

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

May 20 2025

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Daniel M. Coble, Circuit Court Judge

Case No. 2023-CP-32-00524

Jamie S. Gadson, #363870, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Jamie S. Gadson, appeals the order of the Honorable Daniel M. Coble, filed on or about May 14, 2025, and received by the undersigned on May 20, 2025.



May 20, 2025

ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahanlawsc.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

Opposing Counsel:
Donald Zelenka, Deputy Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2025 MAY 14 PM 1:07

Jamie S. Gadson, SCDC #36387)
LISA M. COMER)
CLERK OF COURT)
LEXINGTON SC)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

Case No. 2023-CP-32-00524

This matter comes before the Court by way of Jamie S. Gadson’s (Applicant) *pro se* application for post-conviction relief (PCR) filed on February 10, 2023. Respondent, the State of South Carolina, filed its Return and Motion for More Definite Statement on April 22, 2024. On July 25, 2023, the Lexington County Clerk of Court appointed Ashley A. McMahan, Esquire, to represent Applicant. Applicant filed an Amended PCR application by and through his counsel on March 3, 2025.

An evidentiary hearing convened on March 4, 2025, at the Lexington County Courthouse before the Honorable Daniel M. Coble. Applicant was present and represented by Ashley A. McMahan, Esquire. Deputy Attorney General Donald J. Zelenka of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant proceeded on the claims of ineffective assistance of counsel presented in his Amended PCR application. Testimony was received from the Applicant, counsel Brett Perry and Eleventh Circuit Assistant Solicitor Russell Parker.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

constitutional violations or deprivations entitling him to relief and, accordingly, **DENIES** and **DISMISSES** this action **WITH PREJUDICE**.

PROCEDURAL HISTORY

The records before this Court establish that Applicant is presently confined at the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment from the Lexington County Clerk of Court. During its March 2020 term, the Lexington County Grand Jury indicted Applicant for Trafficking Cocaine 10-28 grams, five counts of Distribution, and Resisting Arrest. Applicant was initially represented by retained counsel Stanley L. Myers, Esquire (“Counsel Myers”), then was represented by Assistant Public Defender Jean M. Popowski (“Counsel Popowski”). Subsequently, Applicant was represented by retained counsel Brett A. Perry (“Plea Counsel”). Assistant Solicitor N. Russell Parker (“Solicitor Parker”) of the Eleventh Judicial Circuit prosecuted the case.

On August 8, 2022, Applicant appeared before the Honorable Debra R. McCaslin, represented by retained counsel Brett Perry. At the outset, there was a discussion regarding prior plea offers to earlier counsel and the order relieving Counsel Myers. (Plea Tr. pp. 4 – 5). During the proceeding, the Solicitor’s Office offered Trafficking Cocaine 10-28 grams, 2nd Offense. (Plea Tr. p. 6, ll. 21 – 24). They additionally agreed to dismiss the remaining Lexington County charges against Applicant and asserted that the pending Richland County charges would be dismissed as a result. (Plea Tr. p. 13, ll. 14 – 24). Counsel Perry and Applicant were given time to discuss the details of the plea offer and sentencing further after the introduction of charges against Applicant. (Plea Tr. p. 12, ll. 9 – 18). Applicant ultimately accepted the plea offer for Trafficking 10-28 grams, 2nd Offense, with a negotiated seven-to-fifteen-year sentencing range. Judge McCaslin questioned Applicant to ensure that his guilty plea was freely, intelligently and voluntarily made, to which she

found it was. (Plea Tr. p. 21, ll. 5 – 15). Judge McCaslin accepted Applicant’s plea and sentenced him to seven (7) years imprisonment, with credit for 134 days served. Judge McCaslin also issued an order terminating Applicant’s probation. (Plea Tr. p. 26, ll. 17 – 24). Applicant did not appeal his plea or sentence.

SUMMARY OF FACTS PRESENTED AT GUILTY PLEA

During the plea proceeding, Assistant Solicitor Parker informed the Court that Applicant initially had accumulated five charges as the result of five undercover buys that occurred over the course of 2019. (Plea Tr. p. 4, ll. 8 – 10). In October of 2019, the West Columbia Police Department had five active warrants for Applicant’s arrest. Officers recognized Applicant at the McDonalds location in West Columbia and arrested him. (Plea Tr. p. 4, ll. 10 – 13). While arresting Applicant, officers found what field-tested positive as thirteen grams of crack cocaine in Applicant’s possession. Upon completion of subsequent testing at the lab, the results came back as positive for 10.36 grams of crack cocaine. (Plea Tr. p. 4, ll. 14 – 16). Applicant was charged and indicted for five counts of distribution of crack cocaine, one count of trafficking crack cocaine, 10-28 grams, and resisting arrest. (Plea Tr. p. 4, ll. 17 – 22).

CURRENT ACTION BEFORE THE COURT

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel
 - a. Attorney Did Not Advise Me I Could Appeal.
 - b. “Failure to Advise”
 - i. “Attorney Stanley Myers failed to advise me why he was ...”. (*Pro Se* Application)
 - c. “Failure Invalidating Guilty Plea”
 - ii. “Attorney Brett Perry showed ineffective assistance of counsel ...”. (*Pro Se* Application).

In the amended application for post-conviction relief by appointed counsel Ashley McMahan, dated February 27, 2025, the Applicant raised the following:

- I. Ineffective Assistance of Counsel.
 - a. Counsels were ineffective regarding the plea offer given to the Applicant. At one point, while represented by Ms. Popowski, the plea offer from ASOL Parker was to plead straight up to one count of trafficking crack 10-28 grams, 1st offense, down from 3rd offense, which Applicant wanted to take. (Please see attached email from Mr. Parker to Ms. Popowski.) However, by the time the plea came around with Mr. Perry as his attorney he was having to plead to a trafficking 2nd offense. (Amended Application)

Before this Court are the Lexington County Grand Jury Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections (SCDC), Applicant's plea transcript, and the records of the PCR action.

STANDARD OF REVIEW

In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court established that to challenge a conviction based on ineffective assistance of counsel, an applicant must prove two elements: (1) his counsel was deficient in his representation, and (2) he was prejudiced as a result. To satisfy the first prong, an applicant "must show that counsel's representation fell below an objective standard of reasonableness." Id. at 688. To satisfy the second prong, an applicant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. The Supreme Court has cautioned that [j]udicial scrutiny of counsel's performance must be highly deferential," and "[b]ecause of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence – a mere allegation of

ineffective assistance is insufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In the first prong of Strickland, the “deficiency prong”, constitutional deficiency is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant claiming ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the range of professionally competent assistance” demanded of attorneys in criminal cases. Id. Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation [--] only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, make every effort “to eliminate the distorting effects of hindsight,” and “evaluate the conduct from counsel’s perspective at the time” in light of then-existing

circumstances. Strickland, 466 U.S. at 689. Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission was unreasonable.” Id. at 690.; See also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”) Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside of the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so manifestly ineffective that defeat was snatched from the hands of probable victory.”).

Beyond satisfying the burden required by the deficiency prong under Strickland, the “prejudice prong” requires an applicant to bear the burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691. The prejudice prong of Strickland is rooted in the very purpose of the

Sixth Amendment guarantee of counsel that ensures a defendant has the assistance necessary to justify reliance on the outcome of the proceeding.” Id. To meet this burden, counsel’s deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. Cherry v. State, 300 S.C. 115, at 117-18, 386 S.E.2d 624, 625 (1989). A reasonable probability is one that is “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694; see id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists a “reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part test to challenge guilty pleas based on ineffective assistance of counsel. Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying the two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. at 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged – the applicant must show counsel’s representation fell below the 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 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. This inquiry “focuses on a defendant’s decision-making” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty – not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. at 368; cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. at 369. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR evidentiary hearing. Harres, 282 S.C. 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. This right applies to all critical stages of criminal proceedings. Hill established that Strickland’s two-part test governs ineffective assistance claims in the plea bargain context, where a defendant must show that but for counsel’s deficiency surround the plea offer, he would have proceeded to trial. Hill, 474 U.S. at 60. The analysis under Strickland for the deficiency prong remains unchanged. However, where a defendant argues that with effective assistance of counsel he would have accepted an earlier plea offer as opposed to entering an open plea, Strickland’s inquiry into whether “the result of the proceeding would have been different” requires looking at not whether the defendant would have proceeded to trial, but at whether he would have accepted the earlier plea offer. Strickland, 466 U.S. at 694.

A key issue determined by the Supreme Court was how to apply Strickland’s prejudice test when counsel fails to sufficiently evaluate and convey the State’s plea offer to the petitioner. The Court in Lafler¹ held that in these circumstances, “a [defendant] must show that but for the

¹ Lafler v. Cooper, 566 U.S. 156 (2012).

ineffective assistance, there is a reasonable probability that the plea offer would have been presented to the court, the court would have accepted its terms, and the conviction or sentence, or both, would have been less severe under the terms of the offer than under the judgment and sentence imposed.” Id. at 164. Our Court has also held that defendants must “demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel.” Simuel v. State, 432 S.C. 150, 850 S.E.2d 642 (2020).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard evidence presented at the evidentiary hearing and observed the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (“In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment.”); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) (“The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.”).

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, “[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct.

App. 2015) (“In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief.”); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (“The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.”).

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

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Counsels’ representation of Applicant, each rendered adequate assistance and exercised reasonable professional judgement in their representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that “every effort be made to eliminate the distorting effects of hindsight” and evaluate counsel’s decisions at the time they were made. Strickland, 466 U.S. at 689, 104; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following initial findings from the guilty plea hearing: (1) Applicant was present and was properly informed of his right to trial by jury; (2) Applicant understood his right to a jury trial and his ability to waive this right; (3) Applicant understood that he could be facing a conviction for Trafficking, 3rd Offense should he go to trial; (4) Applicant understood that the plea offer extended was for Trafficking, 2nd Offense; (5) Applicant’s acceptance of the plea offer was freely, voluntarily, and intelligently made.

INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1: “Attorney Did Not Advise Me That I Can Appeal.”

Applicant alleges that counsel failed to advise Applicant of his right to appeal his guilty plea. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to 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, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is a reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the “bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders² procedure, “White³ permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal

² Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

³ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

given and timely served.” Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 228 S.C. 290, 342 S.E.2d 60 (1986)).

PCR Evidentiary Hearing

On direct examination, counsel Perry testified that he spoke with Applicant regarding his right to appeal and that the plea judge informed Applicant of his constitutional rights at his guilty plea hearing. Counsel Perry testified that Applicant never asked him to file an appeal following their discussion about Applicant's right to appeal. Counsel Perry testified that the plea deal was very well executed and that he does not believe an appeal would have been filed for it anyway.

Findings

This Court finds the combination of the record and counsel Perry’s testimony that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving counsel Perry’s representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, *supra*. Counsel Perry **credibly** testified that he and Applicant discussed the right to an appeal and further testified that Applicant never asked counsel Perry to appeal the guilty plea or sentence.

Further, based upon the record, this Court finds Applicant has failed to show extraordinary circumstances that existed that would have warranted an appeal. Counsel Perry **credibly** testified that the plea offer extended to Applicant was very well put together and that he did not see a basis for an appeal that the Court of Appeals would reverse. Most importantly, the sentence the Applicant received was the minimum of the plea offer of seven years. No objections were raised during the hearing so there was effectively nothing available to raise on appeal. Under *Roe*, the Applicant

had failed to show by credible evidence the existence of a further duty to consult when there is a reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so. Since there was no duty to consult under the discrete facts of this case where he receive the 7 year sentence and there was no further objection at the plea, his allegation must be dismissed.

Accordingly, this Court finds Applicant has failed to establish any deficiency by counsel Perry or any prejudice flowing therefrom. Thus, this allegation must be **DENIED AND DISMISSED WITH PREJUDICE.**

Allegation 2: “Failure to Advise.”

Applicant alleges that specifically counsel Stanley Myers, "failed to advise me why he was ..." Application ¶10(a), ¶11(a). This allegation is vague and lacks specificity and is conclusory. The Respondent had requested a more definite statement in the return to this allegation. Applicant failed to present any additional clarity or evidence, testimony, or legal authority regarding this vague conclusory allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue". Palmer v. State, 427 S.C. 36, 37, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). The Applicant's only testimony at the hearing related to Mr. Myers was primarily from Assistant Solicitor Parker who indicated that that retained counsel asked to be relieved after the Applicant had failed to show up at court for a favorable plea offer that was made to Mr. Myers, which the Applicant had rejected. The records of the Clerk of Court indicated that the initial plea hearing with counsel Myers had been set for November 4, 2021 and the plea offer between Myers and the State had been to plead guilty and receive a sentencing range between 3-10 years, which Myers believed was a favorable

offer that Applicant rejected according to the Order relieving counsel Myers.⁴ The purpose was to have Mr. Gadson assert on the record whether he would accept the plea or reject the plea. Tr.p. 5, l. 4-8. (statement of Assistant Solicitor Parker). Judge Manning relieved Myers from representation in an Order signed on November 16, 2021 and filed January 5, 2022. State v. Jamie Gadson, Order, dated November 16, 2021, filed January 5, 2022 (Manning, presiding judge).

The Applicant failed to add specificity to the claim to allow this Court to understand. The Court is not required or allowed to speculate what the breath and meaning of the allegation in the in his original application. Therefore, this Court deems the conclusory and nonspecific allegation **ABANDONED.**

Allegation 3: “Failure Invalidating Guilty Plea.”

Applicant alleges that counsel Perry “failed to invalidate his guilty plea.” Application ¶10(b), In this assertion, the *pro se* applicant indicated that “attorney Brett Perry showed ineffective assistance of counsel. Application, ¶11(b). The Respondent made a motion to make more definite and certain on this allegation. This a confusing assertion since the guilty plea was freely and voluntarily entered with a negotiated range of 7 to 15 years and the State actively declaring it took no position on sentencing which resulted in a 7 year sentence. Tr.p. 25-26.

A review of the testimony and record before this Court fails to reveal any matter that would have allowed counsel Perry to invalidate the plea. The record shows that the charge that the Applicant plea was indicted on March 9, 2020. State v. Gadson, 2020GS3200511 for trafficking in cocaine base – 10 grams or more, but less than 28 grams (third offense). The guilty plea was on August 18, 2022 before Judge McCaslin after the case had been placed on the trial docket. The

⁴ The Clerks records reflect that counsel Myers made a notice of appearance in Mr. Gadson’s cases on January 22, 2020.

record reveals that the offer made on the record by the State was within the statutory limits for the crime as charged and as pled – trafficking – 2nd offense. The sentence that Applicant received of 7 years was not the product of an unkept plea bargain and within the statutory mandates for the crime. The crime the Applicant pled was a lesser included offense of the indicted crime. Tr.p. 16. A factual basis was presented at the plea which was consistent with the elements of the crime as charged. Tr.p. 4, 1. 8-20. The Applicant was present at the plea and confirmed his desire to plead guilty to trafficking – 2nd with a sentencing range. Tr.p. 13-14. Under oath at the plea he acknowledged he was not under the influence of any drugs, not treated for any mental illness, aware that the charge carried a range of 5 to 30 years, and aware that it was on the trial docket. Tr.p. 14-15. He also asserted affirmatively that he was aware that he could have gone to trial, called witnesses on his behalf, presented a defense, cross-examined the state witnesses, chosen to testify or not testify, and had the jury advised that they could not hold it against him if he did not testify. Tr.p. 15. Gadson declared to the plea court that he wanted to waive his rights and go forward with a plea to trafficking meth, 10 but less than 28 grams, for a second offense when it was a third offense. Tr.p. 15. No objection was raised in court after the Applicant was sentenced.

Applicant failed to present any clarification, evidence, testimony, or legal authority regarding this conclusory allegation at the evidentiary hearing. No credible evidence was presented as to how counsel could have invalidated the plea.

“When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue”. Palmer v. State, 427 S.C. 36, 37, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). This Court finds that there was no credible factual support that reasonable counsel could have invalidated the plea. It must be dismissed for the failure to satisfy

the burden of proof. Alternately, this Court also finds the conclusory allegation is abandoned by the lack of credible evidence or legal authority.

Allegation 4: “Counsels were ineffective regarding the plea offer given to Applicant.”

In the amended application, Applicant alleges that all Counsels were ineffective regarding the plea offer given to the Applicant. Specifically, Applicant avers that while Applicant was represented by counsel Popowski, the plea offer from Solicitor Parker was to plead straight up to one count of trafficking crack cocaine, first offense, down from third offense trafficking, which Applicant wanted to take.⁵ However, by the time the plea came around with counsel Perry as his attorney, Applicant was having to plead to a trafficking, second offense due to the circumstances on the Applicant’s failure to show up to plead previously or to reject the earlier plea offer in open court.

Guilty Plea Proceeding

During Applicant’s guilty plea proceeding, Solicitor Parker explained the timeline of Applicant’s prior representation for the charges by three counsel, Stanley Myers, Public Defender Jean Popowski, and retained counsel Brett Perry. Solicitor Parker informed the Court that counsel Myers was retained as Applicant’s initial attorney. Counsel Myers obtained a favorable plea offer⁶ for Applicant, but Applicant failed to appear to accept or deny the plea offer. (Plea Tr. pp. 4, ll. 22

⁵ Applicant contends that there is an email between Solicitor Parker and counsel Popowski regarding this. An email was attached to the Amended Application between Parker and Popowski. However, the email does not indicate the Applicant’s agreement to accept the offer.

⁶ The initial plea offer extended to Applicant was for Trafficking 10-28 grams, 1st Offense, which carries a potential sentence of three to ten years. This offer was extended to both counsel Myers and counsel Popowski, but Applicant rejected the offer both times. (Plea Tr. pp. 4, ll. 24 – pp. 5, ll. 1 – 24).

– pp. 5, ll. 6). Counsel Myers then moved to be relieved as Applicant’s counsel.⁷ This order was granted by the Honorable Casey Manning, based on an obvious dispute between Applicant and Counsel regarding the offer. (Plea Tr. p. 5, ll. 7 – 20). Counsel Myers was not present for Applicant’s guilty plea hearing in August of 2022 due to prior being relieved as Applicant’s counsel. Counsel Myers was not present for Applicant’s March 2025 PCR evidentiary hearing where these claims were addressed, as he sadly passed away in September of 2023.

Assistant Solicitor Parker stated that counsel Popowski was appointed to represent Applicant following counsel Myers being relieved. (Plea Tr. p. 5, ll. 20 – 21). Assistant Solicitor Parker extended the same plea offer to counsel Popowski for the Applicant as was extended previously under Stanley Myers’ representation. Again, Applicant failed to appear. (Plea Tr. p. 5, ll. 21 – 24). The Solicitor’s Office interpreted Applicant’s conduct as a rejection of the offer, and a bench warrant was issued for Applicant’s arrest. The Solicitor’s office noted that all prior offers extended to Applicant were withdrawn at this point after the second failure to appear. (Plea Tr. p. 6, ll. 4 – 6). Counsel Popowski was not present for Applicant’s guilty plea hearing in August of 2022 due to counsel Brett Perry being retained in June of that year.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he initially hired counsel Myers to represent him. Applicant testified counsel Myers was then relieved by court order, and counsel Popowski of the Lexington County Public Defender’s Office was subsequently appointed to represent Applicant. Applicant testified that he then hired Brett Perry in June of 2022. Applicant testified that Brett Perry was retained to represent him on pending charges in both Richland and Lexington County. Applicant testified that counsel Perry met him while he was incarcerated to review

⁷ Stanley Myers had died prior to this PCR hearing on September 27, 2023.

Applicant's charges and discovery materials. Applicant testified that he never indicated to counsel Perry that he wanted to go to trial. Applicant testified that he informed counsel Perry of a plea offer for a sentence of ten years that was offered previously but retracted, and Applicant requested that counsel Perry attempt to get the same plea deal in this instance. Applicant claims that counsel Perry stated he had no knowledge of that previous deal, and that counsel Perry did nothing further to obtain the previous plea deal.

On direct examination, Brett Perry testified that he met with Applicant extensively and reviewed the case. Counsel Perry testified that he and Applicant went over all charges and discovery together, and discussed previous plea deals that were extended to Applicant prior to Perry being retained. Counsel Perry testified that it was his understanding that a previous offer had been extended to Applicant, but that Applicant failed to appear on two separate instances to accept that offer and therefore it was withdrawn. Counsel Perry testified that Applicant's charges were "true third" offenses in nature with two prior drug convictions, so Applicant was facing Trafficking 3rd should he proceed with trial. Counsel Perry testified that he communicated with the solicitor and attempted to obtain the original plea offer that was withdrawn, but the State was not willing to extend it again. Counsel Perry testified that there was a new offer for Trafficking 2nd with a sentencing range of seven to fifteen years, in part being due to the fact Applicant accumulated new charges since the original plea offer was extended. Counsel Perry testified that this negotiation also included dismissal of the Richland County charges against Applicant in exchange for acceptance of the plea offer in Lexington County.

On direct examination, counsel Perry testified that in these types of cases, he drafts memorandums detailing the plea deal, sentencing details, his opinion of the offer, the strength of the State's case, and other relevant details. Counsel Perry testified that he prepared this

memorandum and reviewed it with Applicant to ensure that Applicant was completely informed as to what his options were. Counsel Perry testified that Applicant acknowledged the following in the memorandum: (1) Applicant's receipt of discovery materials from counsel Perry on July 25, 2022, including pending charges in Lexington County, (2) Applicant's notice of Lexington County Solicitor's Office withdrawing all prior plea offers extended to him, (3) Applicant's notice of the maximum sentencing range possible for the five distribution charges that he was facing, (4) the potential of being convicted as charged for the Richland County charges, and (5) Applicant's notice of consequences to waiving the right to trial by jury.

On direct examination, counsel Perry testified that he felt there were no grounds to defend this case, considering the five distribution charges came from undercover buys and the fact that Applicant was arrested with crack cocaine of trafficking weight on his person. Counsel Perry testified that Applicant ultimately accepted the plea offer from the Solicitor's Office. Counsel Perry testified that the plea offer was an open plea, so Counsel was able to negotiate ten years off the maximum range in exchange for two years off the minimum range.⁸ Applicant was sentenced to seven years' incarceration – the minimum sentence in the offered range. Counsel Perry testified that he spoke with Applicant regarding an appeal and that the judge informed Applicant of his right to appeal, but that Counsel Perry was never asked to file an appeal. Counsel Perry further testified that he believes Applicant never filed an appeal because the plea offer was very well executed.

The prosecutor in the case, Assistant Solicitor Russell Parker also testified about the plea offers and resolution. He testified that he became involved in the Applicant's case after Melanie Darko left the office to work in the 5th Circuit Solicitors Office. She had extended an offer to his

⁸ The original sentencing range was five to twenty-five years. Counsel Perry negotiated this range with the solicitor and agreed upon a range of seven to fifteen years. (Plea Tr. pp. 9, ll. 13 – pp. 10, ll. 5).

then counsel Stanley Myers for trafficking first and had attempted to get Gadson to plead. However, the Applicant failed to come to court, although his counsel was present. This led to Myers removing himself from the Applicant's case by court order because he felt this initial offer was reasonable though his client did not want to accept it. Parker stated that Gadson was then appointed a public defender who was given the same offer. He attempted to send the Applicant a "come to court" letter and the Applicant again did not appear for court. Parker declared his office considered the failure to appear as a rejection and prepared an arrest warrant, withdrew all offers and set the case on the trial roster. The Office policy is that once a case has been placed on the trial roster, no new plea offers will be extended. At that point counsel Perry had been retained and reached out to Parker and asked if he could extend an offer. Parker stated he sent to Suzanne Mayes, his supervisor, and they decided to extend an offer for trafficking 2nd as appropriate. Parker stated that Perry returned seeking a range of punishment. Parker stated that they had Gadson come to either accept or reject the offer, and at that point he accepted the plea.

Parker clarified that Public Defender Jean Popowski was the assigned public defender for Gadson prior to Perry's retention. He stated that she had been extended the trafficking 1st offer and he had believed the offer had been rejected because Applicant had no-showed to court. This was the same offer that he had no-showed to court with counsel Myers earlier. Parker further stated that when he re-extended the same offer to Applicant that was rejected before, he received calls from the West Columbia Police department inquiring what was going on to get some movement on the case. Parker also thought Applicant had been re-arrested in Richland after the Lexington charges.

Parker thought that the information he provided the plea court was consistent with his own understanding of the offers made and counsel's agreements. He noted that he was in

communication with the Fifth Circuit and we agreed to dismiss both the remaining Lexington charges and Richland charges if he pled guilty to the Lexington charge that were offered.

On cross-examination, Parker clarified that the Richland charges may have been before the Lexington charges. He described the timing of the notices that led to the bench warrant when he refused to show the second time. He declared the offer was made to Popowski on February 16, 2022 and the Applicant failed to show up to court on March 24, 2022. Parker stated that his information was that Perry was appointed on June 9, 2022, after the March no-show.

Law Related to Plea Bargaining

A defendant does not have a constitutional right to plea bargain, a trial judge is not required to accept a plea bargain, and that ordinarily a plea offer is nothing more than an offer until it is accepted by the defendant by entering a court-approved plea of guilty. Custodio v. State, 373 S.C. 4, 10, 644 S.E.2d 36, 38–39 (2007); Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct.App.1999). See also Weatherford v. Bursey, 429 U.S. 545, 561, 97 S.Ct. 837, 51 L.Ed.2d 30 (1977) (finding “there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial”). Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). This is not a situation where the prosecution reneged on an accepted plea offer. This is a situation where the Applicant desired to have an initially rejected plea offer renewed. See *Annotation, Right of Prosecutor to Withdraw from Plea Bargain Prior to Entry of Plea*, 16 A.L.R.4th 1089, § 3(a) (1982) (noting at least twenty-four states have adopted the detrimental reliance exception); 5 *Wayne R. LaFave, et. al, Criminal Procedure* § 21.2(f) (2d. ed.1999) (prevailing doctrine is that the State may withdraw from a plea bargain agreement at any time prior to, but not after, the actual entry of the guilty plea by the

defendant or other action by him constituting detrimental reliance upon the agreement). *Custodio v. State*, 373 S.C. 4, 11, n. 4, 644 S.E.2d 36, 39, n.4, (2007).

The right to effective assistance of counsel extends to the plea bargaining process. *Lafler v. Cooper*, 566 U.S. 156, 162, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012). To prove ineffective assistance, a petitioner must prove trial counsel's performance fell below an objective standard of reasonableness, and but for counsel's errors, there is a reasonable probability that the result would have been different. *Strickland*, 466 U.S. at 691–94, 104 S.Ct. 2052; *Simuel v. State*, 432 S.C. 150, 154, 850 S.E.2d 642, 643–44 (Ct. App. 2020).

Findings

As a threshold matter, Gadson does not cite any authority that imposes a duty on trial counsel to revive an expired plea offer. Further, the decision whether to revive the expired plea offer rested exclusively with the solicitor. See *State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating “[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain”). *Collins v. State*, 422 S.C. 250, 261, 810 S.E.2d 871, 877 (2018).

As an initial factual matter, this Court finds Applicant’s testimony **not credible**. This Court further finds from the combination of the plea record, counsel Perry’s **credible** testimony and Assistant Solicitor Parker’s **credible** testimony that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, *supra*. This Court additionally finds Applicant has failed to overcome his burden in proving Counsels’ representation was deficient and any resulting prejudice from that alleged deficiency. See *Butler*, *supra*.

Based on the record, this Court finds counsel Myers and counsel Popowski were effective and did properly negotiate Applicant's plea offer. Counsel Myers initially negotiated the plea offer of Trafficking, 10 – 28 grams, 1st Offense when Applicant would be facing a “true third” offense should he go to trial. This Court finds that Applicant failed to accept the favorable plea offer, and counsel Myers was then relieved as counsel due to the conflict with Applicant. Counsel Popowski later obtained the same favorable plea offer for Applicant, to which he again failed to accept and failed to appear in court. This Court also finds that the Applicant's assertion in this proceeding that he wanted to accept the offer made by the State to counsel Popowski without factual support. As noted at the guilty plea, The failure of the Applicant to appear in court in March after the same offer was extended to either accept or reject the offer was properly deemed to be a rejection at that time which resulted in the bench warrant. Tr.p. 5-6. The record establishes that counsel Myers and counsel Popowski were effective in their negotiations and handling of Applicant's plea offer.

Concerning counsel Perry's representation, this Court finds Perry was effective and properly negotiated a plea deal for Applicant that was favorable under the circumstances where the Applicant's actions in refusing the earlier plea offers led to Applicant being placed upon the trial docket. Contrary to the claims of the Applicant, counsel Perry **credibly** testified that he and Applicant discussed prior plea offers that were negotiated through counsel Myers and counsel Popowski. Counsel Perry testified credibly that he was in communication with the solicitor to negotiate a plea deal for Applicant. This is confirmed by Assistant Solicitor Parker's testimony. Counsel Perry attempted to obtain the initial plea offer extended of trafficking 1st, but the State refused to offer this because of Applicant's two prior rejections and failure to appear. Counsel Perry was ultimately able to negotiate for Trafficking, 2nd offense due to additional charges that Applicant accumulated while released on bond which also vacated the original offers. Further,

counsel Perry was also able to negotiate the dismissal of the additional Lexington County and Richland County charges. Finally, counsel Perry ensured that the Court terminated Applicant's probation to avoid issues following Applicant's release from incarceration. The combination of the record and counsel Perry's **credible** testimony establish that counsel Perry did properly and adequately handle the negotiations with Applicant's plea offer.

Applicant only offered self-serving testimony at the evidentiary hearing lacking in credibility on the critical facts. Applicant testified that counsel Perry never attempted to learn of prior plea offers extended to Applicant, nor did counsel Perry attempt to obtain a plea offer from Solicitor Parker. The factual assertion is without merit. However, the record clearly shows that Applicant rejected this earlier plea offer twice, and following the rejections, the State withdrew all offers. This is not a case where earlier counsel failed to provide a defendant with plea offers. They were offered and recommended by his counsel at the time. Cf. Lafler, *supra*.

Contrary to Applicant's claim, counsel Perry attempted to obtain this same plea offer made to Myers and Popowski, but the State refused to extend it due to Applicant's prior rejections and the circumstances had changed. This is confirmed by Assistant Solicitor Parker. There is no Sixth Amendment requirement that once a plea offer is made and rejected, the next offer must be more beneficial to the criminal defendant. The withdrawal of the plea offer by the State occurred prior to counsel Perry being retained. It was the Applicant's conduct, not counsel Perry's action that caused this change. The State was free to reject any further inquiries from defense counsel about additional negotiations. "It is, of course, true that defendants have "no right to be offered a plea ... nor a federal right that the judge accept it." Lafler v. Cooper, 566 U.S. 156, 168, 132 S. Ct. 1376, 1387, 182 L. Ed. 2d 398 (2012). Although the Applicant has refused to realize it, his counsel performed well within the standards of competence in having the State further negotiate with them

and further limit the potential range of punishment he faced. As Judge McCaslin stated at the plea: “ Mr. Gadson that ...this is the deal of the day. And you got it.” Tr.p. 26, l. 25-, p.27, l.1.

Moreover, Applicant was given an opportunity to express his dissatisfaction with counsel Perry’s representation, and any misunderstanding concerning the plea negotiations or negotiated plea offered, knowingly opted not to, instead choosing to plead guilty. His representations to Judge McCaslin carry of strong presumption of verity that the Applicant has not overcome. The record and counsel Perry’s and Assistant Solicitor Parker’s **credible** testimonies directly contradict Applicant’s allegation that counsel Myers, counsel Popowski, and counsel Perry were ineffective regarding Applicant’s plea negotiations.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Counsels’ performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by counsel Myers, counsel Popowski, or counsel Perry, or any prejudice flowing therefrom. Thus, this allegation is **DENIED and DISMISSED WITH PREJUDICE.**

CONCLUSION

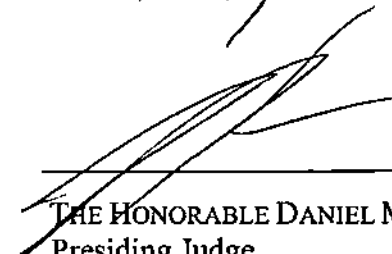
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

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


IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 5 day of May, 2025.



THE HONORABLE DANIEL M. COBLE
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina.