foregone conclusion. He testified that he never spoke to anyone except Stanley himself, never waived conflict of interest because it was never discussed.

On cross-examination, he confirmed that he pled same day as brother. He stated he spoke to Stanley with his brother about the plea before they went to the courthouse. He stated he first time he told Myers his brother was innocent was after he got out of jail. He claimed Stanley dismissed a lot of things Ladarien said. However, he knew Stanley represented his brother right after his arrest. After arrest, he also spoke with David. Ladarien said he did not talk about Stanley other than when David said it was time to meet him.

Ladarien never indicated to Stanley that he wanted to testify against his brother, but only to testify for him. Similarly, there was never any indication that his brother wanted to testify against him. He stated there was no conversation about his plans until the day of the plea. He stated he was initially just going to ask about taking a plea. He claimed that the truth was that all the drugs at Wild Bird were his. He claimed his brother did not know the drugs at Wild Bird

were his. Ladarien stated he had meant to go back and get the drugs. Ladarien claimed that he, his brother, and his cousins all stayed at Wild Bird.

He claimed he did not know about the safe and it had nothing to do with him. He claimed it was a lie during the plea that both of them were involved in trafficking. He admitted that under oath he told the judge he agreed with facts, but he claimed he did not remember this during the PCR hearing. He stated he never said anything about them working together, however the plea record states he agrees with the facts. Ladarien felt he had no choice but to agree because their backs were against the wall. and Stanley told him to. At plea, both he and his brother agreed with the facts because they were advised to by Stanley. Stanley told them both at the same time the plea offer was 10 years. He claimed he was never going to go to trial. Ladarien confirmed he never asked to nor would have testified against his brother. He stated it was his choice to plead to 10 years.

April Muller testified that she was the owner of the Wild Bird Lane house in Cayce. She stated that Ladarien and David both stayed there. She stated she was a long haul truck driver and also worked at Alvin S. Glenn Detention Center. She stated she befriended the Gates brothers in 2008 and became close friends. She testified that she was present when the brothers met with Myers. She said he had asked the Court for more time to talk with them. She said the judge granted more time to discuss things with solicitor. She said that that the Solicitor had some video they needed to see. She was thinking that the brothers were thinking about going to trial. She heard that if he went to trial he would get 25 to 30 years. She recalled Ladarien saying at the courthouse the drugs were his. She recalled Stanley was going to go talk to the solicitor about this, but Solicitor could not take that claiming he wanted two people and that one of them could not take it.

On cross-examination, she stated a few sisters also stayed there, as well as April's kids sometimes stayed there. She stated that they did not have full access to the house and had no key. She stated she drove the brothers to the meeting with Stanley. She was told to come into the meeting. She stated she was sitting on the bench in the courthouse with the brothers. She went to Stanley's office three days later, where they were told what the plea offer was. She said everything happened in the month of January. She stated there was a meeting in the meeting room with the brothers at the law office. She testified that they both were fine with pleading guilty at the time. Stanley said this is all they are offering but it had to be both brothers.

Assistant Solicitor Kyle Smith testified that assigned prosecutor for the brothers' cases. He reviewed the facts and circumstances of the arrest and the merits of the case. The case had been initially assigned to former Assistant Solicitor Matt Edgerton. Smith stated that there were confidential informants on the brothers, which resulted in search warrants to enter Wild Bird Ln. He said that at the house they found a large amount of money and heroin, 14-28 grams, and the rest was fentanyl. Smith knew that Stanley Myers represented both brothers. His information was that David was represented first, then Ladarien hired Stanley. He cannot recall any available defenses, but that there was sufficient evidence to proceed against both on trafficking. He stated the offer had to be accepted, and if not, David was to be the first tried. Smith stated that there was quite a bit of back and forth with Myers that began in October 2021. Smith set a January 10 deadline, which was extended. He stated that the confidential informant was not working off charges. Smith stated the he does not recall any suggestion that one brother was to testify against the other. He stated that a plea date was determined by an instruction from his supervisor that David was going to be tried first. Smith stated that the Applicant was given plenty of time to review the evidence with a January 27 plea date. He stated that Stanley reviewed the videos.

Smith declared that the video did not show Applicant engage in a drug transaction, but that there was a large amount of narcotics at the registered house of the Applicant. It was Smith's opinion and theory that the Applicant at minimum was aware of drugs at Wild Bird. He believes Ladarien was identified as the nickname Coop and David's nickname was Slim. He stated that the facts are consistent with his version presented at the plea.

