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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2019-CP-42-03767

Mark S. Wingo, 269107, Petitioner,

vs.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Mark S. Wingo, Petitioner, appeals the Order of Dismissal issued by the Honorable R. Lawton McIntosh on November 22, 2024, which was filed on December 2, 2024. Petitioner, through counsel timely filed a Rule 59, SCRCP, Motion, which was heard on January 29, 2025, denied by an Order issued on April 8, 2025, and filed on April 14, 2025. Petitioner, through counsel, received notice of the entry of the Order Denying Applicant's Motion to Reconsider, Alter, or Amend Judgement Pursuant to Rule 59(e), SCRCP, on April 21, 2205.

Respectfully submitted,

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May 15, 2025

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Mark S. Wingo, SCDC #269107, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2019-CP-42-03767 **ORDER OF DISMISSAL**

This matter is before the Court pursuant to an application for post-conviction relief ("PCR") filed by Mark Wingo ("Applicant") on October 25, 2019. On September 3, 2024, an evidentiary hearing convened before the Honorable R. Lawton McIntosh. Applicant was present and represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as witnesses Dr. Donna Maddox, Brian Setree, and Andrea Price, Esquire. Respondent did not call any witnesses. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") serving a fifteen (15) year sentence. In its August 2018 term, the Spartanburg County Grand Jury indicted Applicant for trafficking methamphetamine 200g-400g (2018-GS-42-4597). This charge arose from a September 2017 incident in which Applicant used a burner cellphone while incarcerated in prison to contact a confidential informant to set up a drug transaction.

On May 6, 2019, Applicant pled guilty to the lesser-included offense of trafficking methamphetamine, 28g-100g before the Honorable J. Mark Hayes, II. Andrea L. Price, Esquire,

represented Applicant. Assistant Solicitor Sydni Kallam represented the State. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to fifteen (15) years imprisonment to run concurrent to Applicant's existing ten (10) year sentence for shoplifting enhanced and two (2) counts of contraband (convictions from March 27, 2015 – pled guilty).

Applicant did not appeal. On May 6, 2019, Applicant filed a motion to reconsider the sentence. On May 9, 2019, Applicant filed a motion to withdraw his guilty plea. On October 2, 2019, a hearing convened on Applicant's motions. At the hearing, Applicant voluntarily withdrew his motion to reconsider the sentence and proceeded solely on the motion to withdraw the guilty plea. On October 28, 2019, Judge Hayes denied Applicant's motion to withdraw.

CURRENT APPLICATION

Applicant commenced this PCR action on October 25, 2019, alleging he is being held in custody unlawfully for the following reasons (summarized for brevity and clarity):

Ineffective Assistance of Counsel

a. Failure to investigate the evidence, the confidential informant, and law enforcement communications.
b. Failure to request a mental health evaluation.

Involuntary Plea

Counsel provided erroneous and incorrect advice to plead guilty.

On April 30, 2019, Respondent filed a Return requesting a more-definite statement on Applicant's claims. On August 6, 2024, Applicant filed an amendment to his application, in which he raised the following allegations (verbatim):

Ineffective Assistance of Counsel

1. Counsel provided ineffective assistance of counsel that rendered his guilty plea involuntary, due to but not limited to the following:
   a. Counsel failed to properly review the evidence with Applicant and conduct an independent investigation prior to the entry of the guilty plea.
   b. Counsel failed to prepare for trial and properly advise Applicant regarding possible defenses.

c. Counsel misadvised Applicant prior to the entry of the plea agreement regarding the evidence against him and credit for time served, which induced his guilty plea. Additionally, Counsel failed to ensure that he had a full and complete understanding at the time of the guilty plea.
d. Counsel failed to properly address Applicant's mental health, specifically but not limited to his medications, prior to and during his guilty plea.

2. Counsel provided ineffective assistance of counsel in preparation for and during the post-plea motion hearing, to include failure to utilize a mental health expert, failure to address Applicant's understanding regarding time credit, failure to ensure availability of a witness, and failure to properly advise Applicant before the withdrawal of the motion to reconsider.

3. Applicant did not knowingly and voluntarily waive a direct appeal and requests a belated appeal under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

At the evidentiary hearing, Applicant proceeded *solely* on the allegations contained in the amended application. Before this Court are the Spartanburg County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the plea transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant testified that he learned of the charges in September 2017 and was appointed Andrea Price ("Counsel") to represent him. Applicant testified that he met with Counsel a year after the charge and did not discuss a lot with her. Applicant testified that Counsel discussed evidence such as the phone calls and videos with him but did not hire a private investigator. Applicant testified he told Counsel that he did not want fifteen (15) years, and Counsel told him that fifteen (15) years is better than receiving thirty (30) years for the charge. Applicant testified that Counsel did not go over the plea with Applicant or discuss defenses such

as the defense of entrapment. Applicant testified that he told Counsel he wanted a jury trial. Applicant testified that Counsel told him the State was intending to call his brother-in-law, Randy Holified, to testify against him, which would hurt Applicant. Applicant testified that he told his mother that he was pleading guilty because his brother-in-law would testify against him.

Applicant testified that the confidential informant ("CI") was his best friend of thirty-five (35) years, CI is a drug addict, and Applicant expressed concerns to Counsel about the CI. Applicant testified that he tried to address mental health concerns with Counsel. Applicant testified that Counsel did not speak to mental health officials. Applicant testified that in the plea hearing, at which he pled with a group of other defendants, he did not stand up when the Judge asked him about mental health and substance abuse and did not know what to do. Applicant averred he believed that he could get time served credit for the five hundred seventeen (517) days he spent incarcerated and expressed concerns to Counsel about credit for time served. Applicant testified that Counsel did not advise him on the motion to reconsider, Applicant did not communicate with Counsel after the motion hearing, and Applicant did not know an appeal could be filed after a guilty plea.

Dr. Donna Maddox's Testimony

Dr. Donna Maddox, qualified as an expert in forensic psychology, testified that she examined Applicant virtually on April 14, 2023. Dr. Maddox testified that in preparing for the evaluation, she reviewed the discovery in the case, the court packet, the guilty plea transcript, and asked PCR counsel about mental health records. Dr. Maddox testified that she is familiar with Dr. Megan Howard, who wrote a report indicating that if Applicant had not been given his psychiatric medications, it may take a few weeks for Applicant to become stable.

Dr. Maddox testified that Applicant suffers from Depressive Disorder and Attention-

Deficit/Hyperactivity Disorder ("ADHD"). Dr. Maddox testified that after examining Applicant, she issued a report diagnosing him with psychosis, Post-Traumatic Stress Disorder ("PTSD"), and tardive dyskinesia (a movement disorder that is probably due to a history of drug use), unspecified schizophrenia, and paranoia. Dr. Maddox testified that during the evaluation, Applicant was cooperative, compliant, pleasant, cooperative, had a good memory, was able to pay attention, had no trouble understanding, had paranoid ideations against his attorney, and was a little distracted. Dr. Maddox testified that she reviewed records from the detention center which showed that Applicant had not been given Strattera, a medication to treat ADHD. Dr. Maddox testified that Applicant was medicated during the evaluation and was paranoid and impulsive at times during the evaluation and still believes that his attorney misrepresented him.

Dr. Maddox testified that the guilty plea transcript is the best source of what occurred at the guilty plea hearing, but Applicant pled in a group of around 16 people which could affect his ability to focus. Dr. Maddox testified that she believes a report could have been helpful and was willing to testify if called to do so.

Brian Setree's Testimony

Brian Setree, a licensed private investigator, testified that he reviewed the defense file and met with Applicant. Setree testified that he would have been willing to assist in the investigation of the case. Setree testified that a portion of the discovery was not available to Applicant.[1] Setree testified that in investigating, he would have advised Counsel to look into Applicant's history of narcotics and drug abuse because he was unaware of any prior distribution charges. On cross-examination, Setree testified that he was unaware that Applicant had prior convictions for possession with intent to distribute (September 1992) and contraband (March 2015). Setree

[1] Certain items were reviewed by Applicant's Counsel but not given over directly to Applicant to protect the CI.

testified that there was a lack of control over the recorded phone calls and had concerns about chain of custody and how the drugs were handled. Setree also testified that he had concerns about the motivation of the CI. Setree testified that he located and spoke to Randy Holified, Applicant's brother-in-law, and Holified did not intend on testifying at Applicant's trial and was not contacted by Counsel.

Counsel's Testimony

Andrea Price ("Counsel") testified that she was licensed in 2006 and has handled thousands of criminal cases. Counsel testified that she was appointed on Applicant's case and met with him approximately twelve (12) times at the courthouse and the prison. Counsel testified that reviewed the phone calls and videos at the solicitor's office around five (5) days before Applicant pled guilty. Counsel testified that Petitioner had a burner phone in SCDC, and she did not see any viable defenses to the charge and does not believe the defense of entrapment was available to Applicant. Counsel testified that from the beginning of her representation, Applicant wanted to negotiate a plea and did not mention a trial until May 2, 2019. Counsel testified that although Applicant mentioned trial, he gave her authorization to continue to pursue a counteroffer to the solicitor's offer. Counsel testified that she could have tried the case but did not think it was a good idea. Counsel testified that while Applicant was being fitted for clothing for trial, he was still talking about plea negotiations. Counsel testified that she communicated to Applicant the State's offer of fifteen (15) years consecutive. Counsel testified that in response, she asked for a concurrent sentence and was concerned that Applicant would back himself into a corner and receive twenty-five (25) years if convicted at trial. Counsel testified that she informed Applicant that while she could ask for credit for time served, she did not believe Applicant was entitled to time served credit under the statute.

Regarding investigations, Counsel testified that it was the public defender's office policy not to hire a private investigator unless there were red flags or issues with the discovery. Counsel testified that she did not have any concerns about the discovery. Counsel testified that she had concerns about the burner phone, she did not see the phone but believed it was taken into custody. Regarding Randy Holifield, Applicant's brother-in-law, Counsel testified that the solicitor informed her that the State intended to call Holifield to authenticate Applicant's voice in the recordings with the CI. Counsel testified that she had worked with the solicitor previously and had no reason to doubt the solicitor's honesty regarding Holifield's willingness to testify. Counsel testified that she told Applicant that Holifield would testify at trial to authenticate his voice. Counsel also testified that even if Holifield did not testify at Applicant's trial, there were other ways for the State to authenticate his voice in the recordings.

Regarding Applicant's competency, Counsel testified that Applicant did not mention his medications until 2019. Counsel testified that she had no concerns about Applicant's competency, and Applicant seemed normal and had no problems. Counsel testified that during client meetings, Applicant was calm and, in the first meeting, told her exactly what happened in the case and asked lots of questions. Counsel testified that if she had any concerns about Applicant's competency, she would have had him evaluated. Counsel testified that Applicant did not indicate to her that he was having any mental health issues or was not given his medications on the day of his plea hearing. Counsel testified that there was nothing that made her believe Applicant could not go forward with his plea on the day of the plea hearing. Counsel testified that Applicant did not seem confused or incoherent on the day he pled guilty. Counsel testified that she did not recall the letter from Dr. Megan Howard.

After the plea, Counsel testified that, at Applicant's direction, she filed the motions

reconsider sentence and withdraw the plea based on issues that happened after his hearing. Counsel testified that she visited Applicant at the prison in September, and Applicant showed remorse for getting his co-defendants involved. Regarding an appeal, Counsel testified that she does not recall whether she mentioned the right to a direct appeal to Applicant but would have filed an appeal if requested.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety 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. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d

at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, 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. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

"A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial." *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Failure to Conduct an Independent Investigation Prior to the Guilty Plea

Failure to Properly Review Evidence with Applicant

Failure to Ensure the Availability of a Witness

This Court finds Applicant failed to prove Counsel was ineffective for failing to conduct an independent investigation, failing to properly review the evidence with Applicant, and failing to ensure the availability of a witness. "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). "The scope of a reasonable investigation depends on a number of issues, but at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007). Counsel's duty to investigate is limited to reasonable investigations or a reasonable decision that makes particular investigations unnecessary. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597; *Strickland*, 466 U.S. at 691. In applying the *Strickland* standard to a claim of failure to investigate, the court should evaluate counsel's decision not to undertake a particular investigation for reasonableness under all circumstances with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further present evidence demonstrating how additional preparation, and the discoverable matters or defenses would have resulted in a different outcome. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)).

This Court finds Counsel's preparation in Applicant's case was reasonable under prevailing professional norms. This Court finds ***credible*** Counsel's testimony that she met with Applicant several times. This Court finds ***credible*** Counsel's testimony that she reviewed discovery, which

included reviewing the recordings.

This Court finds Counsel articulated a reasonable strategic decision in not conducting an independent investigation that she believed to be unreasonable because drugs were seized as a result of the confidential informant, who is Applicant's best friend of thirty-five (35) years, informing law enforcement that Applicant reached out to conduct drug transaction while in prison. This Court finds ***credible*** Counsel's testimony that she did not hire a private investigator because it was the public defender's office policy not to hire a private investigator unless there were red flags in discovery, and this Court finds ***credible*** Counsel's testimony that she had no concerns about the discovery in Applicant's case. This Court finds ***credible*** Counsel's testimony that although she had concerns about the burner phone that was taken into custody, she did not see any viable defenses available to Applicant. In accordance with *Strickland*, this Court gives heavy deference to Counsel's decision not to undertake additional investigations at the time she represented Applicant based on her experience in criminal practice and the circumstances of Applicant's case. Thus, Applicant failed to meet his burden.

Additionally, this Court finds Applicant failed to prove he was prejudiced by Counsel's decision not to conduct an independent investigation because Applicant failed to prove the information uncovered by Investigator Setree would have resulted in a different outcome. Setree testified that he had concerns about the CI's motivations. However, Applicant testified that the CI was his best friend of thirty-five (35) years, which supports a finding that the CI was reliable regardless of his motivations. Setree testified that he had concerns about the handling of the drugs and chain of custody. However, Applicant failed to present evidence to prove the evidence seized was either mishandled or had issues with the chain of custody. Setree testified that he spoke to Randy Holfiield, who said that he would not have testified in Applicant's trial. This Court finds

credible Counsel's testimony that, based on her experience working with the solicitor, she had no concerns about the truthfulness of the State's intent to call Holifield to authenticate Applicant's voice in the recordings. This Court also finds ***credible*** Counsel's testimony that even if the State did not call Holifield, there were other ways for the State to authenticate Applicant's voice in the recordings.

Additionally, Setree testified that he investigated Applicant's case around 2023-2024, nearly four to five (4-5) years *after* Applicant pled guilty, and this Court is to evaluate Counsel's decision to investigate at the time the decision was made. *See Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Strickland*, 466 U.S. at 689) (stating the court is to evaluate counsel's decisions at the time they were made and "every effort be made to eliminate the distorting effects of hindsight").

This Court finds Applicant failed to prove Counsel was ineffective for failing to "ensure the availability of a witness." This Court finds Applicant failed to specify a witness that Counsel should have ensured the availability of. To the extent that Applicant alleges Counsel should have ensured the availability of a mental health expert, this Court does not find Counsel was ineffective in that regard (see analysis below). To the extent that Applicant alleges Counsel should have ensured the availability of another witness, this Court finds Applicant failed to prove prejudice by failing to call that witness at the PCR hearing to prove the result of the proceeding would have been different based on their testimony. *See Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) ("applicant's mere speculation to what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice"). Thus, Applicant failed to meet his burden.

Failure to Prepare for Trial

Failure to Properly Advise Applicant Regarding Possible Defenses, Including the Defense of Entrapment

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare for trial and failing to properly advise Applicant regarding possible defenses including the defense of entrapment. To prevail upon a claim that counsel did not adequately prepare a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. *Jackson*, 329 S.C. at 353-54, 495 S.E.2d at 772. This Court finds ***credible*** Counsel's testimony that she was prepared for trial and could have tried the case. This Court finds ***credible*** Counsel's testimony that she met with Applicant several times. This Court finds ***credible*** Counsel's testimony that she reviewed discovery, which included reviewing the recordings. This Court finds Counsel's preparation in Applicant's case was reasonable under prevailing professional norms.

This Court finds Applicant failed to prove prejudice by failing to prove what other defenses Counsel could have developed if she had more fully prepared. This Court finds ***credible*** Counsel's testimony that because Applicant had a burner phone in the prison, and she did not believe Applicant had a viable defense to the charge. This Court also finds ***credible*** Counsel's testimony that the defense of entrapment was unavailable to Applicant. This Court finds the entrapment was unavailable to Applicant because his use of a contraband cellphone in the prison is not government inducement and his prior drug convictions support a finding that he did not have a lack of predisposition to commit the crime of trafficking. *See State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) (defense of entrapment requires two elements: (1) government inducement, and (2) lack of predisposition). Thus, Applicant failed to meet his burden.

Failure to Address Applicant's Mental Health Issues, Including Medications

Failure to Request a Competency Evaluation

Failure to Ensure Applicant had a Full and Complete Understanding

Failure to Utilize a Mental Health Expert

Failure to Properly Advise Applicant Before the Withdrawal of the Motion to Reconsider

This Court finds Applicant failed to prove Counsel was ineffective for failing to address his mental health issues before, during, and after the guilty plea; failing to request a competency evaluation; failing to ensure Applicant had a full and complete understanding at the time of the plea; failing to utilize a mental health expert; and failing to properly advise Applicant before the withdrawal of the motion to reconsider. In a PCR action, to show prejudice for counsel's failure to fully investigate an applicant's mental capacity, the applicant must show a reasonable probability, by a preponderance of the evidence, that he was incompetent at the time of his guilty plea. *Lee v. State*, 396 S.C. 314, 320, 721 S.E.2d 442, 445-46 (Ct. App. 2011) (citing *Matthews v. State*, 358 S.C. 456, 458-59, 596 S.E.2d 49, 50-51 (2004) (stating to find trial counsel ineffective for failing to request a competency hearing, the applicant must show that counsel was deficient and prejudiced the outcome of applicant's proceeding)). The test of competence to enter the plea is the same as is required to stand trial: 'the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.'" *Id.*

This Court finds Applicant failed to prove Counsel was ineffective for failing to address Applicant's mental health concerns before, during, and after the guilty plea; failing to request a competency evaluation; and failing to ensure Applicant had a full and complete understanding at the time of the plea. This Court finds ***credible*** Counsel's testimony that she had no concerns about Applicant's competency, and Applicant seemed normal and had no problems. This Court finds ***credible*** Counsel's testimony that during client meetings, Applicant told her exactly what

happened in the case and asked lots of questions. This Court also finds *credible* Counsel's testimony that in her experience, she has had clients who suffer from mental health issues and has had them evaluated for competency. This Court finds *credible* Counsel's testimony that if she had concerns about Applicant's competency or mental health, she would have had him evaluated. This Court finds *credible* Counsel's testimony that Applicant did not mention he was taking medication until 2019. This Court finds *credible* Counsel's testimony that Applicant did not indicate to her that he was having any mental health issues or was not given his medications on the day of his plea hearing. This Court finds *credible* Counsel's testimony that there was nothing that made her believe Applicant could not go forward with his plea on the day of the plea hearing. This Court finds Counsel cannot be deficient for failing to investigate Applicant's mental health or request an evaluation where Counsel credibly testified that she had no indication or concerns about Applicant's mental health status. *See Lee*, 396 S.C. at 322, 721 S.E.2d at 447 ("Plea counsel could not be deficient if she had no indication of [applicant's] mental status"). Further, this Court finds Applicant failed to prove he was prejudiced by Counsel's conduct because Applicant failed to prove he was incompetent at the time he pled guilty (see analysis of this issue below).

This Court also finds Applicant failed to prove Counsel was ineffective for failing to utilize a mental health expert at either Applicant's guilty plea or post-plea motion hearing. Applicant alleges Counsel should have hired a mental health expert to assist with Applicant's guilty plea and post-plea motion hearing. This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to call a mental health expert by not proving a reasonable probability the result of the proceedings would have been different if a mental health expert was called.

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly advise him before the withdrawal of the motion to reconsider. This Court finds *credible* Counsel's

testimony that the motion to reconsider and motion to withdraw the plea were based on issues that occurred after Applicant pled guilty. This Court also finds Applicant failed to prove he was prejudiced by Counsel's advice before withdrawal of the motion to reconsider because Applicant failed to prove there's a reasonable probability the result would have been different. Thus, Applicant failed to meet his burden.

Failure to File a Direct Appeal

This Court finds Applicant failed to prove he did not knowingly and voluntarily waive this right. There is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea. *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008). Counsel does not have a duty to initiate an appeal after a guilty plea "absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing." *Id.* at 224, 670 S.E.2d at 374. This Court finds ***credible*** Counsel's testimony that while she does not recall whether she mentioned to Applicant his right to a direct appeal, based on her experience, she would have filed a direct appeal if Applicant requested. This Court also finds ***credible*** Counsel's testimony that she does not know if there were grounds for Applicant to appeal his guilty plea. Thus, Applicant failed to meet his burden.

Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). "To be knowing and voluntary, a plea must be entered with an awareness of its consequences." *Holland v. State*, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and

the charges against him." *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid reasons why he should be allowed to depart from the truthfulness of his statements. *Id.*, 376 S.C. at 137-38, 654 S.E.2d at 874.

Failure to Properly Review the Evidence with Applicant

Misadvising Applicant on the Evidence

Misadvising Applicant on Credit for Time Served

Applicant alleges that prior to the entry of the plea agreement, Counsel failed to properly review the evidence with him, misadvised him on the evidence against him, and misadvised him on credit for time served, all of which induced his decision to plead guilty. This Court finds Applicant failed to prove Counsel was ineffective for misadvising him and finds Applicant failed to prove there is a reasonable probability that but for Counsel's advice and performance, he would have insisted on going to trial.

A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have plead guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Dalton*, 376 S.C. at 136, 654 S.E.2d at 873. Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Id.*

This Court finds Applicant failed to overcome the presumption that Counsel rendered competent advice regarding credit for time served. Regarding credit for time served, the relevant statutory provision states as follows:

> Provided, however, that credit for time served prior to trial and sentencing shall *not* be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; (2) *when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense...*

S.C. Code Ann. § 24-13-40(c)(1)-(2) (2014) (emphasis added).

This Court finds, as a matter of law, that Applicant was not entitled to receive credit for time served for the time he spent serving the ten (10) year sentence for shoplifting (enhanced) and contraband to reduce the fifteen (15) year sentence for the subsequent trafficking meth conviction. This Court finds ***credible*** Counsel's testimony that she informed Applicant, prior to the plea, that while she could ask for credit for time served, she did not believe Applicant was entitled to time served credit under the statute. This Court finds Counsel's advice regarding credit for time served was both accurate and competent. Further, the fact that Applicant hoped or wished to receive credit for time served is insufficient to support a collateral attack on his guilty plea. *See Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact that defendant "hoped" and "expected" to get a reduced sentence does not render a plea invalid).

This Court finds Applicant failed to overcome the presumption that Counsel rendered competent advice regarding the State's evidence against him. This Court finds ***credible*** Counsel's testimony that she reviewed the discovery in Applicant's case, including listening to the recordings at the solicitor's office before Applicant pled guilty. This Court finds ***credible*** Counsel's testimony that she reviewed discovery with Applicant and went over the State's case against him.

This Court finds Applicant failed to prove a reasonable probability that he would have insisted on going to trial but for Counsel's advice. This Court finds ***credible*** Counsel's testimony that from the beginning of her representation, Applicant was interested in plea bargaining. This Court finds ***credible*** Counsel's testimony that although Applicant mentioned going to trial on May 2nd, he gave Counsel authorization to continue to engage in plea negotiations with the State. This Court also finds ***credible*** Counsel's testimony that she was adequately prepared for trial and while Applicant was being fitted for trial clothing, he still discussed plea offers with Counsel.

Focusing on Applicant's conduct and decision making around the time of the plea, this Court finds Applicant's repeated conversations with his attorney regarding plea offers, and credit for time served, support a finding that Applicant was not interested in going to trial. This Court also finds Applicant failed to prove it would have been rational for him to reject the State's fifteen (15) year plea offer and proceed to trial where there was overwhelming evidence of his guilt (recordings, a reliable CI, seized drugs, and the burner cellphone), and he faced, at the least, a twenty-five (25) year sentence for trafficking if convicted. This Court finds ***credible*** Counsel's testimony that while the case could have gone to trial, she did not think trial was a good idea and was concerned that Applicant would "back himself into a corner" and receive twenty-five (25) years. Thus, Applicant failed to meet his burden.

Applicant's Competency at the Time of the Plea

Applicant alleges his guilty plea was made without a full and complete understanding at the time of the guilty plea (i.e., involuntarily) due to not taking his medications prior to the plea. This Court finds Applicant failed to prove prejudice because Applicant failed to prove by a preponderance of the evidence, that he was incompetent at the time he pled guilty.

Before a defendant pleads guilty, it must be established that the defendant is competent, and that the defendant's decision to plead is knowing and voluntary. *Garren v. State*, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018). The test for competency is "whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding" and whether the defendant has "a rational as well as factual understanding of the proceedings against him." *Id.* (citation omitted). Where a PCR applicant claims his guilty plea was involuntary due to the influence of medication, he must show "that his mental faculties were so impaired by the drugs [or lack thereof] when he pled that he was incapable of full understanding and appreciation of the charges against him, his constitutional rights, and the consequences of the plea." *Id.* at 15, 813 S.E.2d at 712. (citation omitted).

In *Garren*, the Supreme Court held a PCR applicant's guilty plea was not made involuntarily where the record was devoid of any evidence that the applicant's ability to understand the guilty plea was diminished by the effects of medications that the applicant alleged were taken *on the day he pled guilty*. *Id.* at 17, 813 S.E.2d at 713. In ruling, the Court noted that nothing in the guilty plea transcript suggested that the applicant was under the influence of drugs or otherwise dispossessed of his mental faculties *at the time the guilty plea was entered*. *Id.* at 16, 813 S.E.2d at 712. (emphasis added).

This Court finds Applicant failed to prove that he did not have the ability to consult with his attorney with a reasonable degree of rational understanding at the time he pled guilty. This Court finds ***credible*** Counsel's testimony that she had no concerns about Applicant's competency on the day he pled guilty or during the course of representation. This Court finds ***credible*** Counsel's testimony that nothing about Applicant seemed out of the ordinary, and Applicant did not seem confused or incoherent on the day he pled guilty. This Court finds ***credible*** Counsel's

testimony that Applicant communicated with her on the day of the plea and did not have trouble communicating. This Court finds ***credible*** Counsel's testimony that Applicant did not indicate to her that he was having any mental health issues or was not given his medications on the day of his plea hearing. This Court finds ***credible*** Counsel testified that there was nothing that made her believe Applicant could not go forward with his plea on the day of the plea hearing. This Court finds, based on Counsel's ***credible*** testimony, that Applicant was competent on the day he pled guilty. *See McLaughlin v. State*, 352 S.C. 476, 575 S.C. 841 (2003) (holding nothing in the record suggested that a PCR applicant was incompetent before or during his trial where the applicant's trial counsel testified that he had no trouble communicating with her during the trial and clearly understood and responded to questions).

Further, the record establishes Applicant had the present ability to consult with his attorney at the time of the guilty plea as evidenced by the following verbal exchange between Applicant and Counsel during the plea:

> [Counsel]: [W]e would ask that you just consider starting his new sentence today running that concurrent. Thank you, Judge.
>
> [Applicant]: I'm gonna withdraw my plea, Your Honor.
>
> [Counsel]: Sir, you're making a mistake.
>
> [Applicant]: Nah, this is –
>
> [Counsel]: You're making a mistake.
>
> [Applicant]: That is not what y'all told me Friday.
>
> [Counsel]: Yes, it is is.
>
> [Applicant]: It's not.
> (Pause)
>
> Court: Just talk to your lawyer.
> (Pause)

Court: All right. Do you still want to go ahead with the plea?

[Applicant]: Yes, I do.

(Plea Tr. 19:22-20:12).

This Court finds Applicant failed to prove that he did not have a rational and factual understanding of the pleadings *at the time he pled guilty* due to not receiving his medication. While this Court finds ***credible*** Dr. Maddox's testimony that Applicant was not taking his prescribed Strattera medication for ADHD, this Court finds Applicant failed to prove the lack of medication affected his rational and factual understanding of the guilty plea or ability to consult with his attorney *at the time of the guilty plea. See Garren*, 423 S.C. at 14-15, 813 S.E.2d at 711-12 (stating the critical question is whether the drugs [or lack thereof] impaired the defendant's ability to plead guilty "on this occasion") (citation omitted). Dr. Maddox testified that she evaluated Applicant in April 2023, nearly four (4) years *after* Applicant pled guilty on May 6, 2019. Dr. Maddox testified that she wrote a report in January 2024, nearly five (5) years *after* Applicant pled guilty.

While this Court finds ***credible*** Dr. Maddox's testimony that not taking his Strattera medication for ADHD would have affected his *attentiveness* and *ability to focus*, this Court finds Applicant failed to prove that not taking the medication would have affected his *rationality*. *Garren*, 423 S.C. at 18, 813 S.E.2d at 713 ("[the applicant] must show that the medication affected his *rationality*") (emphasis added). This Court finds Dr. Maddox's testimony of the findings in her report that Applicant would have experienced inattentiveness and impulsivity of little probative value since the findings were *commenced years after* Applicant pled guilty and do not directly relate to Applicant's *ability to consult with his attorney* at the time he pled guilty. *See McLaughlin*, 352 S.C. at 481, 575 S.E.2d at 843 (stating an applicant's medical records from SCDC had "little probative value" because they commenced after the applicant's trial and do not directly relate to

the applicant's ability to consult with his attorney or understand the proceedings at the time of trial).

This Court finds the record establishes that Applicant was competent and had a rational understanding of the proceeding at the time he pled guilty. This Court finds ***credible*** Dr. Maddox's testimony that because she was not present at the guilty plea, the guilty plea transcript is the best source of what occurred at the guilty plea hearing. At the guilty plea, in accordance with the plea judge's instructions, Applicant stood and sat in response to the judge's questions. (Plea Tr. 10-12). Applicant stood, affirmatively, to indicate that his plea was being made freely and voluntarily. (Plea Tr. 11) Applicant did not stand up when the judge asked if he wanted to exercise his right to a jury trial. (Plea Tr. 12). Applicant stood up, affirmatively, when the judge asked if he understood his constitutional rights and wanted to waive them to plead guilty. (Plea Tr. 12). Applicant addressed the court individually and answered several of the judge's very specific questions about his educational, familiar, and employment background. (Plea Tr. 14).

This Court finds ***credible*** Counsel's testimony that prior to Applicant pleading guilty, she explained to him his constitutional rights and the negotiated sentence he was entering for the trafficking charge. Thus, the record established that Applicant pled guilty freely, voluntarily, knowingly and intelligently, with an awareness of the charges against him, the fifteen (15) year negotiated sentence, and his constitutional rights. Accordingly, this Court finds Applicant failed to meet his burden.

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directly relate to the applicant's ability to consult with his attorney or understand the proceedings at the time of trial).

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CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) 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 an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 22 **day of** November, **2024.**

Anderson, South Carolina

R. LAWTON MCINTOSH
Presiding Judge
Seventh Judicial Circuit

FILED
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CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Mark S. Wingo, SCDC #269107, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2019-CP-42-03767 **ORDER DENYING APPLICANT'S MOTION TO RECONSIDER, ALTER, OR AMEND JUDMGNET PURSUANT TO RULE 59(E), SCRCP**

This matter is before the Court pursuant to a motion to reconsider, alter, or amend judgment pursuant to Rules 59(a) & (e), SCRCP filed by Mark Wingo ("Applicant") on December 19, 2024. On December 2, 2024, following an evidentiary hearing on the merits, this Court issued an Order of Dismissal denying and dismissing Applicant's PCR application. Applicant's motion to reconsider, alter or amend judgment followed. On January 29, 2025, a hearing on Applicant's motion was convened before the Honorable R. Lawton McIntosh in Oconee County. Applicant waived venue and was present and represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent.

This Court has heard the arguments presented by counsel and has reviewed the materials before this Court including the Spartanburg County Clerk of Court records; Applicant's SCDC records; the plea transcript; and the records of the current PCR action. This Court finds there are no appropriate grounds to alter or amend its judgement denying Applicant's PCR. This Court finds all issues that were raised by Applicant were ruled on in the Order of Dismissal. Accordingly, this Court reasserts its findings of fact and conclusions of law as articulated in the Order of Dismissal.

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CONCLUSION

THEREFORE, IT IS ORDERED: based on the foregoing, Applicant's motion to reconsider, alter, or amend judgment pursuant to Rules 59(a) & (e), SCRCP, is DENIED. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of this Order pursuant to Rule 59(f), SCRCP, and 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 an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED THIS 9 **day of** April, **2025.**

R. LAWTON MCINTOSH.
Presiding Judge
Seventh Judicial Circuit

Anderson, South Carolina

FILED
2025 APR 14 PM 4:09
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX