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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

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

Case No. 2018-CP-41-00250

Robert Goodwin, Jr., #377346, ... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Robert Goodwin, Jr., appeals the order of the Honorable David P. Caraker, Jr., filed on or about April 25, 2025, and received by the undersigned on June 2, 2025.

June 9, 2025

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STATE OF SOUTH CAROLINA COUNTY OF SALUDA	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Robert Goodwin, Jr., #377346, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-41-250 ORDER OF DISMISSAL

This matter comes before this Court by a *pro se* application for post-conviction relief filed on December 17, 2018 by Robert Goodwin Jr. challenging his 2018 guilty plea. The Respondent made a Return and Motion for a More Definite Statement on February 25, 2019. The records reflect that current counsel Ashley A. McMahan was ultimately appointed on October 2, 2023 after prior court appointed lawyers were relieved. On August 23, 2024, the Applicant through counsel McMahan made an Amended Application.

On August 27, 2024, the matter was convened before this Court for an evidentiary hearing. The Applicant was present and represented by counsel McMahan. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. At the hearing, testimony was received from the Applicant, his mother Michelle Hinton, his brother Antonio Goodwin and his counsel Andrew Farley. At the conclusion of the hearing, this Court took the matter under advisement. This Order of Dismissal follows.

I. Procedural History

Robert Goodwin, Jr. (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Saluda County Clerk of Court. During its October 2017 term, the Saluda County Grand Jury indicted Applicant for first-degree burglary (2017-GS-41-01382), criminal conspiracy (2017-GS-41-01383), impersonating a law enforcement

officer (2017-GS-41-01384), grand larceny, $10,000 or more (2017-GS-41-01385), armed robbery (2017-GS-41-01386), and two counts of kidnapping (2017-GS-41-01387; -01388). Andrew B. Farley, Esquire, represented Applicant on these charges. Solicitor for the Eleventh Judicial Circuit S. R. Hubbard, III prosecuted the case.

On August 8, 2018, Applicant appeared before the Honorable Eugene C. Griffith, Jr. and pled guilty as indicted to first-degree burglary, criminal conspiracy, armed robbery, and both counts of kidnapping. The charges for impersonating a law enforcement officer and grand larceny were dismissed. Judge Griffith accepted the pleas and sentenced Applicant to a term of imprisonment of forty-five years for first-degree burglary, five years for criminal conspiracy, thirty years for armed robbery, and thirty years for each count of kidnapping. The sentences were to be served concurrently. Applicant did not appeal his pleas or sentences.

II. Factual Basis for the Guilty Plea

The Solicitor presented the following factual basis during the guilty plea. Applicant, and his co-defendants, Abin Lee Lowman, Joshua Darien, and James Wilson, planned to rob Danny and Linda Tidwell, who owned several jewelry stores, one of which is located in Johnston, South Carolina. Tr. 8-9. Lowman, who is Applicant's nephew, knew the Tidwells; and Lowman and Wilson led the codefendants to believe the Tidwells were "big dope dealers." Tr. 8-9. Applicant and his co-defendants sat outside of the Tidwells' jewelry store for a week and watch them. Tr. 9. They would also follow the Tidwells home. Tr. 9-10. On March 5, 2017, Applicant and his co-defendants drove up to Spartanburg, South Carolina in order to buy a pistol so that they could commit these crimes. Tr. 10. On March 6, 2017, they bought ammunition and other supplies, including tie strips and dark clothing, in order to commit these crimes from a Wal-Mart. Tr. 10.

On March 7, 2017, Applicant and Lowman dropped Darien and Wilson off in a wooded area behind the Tidwells house; and Darien and Wilson went into the Tidwells' home while the Tidwells

were still at work. Tr. 10-11. Applicant and Lowman were going to call Darien and Wilson on walkie-talkies when the Tidwells were in route. Tr. 11. However, their plan did not work, so Wilson and Darien exited the house and waited in the wooded area. Tr. 11. All of the co-defendants waited in that wooded area, looked into the Tidwells' home, and waited until the Tidwells turned off all of the lights. Tr. 11.

After all of the lights were off, Applicant and his co-defendants went up to the house and broke into a GMC Yukon, where Applicant found a .380 pistol. Tr. 11-12. Applicant armed himself with that pistol. Tr. 12. Applicant, Darien, and Wilson then went into the house, screaming "ATF." Tr. 12. Lowman waited on the porch for the keys and codes to the jewelry store. Tr. 15. The men laid the Tidwells on the floor, tied Mr. Tidwell up, pressed the pistol into his face, and threatened to shoot him if he did not give them drugs and money. Tr. 13. The men then put Mr. Tidwell in the half bathroom, while they took Mrs. Tidwell into the master bedroom and put her in the laundry room. Tr. 13. Applicant continued to threaten the Tidwells in order to get information about their jewelry stores out of them. Tr. 16. Applicant and his co-defendants were able to get jewelry, valued at greater than $100,000, and approximately $4,000 cash from the Tidwells. Tr. 17-18.

Eventually, Lowman got the keys and drove to the Tidwells' jewelry store in Johnston. Tr. 16. Law enforcement, however, stopped Lowman, at which point he sent a text to Applicant informing Applicant he had been stopped by the police. Tr. 16. Meanwhile, Applicant, Wilson, and Darien left the house, with the Tidwells tied up, stole the Tidwells' Yukon, and drove to Aiken, South Carolina. Tr. 17. While Applicant, Wilson, and Darien were in a Waffle House in Aiken, law enforcement was able to locate the Tidwell's' vehicle.[1] Applicant and his co-defendants saw law enforcement at the vehicle, so Applicant went into the restaurant bathroom and deposited a white glove he had worn during the robbery, as well as Mr. Tidwell's money clip. Tr. 17.

The next day, Darien and Wilson were able to get away and took jewelry with them. Tr. 17. Applicant was also able to get to Maryland.[2] Tr. 17. Shortly thereafter, Darien and Wilson were arrested, and both were willing to cooperate. Tr. 18. Applicant was arrested thereafter. Tr. 18.

III. Summary of PCR Testimony

The Applicant testified that he was detained until the plea after his arrest. The case had not been set for trial and he took the guilty plea for efficiency. After counsel was appointed Goodwin claimed that he only met with him in person twice at the courthouse. The Applicant testified that Farley did not review discovery with him, but he had received a copy of it from him. He clarified that both times he personally met with him was at the courthouse during the day of the bond hearing and the day of the guilty plea. These meetings lasted around 5-10 minutes about the charges just before he entered the courtroom. He asserted that counsel Farley did not explain the possible sentence. Goodwin asserted that counsel never went to the jail and never spoke with him on the telephone.

Goodwin testified that he was in federal holding for 2-3 months in Anderson. After his federal conviction, he was taken to Saluda for the state charges. He contended that the federal authorities indicated that he "would not have to worry about the state charges." He claimed that it was odd to him that he was the only one to face both federal and state charges.

The Applicant testified that he did not discuss the options about a trial versus a guilty plea with Farley. Goodwin stated that he first learned of the sentence length at the guilty plea. He claimed that he did not know enough from his lawyer because they did not meet enough to know what would happen if he would have gone to trial. He claimed that he felt forced into the guilty plea based upon his lack of knowledge. He complained that his family was not notified about the plea so

[1] The vehicle is equipped with OnStar. Tr. 17.
[2] Applicant lived in Maryland at the time. Tr. 8.

they were not present who learned about it afterwards when Goodwin called them. He noted that they were present at this hearing. The Applicant felt counsel Farley was rushed and could have done more. He stated that Farley gave him options, but there were not many. He did not have any in-depth discussions with him. He claimed he made his PCR application for a good reason because he wants equal justice. He claimed that he cannot go to trial with someone he does not trust. The Applicant declared that he "did what was best at the time" when he pled guilty.

On cross-examination, the Applicant claimed that he pled guilty due to "inefficiency" the he may have gotten something less by pleading guilty than by going to trial. He claimed that he was not confident in his attorney and did not trust him to go to trial. He was awre of his charges and his sentencing possibility. He knew that Abin Lowman was convicted and received life without parole. He knew when he pled guilty that based upon the negotiations that he had with his lawyer that he was facing state charges and confirmed that with the plea judge. He restated that he was not going to take the risk of going to trial with Farley because he did not know him. Goodwin pointed out that the federal authorities took him from federal custody and brought him to county detention center. He claimed he saw Farley a few days to a week later. Although he had been under the impression that the state charges would not be pursued, he became aware that the state was trying to run the charges concurrent with his federal time.

The Applicant claimed that they could have brought witnesses on his behalf, but he did not talk enough with his lawyer to have his family at the plea. Goodwin claimed that he did not tell his lawyer about anything that happened at the Tidwell's house. He asserted that his defense would have been that he had nothing to do with Lowman on that day. He claimed that people see him and Abin as kin and therefore associate the two. He claimed that he was not aware until after the guilty plea that his co-defendants were going to testify against him. He stated that he was aware that they had testified against the other co-defendant (Lowman) at his trial. The Applicant said he was willing to

plead guilty due to what he was going through with Farley and the guilty plea removing life without parole which was a big difference. At the time of the plea, he stated he did not know what the sentence would be.

His mother, Michelle Hinton, testified that she had no knowledge of the plea hearing. She would have spoken on his behalf. She stated that they were raised in a good Christian family and he would not have done this. She stated that her oldest son fought with "Lee" (Abin Lowman) all the time. She felt that Lee was in jail all the time and was trouble all his life. She told her son and was going to tell her son Robert to stay away from him when he was in Maryland, because Lee was " bad news." She claimed that Robert never knew Abin before this matter. She said Robert never had behavioral problems and grew up in a good Christian home. She described him as hard working with jobs and a loving and caring son. She said she would have told the sentencing judge all this if she was present at the plea.

The Applicant's brother, Antonio Goodwin, also testified. He stated that he was not aware of the guilty plea and would have appeared to speak on his brother's behalf. He described the Applicant as a smart and good person who was raised right. He stated that he should have looked after him and his other little brother more, but Robert is the only brother locked up. He agreed that all in his family were raised to be good people. He stated that his father was not around to teach them. He stated that the other brothers turned out well and all have kids. The witness stated that it breaks his heart. He stated that he knew Lee (Abin) to be problematic. He stated the oldest sister on father's side was Abin's mom. However, the witness stated he got a real negative vibe from Abin, knew he should stay away from him and never spoke to him. He stated he wished he could have shown the judge Robert's childhood, that was a good person, that Robert was looked up to by him even though he was younger. The witness asks for the Court's leniency.

Counsel Andrew Farley testified that he was appointed pursuant to Rule 608 on August 10,

2017. He stated that he had been practicing since 2006, with both criminal and domestic work throughout the Midlands. He stated that he was the only criminal practitioner in his firm. Counsel stated that he filed Rule 5 discovery motion. When he received all discovery, he went to see his client in Anderson on March 9, 2018 when he was housed pursuant to the federal charges rather than in Saluda. At that meeting, he went over all the discovery he had at that time. Farley stated that in that meeting he went over his impression of the case, the difficulties, and the fact pattern. Farley described the State's version of the case. He stated that under the state's theory Abin Lowman and Robert had two young men join them going inside the domestic residence of the jewelers in Saluda County. The purpose was to take jewelry and obtain security codes for jewelry store so they could rob it. Under the state theory, Robert was the orchestrator inside the residence, and his understanding was that Lowman was not inside the house, perhaps to protect himself from prosecution. Farley stated that Robert did not confirm or deny he was involved in the incident or in the home. Farley's focus was on what state could prove. He wanted to make clear to Robert what problems a trial would bring. He stated that he pointed out to Robert the biggest problems were the victim and the co-defendant testimony.

At the July 25 meeting, after Lowman's conviction, he received sentence sheets from solicitor Hubbard, including a notice of life without parole sentence request (LWOP). He informed Robert of this request. He further advised him at that Lowman's trial two victims testified against him and the co-defendants did too. Farley indicated to the Applicant that it was highly likely that would also happen at his trial and the result would be an LWOP sentence.

Farley testified that is was an important part of the job is to make sure the Applicant would not be facing the mandatory LWOP sentence. He stated that eventually could plead to some but not all the charges. The decision to plead by the Applicant was initially made at the July 25 meeting. Farley stated that the Applicant had time to think about his decision to plead from the July 25

meeting until August 8.

Farley stated that on August 8th, the Applicant signed the plea sheet during the meeting they had in Lexington County. Farley believed and advised the Applicant that under the facts and potential testimony, the guilty plea was a better outcome than LWOP. Farley stated that he had no notes about alleged innocence, but Goodwin would neither confirm nor deny he was involved to him. However, Farley stated that Goodwin was frustrated by being incarcerated. Farley stated that he had no information that Goodwin was not supposed to be charged with state charges. Counsel knew his family was in Maryland, but did not contact them and they were not at the guilty plea. He did not recall requesting for his family be there.

On cross-examination, Farley confirmed that he met those three times; on March 8 with discovery, on July 25, when they talked about Lowman guilty verdict and the state's intent to seek LWOP. Counsel was aware that Goodwin had a prior manslaughter conviction in Maryland (which supported the LWOP potential). Farley stated the only offer they received is what they took. Farley was aware that this charge was going to be vigorous pursuit by solicitor. Counsel believed that with the LWOP notice, the judge would have had his hands tied to sentence to LWOP. Farley believed that a straight up plea with mandatory LWOP removed was good.

He stated that he told the Applicant that he would not receive life with the plea offer , there was a large range for punishment that he needed to consider. Counsel noted that they had to waive venue for the Saluda case to be plead in Lexington due to the lack of court terms in Saluda.

On redirect, reference was made to page 19, l. 17-20 of the transcript where the Solicitor stated where the Solicitor pointed out the co-defendants Lowman, Wilson and Darien did not have prior criminal records, where the Applicant had a manslaughter charge out of Maryland.

IV. Allegations 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:

I. Ineffective Assistance of Counsel.
   a. Counsel did not advise me of right to appeal.

In the August 24, 2024 Amended Application, the Applicant alleged the following:

II. Ineffective Assistance of Counsel of Andrew B. Farley -
   a. Failed to adequately explain the possible sentence he was facing.
   b. Failed to discuss possible defenses to the case in assisting whether or not the Applicant should go to trial.
   c. Failure to raise as mitigating evidence during sentencing that the Applicant had never been in trouble in SC and didn't really get to know the Applicant as a person to present better mitigation.
   d. Applicant's family was not present to testify at mitigation and was not told of the guilty plea so they could be present and speak on the Applicant's behalf.
   e. Never had any in depth conversations with Mr. Farley
   f. Applicant was waiting for Mr. Farley to give him options, but Mr. Farley never presented him with any.

IV. Matters before the Court

This Court has before it the following material: the records of the Saluda County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, a copy of the transcript from Applicant's guilty plea proceeding, and the post-conviction relief application

V. Standards of Review of Ineffective Assistance of Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Failure to Advise Applicant of the Right to Appeal from the Guilty Plea.

Applicant alleges plea counsel was ineffective for failing to advise him of his right to appeal from his guilty plea. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). Absent extraordinary circumstances, 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). For example, "one

extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Moreover, in order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. *See Roe*, 528 U.S. at 484.

During the PCR hearing, the Applicant did not indicate that he had any desire to appeal the guilty plea. In particular, the Applicant has wholly failed to provide this Court with any information he: (1) wanted to appeal his guilty plea or (2) informed plea counsel to appeal his plea.

Important the plea judge advised the Applicant of his right to appeal his guilty plea if he believed that something procedurally was done wrong, and Applicant indicated he understood that right. Tr. 26. More particularly, he has failed to show either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing under *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). The record supports that that Applicant was fully advised of his constitutional rights to a jury trial, the potential punishment he was facing, the factual basis of the charges against him and whether his decision to plead was knowing and freely and voluntarily entered. Tr.p. 3-26. The sentence he received was within the range of punishment could receive. No objection was made during the plea or sentence.

This Court finds that he has failed in his burden of proof where there was no duty on the part of counsel to further advise the Applicant of his right to appeal under the circumstances of this case. It must be denied for failure of credible proof.

Failure to Inform of a Possible Sentence

This Court finds the Applicant has failed in his burden of proof to show that counsel was deficient in failing to advise the Applicant of the possible sentence. This Court finds that counsel Farley was credible in his testimony. Counsel advised the Applicant that he was facing a mandatory

life without parole if he went to trial due to the Solicitor's notice to seek LWOP on the armed robbery and kidnapping charges based upon the Applicant's prior conviction for manslaughter. Counsel advised the plea court after Judge Griffith went over each indictment that he had "advised him of the elements of each of the offenses and the potential punishment on each." Tr.p. 5, l. 16-18. His statement in open court by counsel carries a strong presumption of verity under *Blackledge v. Allison*, supra.

Since the only offer was to remove the mandatory LWOP if he pled guilty, the Applicant was facing a range of 10 to 30 years on armed robbery (§16-11-330), an upper range of thirty years on kidnapping (§16-3-910), and a minimum of fifteen years to a life sentence on burglary in the first degree (§16-11-311). The Applicant received 45 years on the burglary first degree rather than the life sentence and the other sentences were run concurrent. Tr.p. 31. The sentence the Applicant received was less than the potential he was facing, which was life imprisonment.

The Applicant has failed in his burden of proof in his contention that counsel did not advise him of his potential sentences. It must be dismissed.

Failed to Discuss Possible Defenses if He Went to Trial.

This Court finds that the Applicant has failed in his burden to show that counsel was deficient in an alleged failure to explain possible defenses if he went to trial. This Court initially finds that counsel met with the Applicant sufficient times to learn about the Applicant's theories of possible defenses. Contrary to the Applicant's testimony, this Court finds that counsel did review the discovery with Hoodwin prior to the decision to plead guilty. In this hearing, the Applicant maintained that he had nothing to do with the kidnappings and robbery, however when asked by his counsel about any involvement the Applicant would not confirm or deny his involvement. Therefore, his defense theory was that the State would have to prove his guilt beyond a reasonable doubt when the victims and his co-defendants (James Darien and James Wilson) would be testifying

against him, as they did in Abin Lowman's case.

During the PCR proceeding, the Applicant failed to present any cogent evidence of a defense that reasonable counsel would have discussed with the Applicant. Although there were references that he was told by a federal agent that the state prosecution authorities were not going to pursue charges against him, this was no defense where the State had pursued the charges after the Saluda County grand jury had indicted and the Eleventh Circuit Solicitor's Office made clear its intent to pursue a conviction against the Applicant.

As to the existence of any defenses, the Applicant made many inculpatory statements during the plea proceeding. *Blackledge v. Allison*, 431 U.S. 63, 73 (1977) ("[T]he representations of the defendant ... at [a plea] hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity."). As noted above, during the plea proceeding, the Applicant confirmed that:

> THE COURT: ...The facts outlined by him, you were involved doing these acts to these people, planning it , executing it, the events, going in the house, taking them hostage and taking their goods and having – and I believe one fact in particular is that you did acquire the pistol out of the car. That's you?
>
> THE DEFENDANT: Yes, Your Honor.

Tr.p. 21, l. 22- p. 23, l. 3. At the plea, the Applicant further confirmed that his counsel had spoken with him about potential defenses if he went to trial. Tr.p. 24, l. 14-16. At the plea, the Applicant, in mitigation, apologized to the victims and asked them to forgive him, claiming that he never meant to hurt them. Tr.p. 29, 15-18.

The Applicant failed to prove that counsel was deficient in his advice related to possible defenses. For similar reasons, since the Applicant failed to present any defenses that reasonable counsel should have discussed, the Applicant failed to prove prejudice under *Hill v. Lockhart*.

Failure to Advise of Right to Trial and Options.

This Court finds that the Applicant failed to show that counsel was deficient in allegedly failing to adequately advise that Applicant about his rights to a jury trial and other options arising from his defense. This Court finds counsel Farley's testimony credible related to his discussion with his client about the right to a jury trial, the Solicitor's failure to negotiate below dropping the LWOP notice and the unavailability of other options. As stated above, the Applicant was questioned about his waiver of his trial rights by the plea judge. He acknowledged that he was aware of the charges in each indictment. Tr.p. 3-6. His counsel acknowledged that he had advised him of the elements of each of the crimes, and the potential punishment and his right to a jury trial in Saluda. Tr.p. 5. Counsel confirmed that he had gone over the discovery with him, interviewed him , possibly reviewed a portion of the trial of his codefendant, and had a firm belief that if he stood trial he would more probably than not be convicted. Tr.p. 5-6.

This Court finds that the plea judge specifically inquired of the Applicant about his constitutional right to a jury trial including, the State's burden of proof, the State's requirement to present witnesses and evidence sufficient for a jury to consider the issue of guilt, which his attorney was allowed to confront, including challenging the evidence and presenting a defense. Tr.p. 6-7. As state above, these statements at the plea "carry a strong presumption of verity."

This Court also finds credible counsel's testimony in this proceeding that a critical part of hid defense, once the LWOP notice was served, to remove the potential mandatory LWOP after a jury trial or plea to a term of years sentence. The counsel made clear to the Applicant was that the option was to go to trial and risk the LWOP sentence if convicted. With the codefendants already testifying in the Lowman trial and the State's theory that the Applicant was a leader in the planning with Lowman of the robbery, the reasonable course was the recommendation to waive the trial and argue mitigation. However, the Applicant , as well as counsel, was aware that the State's theory was that

Goodwin was the person being rough with the victims at the incident. Tr.p. 18, l. 10-14.

The Applicant has failed to allege or prove that he was not aware of any critical right to a jury trial or that there was a particular deficiency in counsel's advice on this issue. Further, the Applicant has failed to prove any omission on counsel's part related to the advice about a jury trial right or option, to a reasonable probability would have led him to insist on a trial rather than a guilty plea. *Robinson v. State*, 422 S.C. 78, 85, 810 S.E.2d 32, 36 (2018); *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970)). "[T]he defendant can show prejudice by demonstrating a 'reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.' " *Lee v. United States*, 582 U.S. 357, 137 S.Ct. 1958, 1965, 198 L.Ed.2d 476 (2017) (quoting *Hill*, 474 U.S. at 59, 106 S.Ct. 366). His allegation is denied.

Failed to Have In-Depth Conversations With Him

This Court finds that the Applicant failed to prove that the conversations that the Applicant had with counsel were constitutionally inadequate. Here, the Applicant complained that counsel only met with him very briefly. Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. *Campbell v. Polk*, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." *Easter v. Estelle*, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and

holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if plea counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. *See Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter*) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.") Mere speculation and conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial. *See Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds that counsel met adequately with the Applicant to prepare for trial based upon counsel's credible testimony. Contrary to the Applicant's testimony, this Court finds as a fact that counsel Farley met with the Applicant on March 9, 2018 at the detention center in Anderson County when counsel went over the discovery he had received with his client, his own impression of the case, the difficulty with the case and the facts of the case. The Applicant did not confirm or deny his involvement in the case at that meeting. Counsel had a second meeting with Goodwin on July 25 and discussed the life without parole notice they had received from the solicitor and its impact. They also discussed the Lowman trial and that 2 codefendants testified about their involvement as well the Applicant and Lowman in Lowman's trial. In that meeting the Applicant indicated his desire to plead guilty rather than risk LWOP in a trial. This was the only offer by the State to plead guilty and that they would take LWOP off the table. The Applicant was aware that he would not automatically receive life without parole with the plea agreement to take mandatory LWOP off as an option but would have a range of punishment that counsel believed was more likely than a life sentence which would be rare. Counsel also met the Applicant on August 8, the day of the plea, to confirm the Applicant's intent to plead guilty and his understanding of what he was facing.

In this pre-plea meeting, the Applicant also signed the sentencing and plea sheets for each offense. This sentencing sheets included the potential punishment for each crime that he was pleading as well as the reference that it was without negotiation or recommendation involving a straight up plea on each charge.

The Court finds that counsel performed within the range of competence demanded of criminal lawyers in his communication and cannot be found to be deficient. The Applicant has failed to show with credible evidence any deficiency in these discussions prior to the plea. Under *Hill*, he has failed in his burden of proof based upon counsel's credible testimony as well as the record of the guilty plea. Since no omissions were proven, the Applicant failed in his burden to show prejudice under the *Hill* and *Strickland* standard as well.

Failed to raise as mitigating evidence that he had not been in trouble in South Carolina and counsel failed to get to know the Applicant or have his family present at sentencing.

In his last remaining claim, he contends that counsel failed to present an adequate sentencing presentation and specifically claimed that he did not present evidence that he had not been in trouble in South Carolina previously and did not have his family present at the sentencing. He further asserts that his counsel did not get to know him better as a person. This Court finds that the Applicant failed to prove deficient performance by counsel related to mitigation.

During the plea in mitigation, counsel Farley indicated that the Applicant was 29 years old at the time and was Maryland. He stated that Goodwin was single with three children in Maryland. He was a bricklayer by trad with a job. Counsel expressed his assertion that as a result of his several meetings with the Applicant, that the Applicant had regret for everything that occurred and was taking ownership to his involvement in the case and requested leniency on his behalf. Tr.p. 28-29. The Applicant also apologized to the family and expressed that he never meant to hurt them. Tr.p. 29. [Mr. Tidwell indicated that he forgave him].

As to the claim that counsel failed to assert that he had no convictions in S.C., he has failed to show that this was deficient. At his plea, the sentencing judge was advised about that Applicant's prior record, which included aa conviction in Maryland for manslaughter in Maryland, a series of probation or parole violations, prior to this involvement in South Carolina. A comment by counsel that a person from Maryland had not had a prior criminal record in South Carolina in response to this record would not have been done by reasonable counsel in a similar setting. In fact, it may have aggravated the situation more because it reflected more aggravation in the event by emphasizing more bringing the crime into S.C at the time by an individual unknown to local law enforcement.

Similarly, the alleged failure to have his family present to speak for his at trial was not deficient. The Applicant's mother and brother certainly could have appeared at the plea. However, the failure to have family present is not constitutionally mandated, contrasting with a victim state constitutional and statutory right to speak that the court is mandated to enforce. speak. It was apparent to the sentencing judge that the Applicant was from out of state so it could be presumed that the family was from out of state. Counsel acknowledged that he made no attempt to have the family present.

Even assuming arguendo that counsel was deficient, the Applicant was failed to show prejudice. 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).

This Court finds that the Applicant has failed to show that absent the alleged omissions alleged above, that there is a reasonable probability that the result of the sentence would have been different. First, the sentencing court of was aware of his record in Maryland for manslaughter, a qualifying offense to allow mandatory LWOP if the Solicitor chose to present it. Since the Solicitor did not advise the Court when going over his criminal record about a South Carolina conviction it is reasonable that the sentencing court would not have thought he would have a criminal record involving any earlier South Carolina offense. Similarly, the Applicant's mother's PCR testimony would have had similar *de minimus* impact on the court. Her focus was on how bad a person

Lowman was and that she failed to tell her son to stay away from him because he was trouble. Although as a mother, she claimed he never had behavioral problems. The fact was that he was convicted of manslaughter in Maryland and had a number of probation or parole violations that defeats the impact of her presentation. His brother again indicated that Lowman was a problem, that Applicant was raised better in a Christian home and was a good person, but that he was the only person in the family who had been locked up. He blamed himself for not looking after his brother more.

Under the facts of the crime with the Applicant's involvement in the planning and possession and purchase of the weapon, this Court must find that the added testimony from the family does not under confidence in the sentence that the Applicant received from Judge Griffith. *Strickland* prejudice was not met.

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), SCRCP, 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 22nd **day of** April **, 2025.**

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

Lexington, South Carolina