On cross-examination, Smith acknowledged that initially Ladarien was represented by Public Defender's Office. Smith confirmed that he did not discuss conflicts of interest with Stanley. He confirmed that questions about a conflict were never asked in the plea transcript. Smith did have a recollection of Myers telling him that Ladarien wanted to claim everything. However, it was Smith's position that he did not accept that theory.

DISCUSSION

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRCP. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application").

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). When reviewing a guilty plea, 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 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.

“The Sixth Amendment right to counsel attaches upon initiation of adversarial judicial proceedings and at all critical stages of a criminal trial.” *State v. Sterling*, 377 S.C. 475, 479, 661 S.E.2d 99, 101 (2008). “To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney’s performance.” *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001). “An actual

conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). This Court has further stated that an actual conflict of interest occurs:

when a defense attorney places himself in a situation inherently conducive to divided loyalties.... If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (quoting *Zuck v. State of Alabama*, 588 F.2d 436, 439 (5th Cir.1979)). *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008) (alteration in original) (citation omitted). *Dorsey v. State*, No. 2011-194547, 2015 WL 5248676, at *3 (S.C. Ct. App. Sept. 9, 2015).

"The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." *State v. Gregory*, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005). Additionally, the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction. *Jackson v. State*, 329 S.C. 345, 355, 495 S.E.2d 768, 773 (1998). Moreover, the "Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction." *Langford v. State*, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993).

"However, a defendant need not demonstrate prejudice if there is an actual conflict of interest." *Gregory*, 364 S.C. at 153, 612 S.E.2d at 450. " 'But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.' " *Duncan*, 281 S.C. at 438, 315 S.E.2d at 811 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980)) See *Lomax v. State*, 379 S.C. 93, 101–02, 665 S.E.2d 164, 168 (2008), *abrogated by Smalls v. State*,

422 S.C. 174, 810 S.E.2d 836 (2018). *See Thomas v. State*, 346 S.C. 140, 143–45, 551 S.E.2d 254, 256 (2001) (holding Petitioner in PCR proceeding demonstrated actual conflict of interest that affected her counsel's performance given counsel jointly represented Petitioner and her husband in a case where solicitor offered a plea bargain that would allow the charge against one spouse to be dismissed if the other spouse would plead guilty to the entire amount of cocaine); *See also Staggs v. State*, 372 S.C. 549, 551–52, 643 S.E.2d 690, 691–92 (2007) (Petitioner in PCR proceeding demonstrated actual conflict of interest that adversely affected counsel's trial performance where his counsel, who represented him on the charge of murder, also simultaneously represented Petitioner's father, mother, and brother on related accessory after the fact of murder charges); *see generally Allan L. Schwartz, Circumstances Giving Rise to Conflict of Interest Between or Among Criminal Codefendants Precluding Representation by Same Counsel*, 34 A.L.R.3d 470 (1970 & Supp.2008) (outlining cases which consider what particular circumstances give rise to conflict of interest where single counsel represents multiple codefendants).

The record now reflects that the brothers' theories were consistent as related to Myers representation -they were not antagonistic with each other but consistent. The factual basis at the plea set out the following factual basis :

MR. SMITH: The facts, the facts presentation is going to encompass Mr. Ladarien Gates and David Gates. Your Honor, these charges stem from investigation by Agent Dustin Pollard of the Lexington County NET Team on March 11th, March 12th and March 12, 2021, three controlled buys with confidential agents law enforcement were conducted on a subject known to law enforcement as Coop, Mr. Ladarien Gates. Those addresses were [REDACTED] Fish Hatchery Road, [REDACTED] Wild Bird Lane, and [REDACTED] Wild Bird Lane, all of which are in the Gaston Area of Lexington County. And on all three of those instances Ladarien Gates did contribute, did distribute a quantity of narcotics to a confidential operative law enforcement. Those agents were outfitted with monitoring equipment during the transaction. They were searched before and after by negative results for any items that would compromise the search. Your Honor,

on one of those buys the quantity of heroin which has been confirmed by drug analysis distributed to the informants was sufficient to fall within the threshold weight for trafficking of heroin.

Your Honor, as a result of these buys, Agent Pollard did obtain a search warrant for the address at [REDACTED] Wild Bird Lane and [REDACTED] Wild Bird Lane. [REDACTED] Wild Bird Lane is the registered address for David Gates. And [REDACTED] is the registered address for Ladarien. They arrived at [REDACTED] Wild Bird Lane [*the address registered to David Gates, not Ladarien Gates*] to serve that search warrant. They made entry, cleared the house, and did execute the search warrant.

During the course of that warrant they seized numerous items consistent with narcotic trafficking, scales, paraphernalia, glass jars with narcotics believed to be heroin, pill bottles, sandwich baggies, guns and ammunition.

Your Honor, one of, in one of the rooms during the course of the search warrant they did observe an open safe. Inside of that safe was Mr. David Gates' passport, and the safe is also located in the room that of Mr. Gates, David Gates stays in. Also inside the safe was \$17,650 of US currency total as well as in that money found - they could locate bills which they documented - had come from some of the control buys. Your Honor, those drugs found in that safe were tested. It was a field weight in two separate jars of what was believed to be 56 grams of heroin. However, one of the jars came back as approximately 24 grams of heroin. The other was solely fentanyl.

Your Honor, it is from the result -- from this investigation by law enforcement we do believe it is clear that the Gates brothers are working together in trafficking and distribution of heroin.

Tr.p. 8-10. The record further shows that each of the Gates brothers indicated under oath that they agreed with those facts while under oath. Tr.p. 11, l. 16-21.

This Court finds that the Applicant has failed in his burden of proof that there was an actual conflict of interest in the dual representation of David Gates and Ladarien Gates by the late Stanley Myers. [*This Court can take notice that Stanley Myers died on September 27, 2023 -- after this PCR application had been filed.*]. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654

S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see *McMann v. Richardson*, 397 U.S. 759, 774 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Indeed, admissions made during a guilty plea carry a presumption of verity and should be considered conclusive unless an applicant presents cogent and valid reasons why he should be allowed to depart from the truth of his statements. *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. 63. at 73–74(1977) (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”); *United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

The Court must find that the Applicant has failed to show that he cannot be bound by his representations under oath that he agreed with the prosecutor’s representations in the factual basis that he and his brother Ladarien were involved together in drug trafficking and that drugs were found in the safe in the room that David Gates stayed in with money in the safe that came from the controlled buys. The Applicant agreed under oath to these facts at the plea. This Court does not find credible any of the reasons that Applicant or his brother has presented to be a “cogent or and valid reason” to support being allowed to depart from the truth at the guilty plea.

To the contrary, the evidence and admissions at the plea carry the finding of verity and support that at the time of the plea, the Applicant as well as his brother had a consistent version – that they were both involved together in the drugs trafficking and that the drugs found in the Applicant’s residence was part of the trafficking and the money located in the safe were proceeds from the trafficking.

The mere fact that his brother, through counsel Myers may have indicated in plea negotiations that Ladarien was willing to accept that the drugs were his does not make the dual representation an actual conflict of interest. This was not an actual conflict of interest adversely affected his attorney's performance – particularly when the Applicant admitted under oath to the State’s versions which reveals a consistent theory that both were engaged in the offense that each pleaded guilty. Here, there was no decision by either represented party to testify against the other brother. This additional distinguishing factor supports the denial of relief in this case.

This case is easily distinguished from the cases relied upon by the Applicant. Likewise, in *Thomas v. State*, 346 S.C. 140, 142, 144, 551 S.E.2d 254, 255–56 (2001), the supreme court determined an actual conflict of interest arose when an attorney represented Thomas and her husband on related drug charges. Before trial, the State offered the following plea bargain:

[Thomas] and [her h]usband could each plead to trafficking in cocaine in an amount of more than one hundred grams and each receive an eight-year sentence [,] or either [Thomas or her h]usband could plead to the entire amount and receive the mandatory minimum sentence of twenty-five years, while the other person would be allowed to go free.

346 S.C. at 142, 551 S.E.2d at 255. Thomas pled to the entire amount. 346 S.C. at 143, 551 S.E.2d at 255. The court determined an actual conflict arose the moment the State made the plea offer “because it was in each spouse's best interest for the other spouse to take the entire responsibility for the cocaine.” 346 S.C. at 144, 551 S.E.2d at 256. The court reasoned, “At the

moment the [State] made the plea offer, [Thomas's and her h]usband's interests became adverse to one another and counsel should have advised them accordingly." *Id.* "Further, counsel acted upon this conflicting loyalty by failing to advise [Thomas] she had nothing to lose by proceeding to trial." *Id.* The court noted counsel could have continued to represent both parties if he had "acquired another waiver covering this specific conflict." *Id.*

To the contrary, in David Gates case there was no similar offer to allow David Gates to go free if his brother pled guilty. To the contrary, if Ladarien pled, David was still going to go on trial. This is based upon the credible testimony of Kyle Smith.

Similarly, in *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 794–95 (1993), the supreme court examined whether an actual conflict of interest arose when an attorney represented codefendants at a guilty plea hearing. Langford and his codefendant, Howard, retained the same law firm to present an alibi defense. 310 S.C. at 358, 426 S.E.2d at 794. However, another codefendant, Todd, pled guilty and produced a recorded conversation wherein Langford implicated himself in the burglaries. 310 S.C. at 358–59, 426 S.E.2d at 794. When Howard learned about the recorded conversation, he decided to plead guilty. 310 S.C. at 359, 426 S.E.2d at 794. Langford also pled guilty, and "Langford and Howard entered their pleas simultaneously and received identical sentences." *Id.*

Langford later applied for PCR, asserting plea counsel was ineffective for "continu[ing] to represent him after Howard decided to plead guilty without advising him of the dangers of dual representation." 310 S.C. at 359, 426 S.E.2d at 794. The court determined "Langford's attorney never actively represented competing interests," 310 S.C. at 360, 426 S.E.2d at 795, reasoning,

The possible conflict that developed when Howard decided to plead guilty never ripened into an actual conflict, however, because Langford, fearing that Howard

would testify against him, also decided to plead guilty. There is no evidence in the record from which it may be inferred that trial counsel advised either codefendant to plead guilty in order to obtain more favorable consideration for the other. The mere fact that Howard would be available to testify against Langford does not establish an actual conflict of interest.

310 S.C. at 359–60, 426 S.E.2d at 795.

Similarly distinguishable, in *Edgemon v. State*, 318 S.C. 3, 5, 455 S.E.2d 500, 501 (1995), the Court found an actual conflict of interest arose when evidence showed plea counsel advised Edgemon's codefendant, Brogden, to plead guilty and testify against Edgemon. Citing *Langford*, the court noted “[t]he mere fact that Brogden would be available to testify against [Edgemon] does not establish an actual conflict of interest.” *Edgemon*, 318 S.C. at 5, 455 S.E.2d at 500. However, the court found an actual conflict of interest arose because plea counsel advised Brogden to testify against Edgemon prior to Edgemon's guilty plea and failed to negotiate a pretrial intervention program on behalf of Edgemon even though the State promised the program to Brogden. 318 S.C. at 5, 455 S.E.2d at 501.

Unlike *Edgemon*, there is no credible evidence in the record that there was ever any suggestion of one brother to testify against the other. The evidence is to the contrary that neither would testify against the other.

Finally, in *Gonzales v. State*, 419 S.C. 2, 795 S.E.2d 835 (2017), defense counsel's simultaneous representation of juvenile defendant and defendant's mother's boyfriend for other drug-related charges created an actual conflict of interest prior to defendant's trial. In *Gonzales*, the mother's boyfriend paid part or all of defendant's attorney fees, after counsel discussed with mother ways to pay such fees and suggested possibility of using the funds recovered in boyfriend's previous forfeiture action. The juvenile defendant and mother's boyfriend were each arrested for trafficking in marijuana over one thousand pounds in a very short time frame in the

same geographical area, and it was unlikely a juvenile would act independently when engaging in such trafficking. There, unlike in Gates case, counsel failed to advise defendant as to favorable options he may have otherwise exercised, and a law enforcement official testified that the conflict of interest hindered law enforcement's ability to secure cooperation from defendant in prosecution of mother's boyfriend, and an Assistant United States Attorney testified that had defendant been available for cooperation in prosecution of mother's boyfriend, their office would have advocated that defendant receive favorable treatment for his cooperation. Here, there was no similar showing made in this record.

The Court recognizes the burden of proof is on the Applicant in this setting. This Court is further constrained by the fact that the Applicant's counsel is now deceased and the fact that there was no court inquiry about the joint representation at the time of the guilty plea. However, since this Court has found that there was no conflict of interest based upon the probative evidence at the guilty plea, the failure of an on the record inquiry does not require relief based upon the resolution that there was no actual conflict of interest.¹

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


¹ In making this conclusion, the Court is mindful that the best practice is to have an on the record inquiry to determine the existence of a waiver and the existence or waiver of a conflict of interest. However, this Court similarly concludes that in light of the sworn statements and affirmations before the plea court, the failure to do so here, does not require post-conviction relief.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13 day of AUGUST, 2024.




J. CORDELL MADDOX
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

In his third assertion, the Applicant contends that the trial judge and prosecutor, under the circumstances, were obligated to assure that defense counsel did not have a conflict in representing the two co-defendants. In light of the fact that this Court found that the Applicant had failed in his burden of proof to show an actual conflict of interest that adversely affected the representation and sufficiently addressed the issues within its order of dismissal, this argument does not provide a basis for relief under Rule 59.

IT IS THEREFORE ORDERED that the Motion to Alter or amend the judgment be denied.

AND IT IS SO ORDERED this 20th day of March, 2025.



J. CORDELL MADDOX
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina