

**RECEIVED**

**Jun 09 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable David P. Caraker, Jr., Circuit Court Judge

Case No. 2022-CP-32-04402

Amy L. Wright, #322552, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

**NOTICE OF APPEAL**

Applicant, Amy Lynn Wright, appeals the order of the Honorable David P. Caraker, Jr., filed on or about April 28, 2025, and received by the undersigned on June 2, 2025.

June 9, 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 J. 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  
COUNTY OF LEXINGTON 2025 APR 28 ) PM 2:31 PLEAS FOR THE ELEVENTH  
JUDICIAL CIRCUIT

AMY WRIGHT, SCDC # 322552, ) LISA M. COVER  
CLEAN OF COURT )  
LEXINGTON, SC ) Case No.: 2022-CP-32-04402

Applicant, )  
ORDER OF DISMISSAL

v. )

STATE OF SOUTH CAROLINA, )

Respondent. )

This matter comes before this Court from Applicant Amy Wright’s post-conviction relief application filed on December 30, 2022. On March 7, 2023, the Clerk of Court appointed Ashley McMahan as appointed counsel in this action. The Respondent made a Return and Partial Motion to Dismiss on July 27, 2023. On July 28, 2024, counsel McMahan made an Amended Post-Conviction Relief Application.

On August 27, 2024 an evidentiary hearing was held before this Court. The Applicant was present and represented by her court-appointed counsel Ashley A. McMahan. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant and his prior attorney, Stephen R. Story, Jr. At the conclusion of the hearing, this Court took the matter under advisement. This Order of Dismissal with prejudice follows:

**I. Procedural History**

Applicant Amy Wright, SCDC #322552, is presently confined in the South Carolina Department of Corrections (SCDC). In its August 2020 term, the Lexington Grand Jury indicted Applicant of attempted murder (2021-GS-32-02214). Stephan R. Story, Jr., Esquire, represented Applicant. Sutania Fuller, Senior Assistant Solicitor, represented the State. On February 8, 2022, Applicant appeared before the Honorable Kristi Curtis and pleaded guilty to attempted murder

(2020A3220300220). Judge Curtis sentenced the Applicant to twenty-five years. Applicant did not appeal her sentence or conviction.

## **II. Summary of Fact Presented at Guilty Plea Hearing**

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

MS. FULLER: Your Honor, back on August 18th of 2020, 911 was called at 9:35 a.m.; responded to this residence on Oakland Avenue in Cayce, part of our county, Your Honor. What was reported and what was clearly depicted from the photographs and what I could tell from the report is the victim in this case, Ms. Sutton, she was sitting on her couch downstairs. And then Ms. Wright attacked her repeatedly several times with a claw hammer.

The granddaughter that was in the residence heard the grandmother screaming and went downstairs. She ran back upstairs to get her mom and get her boyfriend to get help, because she described that her grandmother was basically bleeding out. She did report to law enforcement that she saw Ms. Wright leave the residence with her two small children.

And in the investigation, law enforcement spoke to the family members. And what was determined was the relationship. So this was a home where the grandmother lived with a daughter, a granddaughter-in-law, as well as the son-in-law. What I can understand, the relationship, Ms. Wright was a relative of the husband, I believe either -- they called -- the children called her "aunt," but it seems like she may be more of a niece to the father in the home, but I'm sure they'll explain that.

When she was living in the home, she had been there for about two weeks. What the husband reported to law enforcement -- and Mr. Hornsby reported that she had lived there for two weeks because no other family would take her in. She had been having problems with the victim, Ms. Sutton, the grandmother in the home because she didn't like the way that the grandmother spoke to her children. And Ms. -- the grandmother, the victim in this case, had -- had problems with her drinking as well.

But that morning, the husband reports leaving. And I refer to him as "husband" because he's the husband of the home, but the son-in-law of the victim. He reports leaving for work at around 5 a.m. and then

returning to the residence when he received a frantic phone call from his wife, describing what happened.

When law enforcement eventually spoke with Ms. Wright, she gave a statement, indicating that she did it; what -- like, kind of indicating, like, what is there really to talk about. She said: "But I did it. There's really not much to say. I done it."

She indicated that she was irritated because Sutton, the victim, was constantly verbally abusive to -- verbally abusive to her two children. She said: "I got tired of people treating my kids like that." And she indicated, when asked what -- how was she abusive or was she abusive, her response was: "No." She was just constantly saying she -- they were verbally abusive.

What we have determined and what I've understood, what she described as "verbally abusive" is the -- Ms. Sutton telling her kids not to run around the house, to be quiet in the home.

At one point on August 21st, when defendant spoke with social worker at DSS, she stated that the reason she caused harm to the victim was because, according to her, people were going to kill her and her children. She also claimed that the victim kept telling her children not to touch things and not to run around in the home.

(Tr. p. 9-11).<sup>1</sup>

Cayce Police Department Investigator Paul Sanguiliano described that it was a miracle that the victim was still alive. He described that crime scene as one of the most brutal he had seen in his 12 years in law enforcement. Tr.p. 18. He described his arrival at the scene with the victim being wheeled out with a caved in skull with circles consistent with the front of the hammer indented with her eyes swollen shut. Tr.p. 18. Family members described the victim tragic change of life being wheelchair bound, unable to cook for herself and needing assistance to go to the bathroom as a result. They asked for no leniency for the Applicant. Tr.p. 19-20.

---

<sup>1</sup> According to the prosecution, the Applicant had a prior record of 2004 – possession of marijuana, 2007 assault and battery with intent to kill, 2010 arrest for public disorderly conduct, and 2018 – open container, DUI-first, and child endangerment. Tr.p. 21-22.

### **III. Allegations Raised and Relief Sought before this Court**

In her application for post-conviction relief, Applicant alleged she was being held in custody unlawfully based on the following, contending in the attachment that the plea was involuntary, irrational and the result of ineffective assistance of counsel:

1. Actual Innocence:
  - i. She was convicted of attempted murder and sentenced to 25 years without parole following an incident, altercation with her relative concerning what she believed to be abusive behavior toward her children. The relative/grandmother experienced head injuries and loss of a finger and long term complications.
  - ii. The Applicant contends that “she did not attempt to kill her grandmother, and immediately reported the incident to the police.”
2. “The plea was irrational because she did not attempt to kill her grandmother and the plea fails to satisfy the requirements of the charge. Under no circumstances was this an attempted murder, and any plea deal on that basis was misconstrued.” The Applicant cites to assault and battery of a high and aggravated nature, assault and battery in the first degree and assault and battery in the second degree as lesser-included offense of attempted murder.
3. “The Court failed to properly evaluate whether the defendant had mitigating circumstances which resulted from prior abuse.”
4. Ineffective Assistance of Counsel
  - i. Applicant alleges that Counsel failed to investigate the circumstances of the case mitigating effect of battered woman circumstances and for allowing an irrational plea.
  - ii. Applicant apparently alleges that Counsel failed to inform her of any lesser-included offenses.

In her amended application, the Applicant, through counsel, alleged the following:

- I. Ineffective assistance of counsel Stephen R. Story, Jr.
  - a. Had Mr. Story presented evidence of Ms. Wright’s remorsefulness regarding the incident, Applicant would have received a shorter sentence.

### **IV. MATTERS BEFORE THE COURT**

This Court has before it the following materials:

1. Records of the Lexington County Clerk of Court including:

- a. records regarding the subject convictions;
  - i. Arrest warrant – attempted murder – 2020A3230300220
  - ii. Magistrate Notice of Rights, indicating bond denied;
  - iii. Motion for Disclosure of Evidence Favorable to Defendant;
  - iv. Request for Disclosure Pursuant to Rule 5;;
  - v. State’s Request for Discovery;
  - vi. Order for Competency Evaluation
  - vii. Order for Criminal Responsibility and Capacity to Conform Evaluation;
  - viii. Indictment for Attempted Murder - 2021GS3202214
  - ix. Sentencing Sheet;

2. Records from the South Carolina Department of Corrections (5 pages) including

- a. SCDC Record Summary Report dated Jan.30, 2023;
- b. Sentencing Sheet 2021-GS-32-02214 dated February 8, 2022

Guilty plea transcript of February 8, 2022 (28 pages); and the records of the current PCR action.

**V. FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATED TO ALLEGATIONS INEFFECTIVE ASSISTANCE OF COUNSEL AND OTHER GROUNDS RAISED**

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 failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRCPC, and the Uniform Post-Conviction Procedure Act (the Act). For the reasons discussed below, this Court denies

**Allegation of Actual Innocence**

Applicant alleges actual innocence (or insufficient factual basis for plea) in her original PCR application. In particular, she contends that she did not attempt to kill her grandmother and counsel should have informed her about the lesser offenses prior to her plea. This Court must dismiss the assertions related to insufficient evidence to convict. It is dismissed as not a cognizable claim under the Uniform Post-Conviction Relief Procedure Act. S.C. Code Ann. § 17-27-20(A).<sup>2</sup>

A free-standing claim of actual innocence is not a proper claim in post-conviction relief.

An applicant may commence a post-conviction relief action on the following grounds:

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

S.C. Code Ann. § 17-27-20(A).

---

<sup>2</sup> The statutory crime of attempted murder is defined as “a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.” S.C. Code Ann. § 16-3-29.

Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation, nor does it support a cognizable claim for relief under any of the statutory grounds. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of the evidence are direct appeal issues that are not cognizable PCR claims); S.C. Code Ann. § 17-27-20(B) (“This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.”). This Court dismisses the allegation of actual innocence as it is not cognizable under the Uniform Post-Conviction Procedure Act.

Similarly, the Applicant complains in her *pro se* application that the guilty plea was irrational because the facts of the case did not show the existence of the crime of attempted murder. This free-standing assertion fails for the same reason as above. During the guilty plea, as set forth below, the plea court heard a factual basis for the crime of attempted murder. Tr.p. 9-11. The Applicant acknowledged her decision to waive her constitutional rights and plead guilty. Tr.p. 8, 16. The plea court found a valid factual basis for the crime of attempted murder and determined that the guilty plea was freely and voluntarily entered. Tr.p. 16. By entering the plea freely and voluntarily, the Applicant waived her right to present a defense. Therefore, under S.C. Code Ann. § 17-27-20(A)(6), because “this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction” the allegation is about the irrational plea must be dismissed. The Applicant entered a knowing, voluntary, and intelligent guilty plea. By doing so, he waived his right to challenge the sufficiency of the evidence underlying his conviction. See State v. Herndon, 742 S.E.2d 375, 379 (S.C. 2013) (“The Alford plea is, in essence, a guilty plea and carries with it the same penalties and punishments.”); LoPiano v. State, 243 S.E.2d 448, 451 (S.C. 1978) (“We are not here concerned with the weight or sufficiency of

the evidence to sustain a conviction. By entering a plea of guilty, [Defendant] waived his right to attack his conviction on this ground. Since we have determined that [the] plea was entered voluntarily and understandingly, he does not now have the right, in post-conviction proceedings, to attack the plea upon the ground that the facts were insufficient to establish the offense to which he pled.”). The allegation is denied.

### **Allegations of Ineffective Assistance of Counsel**

The Applicant alleges she is entitled to post-conviction relief based on allegation of ineffective assistance of plea counsel. Specifically, Applicant contends in her *pro se* application that plea counsel failed to investigate mitigating effect of battered woman circumstances and failed to inform her of lesser-included offenses. In the amended application by counsel she asserts that counsel failed to adequately present evidence of the Applicant’s remorsefulness about the incident which she claims would have resulted in a lesser sentence.

#### **A. Ineffective Assistance of Counsel and Guilty Pleas**

In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "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, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

#### **PCR Hearing Testimony**

##### ***Applicant Amy Wright***

The Applicant stated that Stephen Story was her counsel. She had been in the detention center for two years prior to her plea. She asserted that she only met with counsel three or four times during COVID, but only met virtually, never in person. She claimed that she never received a copy of the discovery from counsel. She claimed that counsel went over the case "a little" and discussed her mental health issues, which included bipolar disorder, manic depression and schizophrenia. She stated that counsel recommended that they not go to trial because there was a risk she could receive a life sentence because she also had a 2005 conviction that could have enhanced the punishment. She stated this case was not set for a trial or on a trial docket.

She claims that it was not presented at the plea that the victim threatened to do bodily harm to her children and had been arrested for abusing her own children and the Applicant was worried about that, but stated she did not tell that to counsel due to her own mental condition.

She took issue with the statement by a law enforcement officer that she was not remorseful. She testified that she tried to send the victim an apology letter but it was not delivered and received a "return to sender." She claimed that she was inappropriately painted as aggressive and a monster in the courtroom.

On cross-examination, she stated she pled guilty because what she did to the lady was not the right decision. She stated that she was not thinking and just reacted to the victim being verbally aggressive towards her children by yelling, cussing and almost striking them. The Applicant admitted that the victim received very serious head injuries. She met counsel a few times due to COVID and told him her reason for striking the victim with a hammer. She stated that she described to Story her remorse and that this caused her to be separated from her family and also to the damage to the victim and her family.

The Applicant decided to plead. She knew she had a right to a jury trial and knew she was facing significant time. However, the Applicant admitted that she was surprised by the 25 year sentence, knowing the range was 0-30 years and felt that 25 years was not right.

Wright stated she had a mental health evaluation before the plea which found her to be competent to stand trial. She testified that she understood the guilty plea and plead guilty because she was guilty.

The Applicant stated that the law enforcement officer asked for a maximum sentence and claimed that she was not remorseful. She was aware that counsel Story made a plea on her behalf and pointed out that she suffered from mental illnesses with treatment at Department of Mental

Health and with psychiatrists. Counsel brought up her auditory hallucinations and remorse, but she did not recall him saying that she was actually remorseful or her own statement to the court. However, she recalled the expressions of remorse after reviewing counsel Story and her statements of remorse in the transcript at pages 25 and 26. Ahe opined that Story

*Counsel Stephen Story*

Counsel Stephen Story testified that he was appointed on the Applicant's case in August 2020. He stated that he was admitted to practice in 2013 and worked in the Third Circuit Public Defenders Office for a number of yeas handling serious offenses and felonies. Since 2017, he has been with the Lexington County Public Defender's Office.

He testified that he initially met with her shortly after he was appointed and later again after receiving the discovery in the case. Counsel reviewed with her what was in the discovery , but did not leave a copy with her and she did not request a copy for herself. He clarified that he only gives discovery to the clients when they request it while incarcerated, to prevent other inmates from getting it (as jailhouse snitches) and saying that the Applicant confessed to them.

Story noted the majority of his meetings with her were virtual because of COVID. Counsel stated that Wright told her very early that she did not want a jury trial, but wanted the best offer. However, they never received a plea offer. She had a prior assault and battery with intent to kill that could enhance the sentence to possibly a life without parole sentence. Story clarified, however, that Sutania Fuller, the prosecutor never mentioned that possibility. Story pointed out that the Applicant had gone to the police station in West Columbia and confessed. He thought and advised her that the best choice was to plead as charged and ask the judge for leniency with a showing of mitigating factors.

He stated that based upon her statements to him, he believed that he needed to get a mental health evaluation. This was because she claimed to hear voices on multiple occasions, had conspiracy theories about harming children, and was not sleeping which suggested the possibility of a mental illness. Although she was found competent to stand trial, she had refused to participate in the criminal responsibility evaluation. Counsel requested an independent evaluation from Dr. McDermott by video who opined that she was competent and criminally responsible, though had a major depressive disorder. Story thought that she did not go into much detail about what she thinks or feels when talking with him.

Story stated that the prosecutor was not negotiating any plea offer at all, which was not uncommon with this type of violent offense. They decided to plead guilty since the solicitor was not asking for the maximum in their discussion and that it was doubtful that a plea deal for a lesser negotiated sentence would occur due to other factors. He noted that the victim had cranial and orbital fractures and needed a feeding tube from the very serious injury. He testified that this was not a strong case for trial. He recalled that this was a serious violent crime with severe injuries. It was described as an ambush of the victim, not self-defense or defense of others.

Story indicated that he thought he shared the Applicant's remorse with law enforcement. Story stated he believed that the Applicant did not have a total lack of remorse which was an inaccurate portrayal of her, but she did say she was sorry and hated what happened. He believed that Wright's reaction in the crime was totally out of proportion to the event, but she contended she was trying to protect her children who were not in the house at the time.

***Failure to Investigate and Inadequate Mitigation Presentation***

This Court finds that the Applicant has failed to prove that counsel was ineffective concerning his investigation leading up to the trial. Applicant initially alleged plea counsel was

ineffective for failing to properly investigate the circumstance of the case and the mitigating effect of battered woman syndrome circumstances. She further indicated that he failed to investigate adequately the mental health issues related to the Applicant, and the prior alleged violent history of the victim related to the victim's children, and the Applicant's alleged remorse. In addition, the Applicant asserts that these matters should have been more effectively presented in mitigation of sentence

Regarding failure to investigate and present evidence allegations, Applicant is required to present credible evidence or witnesses he alleges plea counsel did not properly investigate. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led plea counsel to change her recommendation regarding the plea. Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

During the guilty plea hearing, plea counsel informed the sentencing court of Applicant's mental illness, abuse she suffered from as a child, and domestic violence she suffered. Tr. p. 22. He noted that she was severely mentally ill, having been examined by two doctors and from

information from the Applicant's mother. Due to his conversations with her and his review of statements she made to law enforcement, counsel advised the plea court that he was concerned she suffered under mental delusions and had the DMH doctor evaluate her and also retained a private psychiatrist, Dr. McDermott to do an independent evaluation. Counsel told the court that she had been diagnosed with major depressive disorder. Tr.p. 22. Counsel advised the court that with this disorder, people can suffer delusions and go through manic and depressive periods. Counsel found support in this concern with the statements earlier that the Applicant would stay up for long periods of time and then periods of time that all she wanted to do was stay in bed. Counsel advised the court that the Applicant also suffered from auditory hallucinations.

Counsel also advised the plea court about the Applicant's upbringing. He described that she was raised by her grandmother after her mother gave up custody. However, while living with her, the Applicant was the victim of physical and sexual abuse from other members of her family, lasting until young adulthood. Tr.p. 23.

The Applicant's educational ability was described as very intelligent and was placed in advanced classes through high school.

However, counsel also advised the court that as she got older she was in at least two relationships that turned violent. He noted that she was the victim of pretty intense domestic violence that she reported to counsel. Tr.p. 24.

Counsel stated that she has two children who live with the Applicant's mother who were age 9 and 6. Counsel stated to the court that her mother was unable to come to court because one of the children was ill. Counsel reported that the Applicant's mother loves her very much. However, the mother had expressed concern and believed that the Applicant was mentally ill and should not be pleading guilty and should have been sent to the Department of Mental Health or a

similar institution. Counsel stated that he had advised her mother that the two evaluations they had done did not support it. Tr.p. 24.

Counsel stated that the Applicant feels that mental health at the jail had gotten her medications correct and resolved her sleep cycle issues for the last two months.

As to whether the Applicant had remorse,<sup>3</sup> counsel challenged it directly in the mitigation:

She feels like she's in a lot better place than she was at the time. We've heard a lot today about, you know, it -- this being unjustified, her not showing remorse. I can't say for sure, but it just seems like she was under some sort of delusion about people trying to kill her that she reported to law enforcement and that sort of thing. So, you know, it may not rise to the level of criminal responsibility, but I would ask the Court to take into consideration some of the statements that she made to law enforcement and some her behavior.

Tr.p. 25, l. 2-11. Counsel further indicated that this was a bizarre case in his eight years of practice. He asked the court to take everything into consideration and asked the court to give mental health treatment in the Department of Corrections and allow her to be a productive part of her children's lives. Tr.p. 25-26.

The Applicant then made a personal plea for leniency to the sentencing court reflective of her attitude of remorse:

I just wanted to say that I am sorry for everything that has happened. I **am remorseful about it**. I just don't talk about it. Because it hurts; it does.

But I don't like people threatening my children, and I lost it, you know. But please have mercy.

---

<sup>3</sup> The remorse assertion by counsel Story was in direct response to the statements by Cayce Police Department Investigator Paul Sanguiliano about the Applicant's lack of remorse. He advised the sentencing court:

Ms. Wright has shown zero remorse for this incident since I -- the -- the time I dealt with it. During her confession initially and her recorded interview, through jail calls, we weren't sure initially if her minor children were witnesses to the event.

So we scheduled forensic interviews for them, and it was ordered that she should have no contact with them. That was violated multiple times in jail calls. When she talked about the offense through her jail calls, zero remorse for the entire thing.

Tr.p. 18, l. 14-23.

Tr.p. 26, l. 8-13.

This Court finds that the Applicant has failed in his burden of proof to show deficient performance as what additional investigation in the case would have led to. It is apparent to this Court that counsel had a full understanding of the facts of the from the state's and Applicant's own versions. Counsel fully reviewed the discovery with the Applicant in their meetings.<sup>4</sup> He was aware of the Applicant's theory from the discussions with her, a review of the state's evidence he received from discovery and his own pursuant of mental health evaluations. It was the Applicant's position that the victim was an evil person who was likely to harm the Applicant's children. However, the Applicant has failed to show any untapped potential evidence to support that theory, other than speculation presented in this hearing that the victim had harmed her own children. However, that speculation lacked a connection to what happened on that date and did not provide a defense or evidence of a lesser offense. However, in this hearing, the Applicant failed to present any evidence of the victim's propensity for violence to support that suggestion.<sup>5</sup>

This Court finds that from counsel's credible testimony that he was aware that there was no credible evidence presented to him that the victim had physically harmed any of the Applicant's children. The Applicant has failed to show how counsel's investigation into the victim's background was not reasonable performance.

This Court also concludes that the Applicant failed to show deficient performance in his investigation of the Applicant's mental health. This Court finds that counsel was aware of mental

---

<sup>4</sup> Counsel went over the discovery with the Applicant in their meetings. These discussions occurred virtually as well as in person based upon counsel's credible testimony. However, the discovery was not left with the Applicant who did not request it. This was counsel's practice to avoid the possibility of jailhouse snitches.

<sup>5</sup> This Court takes judicial notice of the Public Index of the Lexington County Clerk of Court. I also does not include any public entries support any criminal record for Florine Sutton, the victim in this case.

health issues in discussion with both the Applicant and her family. In light of the Applicant's statement to counsel, he requested a criminal responsibility and competency to stand trial evaluation by the Department of Mental Health which was granted by Judge McLeod on March 19, 2021. Counsel also sought an independent psychiatric examiner, Dr. McDermott, who generally opined she suffered from major depressive disorder. However, these clinical findings did not support either an insanity of guilty but mentally ill verdict or a lesser verdict than attempted murder. Then Applicant failed to show deficient performance as to his investigation. Counsel Story performed what a reasonable counsel in the practice of criminal law would do related to his initial concern about mental health issues.

This Court finds that counsel failed to prove that counsel was deficient concerning his investigation about the battered women mitigation defense as alleged in the Applicant's initial application. The Applicant contended that she had been abused in two prior relationships and that in her upbringing she had been sexually and physically abused by family members. However, there was no showing that the victim in this case was ever an abuser of the Applicant. The information was that at most, the verbal statements by the victim did not amount to criminal domestic abuse toward either the Applicant or her family. The Applicant has also failed to present any evidence to support that the children of the Applicant were the subject of any domestic abuse by the victim.

Trial counsel cannot be deficient for failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law. See Strickland, 466 U.S. at 690 (“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”); Robinson v. State, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992) (holding that trial counsel was not ineffective for failing to request a charge on battered woman's syndrome when the theory was not well known at the time and had

not been recognized by our supreme court as relevant to a claim of self-defense); Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial.”), overruled on other grounds by Brightman v. State, 336 S.C. 348, 351 n.4, 520 S.E.2d 614, 615 n.4 (1999); Arnette v. State, 306 S.C. 556, 557–58, 413 S.E.2d 803, 804 (1992) (holding trial counsel provided effective assistance although he failed to consider the defense of accident because there was no evidence that the defense could be applied to the applicant); State v. Moussa, 53 A.3d 630, 637 (N.H. 2012) (“An attorney is not obligated to pursue weak options when it appears, in light of informed professional judgment, that a defense is implausible or insubstantial.” (quoting United States v. Woodard, 291 F.3d 95, 108 (1st Cir. 2002))); Esprit v. State, 826 S.E.2d 7, 15 (Ga. 2019) (“A criminal defense attorney does not perform deficiently when he fails to advance a legal theory that would require ‘an extension of existing precedents and the adoption of an unproven theory of law.’ ” (quoting Williams v. State, 818 S.E.2d 653 (Ga. 2018))).

Similarly, counsel cannot be deemed deficient based upon his reasonable investigation concerning the existence of any alleged lesser offenses or defenses. Defendant must be advised of any lesser-included offenses which the jury would be instructed on if she went to trial. Kerrigan v. State, 304 S.C. 561, 406 S.E.2d 160 (1990). The test for determining when an offense is a lesser-included offense of another is whether the greater of the two offenses includes all the elements of the lesser offense. State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000). If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense. Hope v. State, 328 S.C. 78, 492 S.E.2d 76 (1997); Suber v. State, 371 S.C. 554, 640 S.E.2d 884 (2007) (finding plea counsel not deficient for failing to inform of lesser-included offense where the lesser-included offense was not viable under the facts and

circumstances); See State v. Funchess, 267 S.C. 427, 429, 229 S.E.2d 331, 332 (1976) (“[I]t is not error to refuse to submit a lesser included offense unless there is testimony tending to show that the defendant is only guilty of the lesser offense.”).

Counsel recognized that due to the repeated malicious violence toward the victim that there was not an available showing of a lesser offense of attempted murder. Further, the State was not negotiating any lesser charges. Further, the Applicant indicated to counsel that she did not want to go to trial at the outset of the representation. It was clear that the State was not willing to offer a lesser plea than attempted murder. The Applicant did not make a credible showing otherwise of deficient performance related to advising on the potential charges based upon the facts in the case.

In addition, the Applicant failed to show deficient performance related to any investigation of self-defense or defense of others that the Applicant stated in passing. This Court finds that the evidence presented concerning the incident through counsel and the plea was that the Applicant was not in fear for herself and her children were not even present at the time of the victim’s beating, but were outside of the home. Counsel’s conclusion related to his rejection of these matters and advice was not deficient performance.

This Court further finds that counsel’s investigation of the Applicant’s alleged remorse was not deficient. Counsel was aware of the Applicant’s expression of remorse to him, as well as the record related to the statements made to law enforcement. Although he may not have been aware of a letter that the Applicant wrote to the victim that was returned, that does not indicate deficient performance on his behalf. The Applicant failed in his burden of proof to show credible evidence of an omission to support a finding of a deficiency.

Further, the Applicant indicated at the plea that she was satisfied with counsel and had discussed the evidence with him and had reviewed the discovery with him. Tr.p. 8. These statements

in court carried a presumption of verity that the Applicant has failed in this proceeding to show a credible reason why she should not be held to the truth of those comments. Blackledge v. Allison, supra.

The Applicant has failed in her burden of proof related to the investigation. It must be denied.

### *Guilty Plea*

More clearly, the Applicant has failed to show how any omissions on the part of counsel showed Sixth Amendment prejudice in her decision to plead guilty. As to the guilty plea, the Applicant failed to show any omission on the part of counsel that to a reasonable probability would have caused her to go to trial rather than plead guilty. See Hill v. Lockhart, supra. As noted above, the Applicant failed to present any item of evidence or credible testimony that counsel failed to uncover or consider. This Court finds credible counsel's assessment that this case would not have been favorably received by a jury and that there was no visible defense to present. Counsel's advise to plead guilty and attempt to mitigate the sentence before the judge was well founded. Counsel was also aware of an unstated risk that with the assault and battery with intent to kill prior that the State could have sought life without parole. The Applicant's plea was entered freely and voluntary upon her own choice to attempted murder, aware that she could receive sentence of 30 years.

As reflected in counsel's plea in mitigation, the areas presented that the Applicant took issue with were essentially presented to the sentencing court. The Applicant's speculation that the information could have been presented more fully or differently to her that would have affected her decision to chose to go trial to a reasonable probability is not supported by any credible evidence to this Court.

### *Sentencing*

Further, regarding sentencing, this Court the Applicant has wholly failed to show that counsel was deficient related to the presentation in mitigation of sentence. In Glover v. United States, 531 U.S. 198, 202–04, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001), the United States Supreme Court applied Strickland to a noncapital sentencing proceeding. Glover presented the question whether “a showing of prejudice, in the context of a claim for ineffective assistance of counsel, requires a significant increase in a term of imprisonment.” *Id.* at 204, 121 S.Ct. 696. The claim in Glover arose from noncapital sentencing proceedings governed by federal guidelines. *Id.* at 200, 121 S.Ct. 696. The Supreme Court reversed the Seventh Circuit for “supplant[ing] the Strickland analysis” in such a context. *Id.* at 203, 121 S.Ct. 696. In closing, Glover noted that “the ultimate merits of [petitioner’s] claim” would turn on Strickland’s elements: “the question of deficient performance” and “prejudice flow[ing] from the asserted error in sentencing.” *Id.* at 204, 121 S.Ct. 696.

To the extent that there was any doubt that Glover “clearly established” that Strickland applied to noncapital sentencing proceedings, that doubt was erased in Lafler v. Cooper, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012). In Lafler, the Supreme Court stated that Glover:

establish[ed] that there exists a right to counsel during sentencing in ... noncapital ... cases. Even though sentencing does not concern the defendant’s guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in Strickland prejudice because “any amount of [additional] jail time has Sixth Amendment significance.”

Lafler, 132 S.Ct. at 1385–86 (second alteration in original) (citations omitted) (quoting Glover, 531 U.S. at 203, 121 S.Ct. 696).

Given Glover and Lafler, the Supreme Court has clearly established that Strickland governs claims for ineffective assistance of counsel in noncapital sentencing proceedings. See also Premo v. Moore, 562 U.S. 115, 126, 131 S.Ct. 733, 178 L.Ed.2d 649 (2011) (“Whether before, during, or

after trial, when the Sixth Amendment applies, the formulation of the standard [for deficient performance, as an element of ineffective assistance of counsel] is the same: reasonable competence in representing the accused.”) (quoting *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052).

How to present evidence and argument in noncapital mitigation is a matter of strategy. Decisions regarding the presentation of evidence are inherently matters of trial strategy. The United States Supreme Court has cautioned courts not to assess counsel's decisions concerning strategy through the distorting lens of hindsight; rather, courts are to employ a strong presumption that counsel's conduct falls within a wide range of reasonable assistance and, under the circumstances, might be considered sound trial strategy. *Strickland*, 466 U.S. at 689.

The Applicant failed to show any deficiency on the part of counsel’s mitigation presentation in the sentencing proceeding. As noted above, counsel presented information about her remorse, her mental health diagnosis of major depressive disorder, and her belief that she was protecting her children in the attack at that time, although she recognized that it was wrong to do so. Counsel was faced with a horrible and violent situation in the assaults committed on the victim that were legally unprovoked and caused life threatening and permanent damage to the victim

The Applicant has also failed to show prejudice under *Strickland*. The record before the Court only reveals the speculation by the Applicant that the mitigation could have been presented more persuasively, yet failed to suggest how that could have been done. This Court also finds that the Applicant has failed to prove prejudice under *Strickland* in the strategic decisions counsel made in sentencing. See *Jones v. State*, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998) (finding that the absence of “fancier” mitigation evidence does not render the prior mitigation case constitutionally inadequate where such evidence would not have had any effect on the outcome of the trial). As noted above, it appears that all matters of suggested mitigation were presented to the

sentencing court.

The test for prejudice in the sentencing is from Strickland, the defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694. This Court concludes that the Applicant has failed to satisfy that burden. He has failed to present any item of evidence in this proceeding in mitigation of sentence that undermines confidence in Judge Curtis’s twenty-five year sentence to a reasonable probability. This must be dismissed.

### § 16-25-90 Applicability

In the State’s return in this matter, the State had speculated that the Applicant’s *pro se* claim of ineffective assistance of counsel may have been related to a failure to investigate or present an assertion that she was entitled to a determination for early parole eligibility under S.C. Code § 16-25-90. In that section it reads:

**§ 16-25-90. Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.**

Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post- conviction proceedings pertaining to the plea or conviction, presented credible evidence of a **history of criminal domestic violence**, as provided in Section 16-25-20, **suffered at the hands of the household member**. This section shall not affect the provisions of Section 17-27-45.

S.C. Code Ann. § 16-25-90 (emphasis added). A defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole. State v. Grooms 343 S.C. 248, 540 S.E.2d 99 (S.C. 2000). State v. Hawes, 411 S.C. 188, 767 S.E.2d 707. (S.C. 2015).

This Court finds that counsel was not deficient in pursuing this request. The record of the plea does not support the existence of abuse required by statute by the victim. To the contrary, it suggested that the victim was targeted because she was advising the Applicant's children not to run around the house and to be quiet in the home or not to touch things. Tr.p. 11-12. This victim in this case had no history of domestic violence with the Applicant. This assertion is denied because the statute is inapplicable.

### CONCLUSION

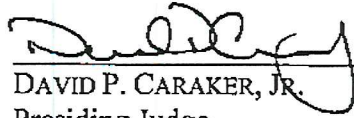
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application and vacate her conviction. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

### IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22<sup>nd</sup> day of April, 2025.



DAVID P. CARAKER, JR.  
Presiding Judge  
Eleventh Judicial Circuit

Lexington, South Carolina