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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2020-CP-19-0030

Jody Ray Jones, #372132 ..... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Jody Ray Jones, appeals the order of the Honorable Kristi F. Curtis, filed on or about July 2, 2025, and received by the undersigned on July 7, 2025.

July 14, 2025

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STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Jody Ray Jones, SCDC #372132, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2020-CP-19-0030 ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed January 24, 2020, by Jody Ray Jones (Applicant). The Respondent made a return and motion to dismiss on December 22, 2022. On December 31, 2020, the Honorable Walton J. McLeod, IV, entered a Conditional Order of Dismissal filed January 6, 2021. On July 7, 2021, Ashley A. McMahan was appointed to represent the Applicant. On August 4, 2021, an amended application was filed. On August 30, 2021, a hearing was held on the state's motion to dismiss for failure to file within the statute of limitations. On September 20, 2021, the Honorable Donald Hocker issued an Order allowing the matter to proceed and denying the State's motion to dismiss.

On April 4, 2023, an evidentiary hearing was held before this Court. The Applicant was present and represented by appointed counsel, Ashley A. McMahan. The Respondent was represented by Assistant Attorney General Taylor Smith.[1] Testimony was received from David Shawn Graham, Robert Madsen, Bennett Casto, Deputy Solicitor Al Eargle, and Solicitor Rick Hubbard. On May 29, 2023, this Court advised the parties of its intent to dismiss the application.

[1] The transcript of the PCR hearing misidentifies respondent's counsel as J. Emory Smith, a different member of the South Carolina Attorney General's Office.

After further review, the application is denied. I find the applicant has failed to meet his burden of proving ineffective assistance of counsel and has failed to show any prosecutorial misconduct or manifest injustice. I find no credible evidence that the solicitor's office acted unethically in this matter.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. Applicant was arrested on January 14, 2015, following an investigation into the shooting death of Patricia Love. During its March 2015 term, the Edgefield County Grand Jury indicted Applicant for murder (2015-GS-19-0110); possession of a weapon during the commission of a violent crime (2015-GS-19-0109); and use of firearm while under the influence of alcohol or drugs (2015-GS-19-1111).

On April 10, 2017, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty to the lesser-included offense of voluntary manslaughter. The remaining indictments were dismissed in exchange for Applicant's plea. Assistant Public Defender Bennett E. Casto, Esquire (Counsel) represented Applicant. Eleventh Circuit Solicitor Samuel R. Hubbard, III, prosecuted the case. Pursuant to negotiations entered into between Applicant and the State, Judge Griffith sentenced Applicant to 22 ½ years imprisonment.[2] Applicant did not appeal his guilty plea or sentence.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

[2] The negotiated sentencing range was between fifteen and twenty-five years.

1. "I have been informed that the Solicitor's Office may have acted unethically, engaged in ex parte conduct, and pressured witnesses to change statements."
    a. "Statements by a former employee(s) of the Solicitor's Office"
    b. "Potential law enforcement witness"

Applicant requests relief as follows:

"A new trial and/or enforcement of original plea offer"

In the Amended application for post-conviction relief filed by appointed counsel McMahan dated August 4, 2021, the Applicant asserted that that the statute of limitations should be tolled under his newly discovered evidence claims related to the handling of the guilty plea.

FINDINGS AND CONCLUSIONS

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the records of the Edgefield County Clerk of Court regarding the subject convictions and this proceeding, Applicant's guilty plea transcript, the original application for post-conviction relief, the Respondent's Return and Motion to Dismiss, the Amended Application, and the transcript of the April 4, 2023 PCR hearing. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented during the guilty plea and this evidentiary hearing.

Newly Discovered Evidence Claim

Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Act states

a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

> (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Factual Basis of the Guilty Plea

This case arises from the entry of a guilty plea involving the shooting death of Patricia Love. The factual basis of the plea presented by Solicitor Hubbard revealed the following:

> As the indictment says, Your Honor, this happened January 11th. It was late at night. Both Mr. Jones and Patricia Love worked for a carnival. And they lived -- basically, it was like a camper community, mobile community, but they lived out in Edgefield. It was way out in the country.

On this particular night, it was pouring down rain. Most of the folks slept in campers, but there was a mobile home that night, that is where Mr. Jones and Ms. Love were. They were seated on a love seat in this mobile home. And there are some other folks that had gone to bed in that mobile home. And that night, folks say they heard a pop, what sounded like a gunshot. And some ten minutes elapsed before the defendant came knocking on the door saying what had happened.

Law enforcement got there. They found Mr. Jones holding a paper towel or a towel next to Ms. Love's head. They rushed her to the hospital. And, Your Honor, she actually lived for two days, gunshot wound to the head. She passed away on the 13th.

Law enforcement immediately started talking to Mr. Jones, read him his Miranda rights, I believe -- I can't tell you how many times, but they made sure that they read him his rights. And that night, early morning hours on the 12th, Jimmy Smith interviews him and says, Well, what happened? That they were seated side by side. Our victim was to the defendant's left. He says they're getting ready to go to bed. He claims Patricia kept a handgun with her, hands it to him, and he's going to clear it by racking the round -- racking the round out. He says, when he does that, the gun goes off.

Your Honor, that didn't make sense. Now, at the time, the detective didn't know -- we knew it was a head wound, but it was on the left side. She's sitting to his left. That was impossible. So he brings him in the next day on the 13th and says, I need to follow up with you. Can you tell me a little bit more because it didn't make sense? Mr. Jones gives pretty much the same explanation: I'm clearing the gun; the gun goes off, but we're facing one another. Well, that still didn't make sense. How did it get -- how do we get a shot on the left side, just around the temple area?

On the 14th, interview him again. He again talks about clearing the pistol by racking the rounds. Instead of dropping the magazine and just clearing that one round in the chamber, he's racking rounds, because we did find a few rounds on the floor we couldn't understand. And he says, the gun just goes off and fires.

Well, at that point, law enforcement, Detective Smith, knew the gunshot wound is not just to the left side of the head, it's a contact wound. Absolutely impossible to get that wound by the way he was describing it. When he's confronted with that, he has no response.

Well, Your Honor, those are three interviews, but we had, actually, another interview. He took a BA that night, because he had been drinking. He clearly had been impaired. So he takes a breathalyzer. And I can't remember -- he blew a 18? Blew an 18.

Well, as Your Honor knows, that's on video. On the video, he's talking the whole time explaining what's happened. And he's demonstrating on video how he's

clearing the chambers of the gun, racking the rounds. You can tell how he's doing it. But even his explanation then is absolutely impossible. It just does not comport with what we found.

Well, Your Honor, the pistol that we recovered, it's a 9mm pistol. SLED will say, this is the weapon that was used. And, initially, they just said it was in good working order and sent it back to us.

The pathologist does an autopsy and says again, contact wound. Well, we start with her, Dr. Ross up in Newberry. Your Honor knows her. Said, Dr. Ross, based on his explanation, is it possible for this gun to just go off? She goes, no, it's a contact wound. The gun is literally against the head, and it's in a downward angle. It would not even appear to be a self-inflicted wound at the angle. Impossible.

We get back with SLED. Our office says -- Susan Cromer out there who does firearms -- Will you take another look at this pistol and tell us a little bit more about it? She goes, It's an eight-pound trigger pull, semiautomatic Smith & Wesson, good working order. Well, we were getting vibes that he might claim that this gun is defective. And we had heard the term slamfire. Your Honor probably has heard that. Some people have used it, particularly with rifles, a floating firing pen. She said, Absolutely not. But what she did for us is take that same pistol, tried to make it misfire some 50 times, could not do it. She said, This is a good weapon.

In fact, she was prepared to come to court and even do a video display to show how this gun works and that it would be impossible for this gun to just go off. And with that eight-pound trigger pull, and she was prepared to demonstrate what that was to each juror, the pressure you would feel on a finger. Impossible. You'd have to intend to fire this weapon. So science and medicine rule out his explanation of what transpired.

Well, our office started talking to some witnesses. Now, Detective Smith, they had reached a number of people, and there were some folks that we reinterviewed with him present. Your Honor, if we would have gone to trial, we would have presented that at least two witnesses that night in that mobile home say that when the defendant came to them, after waiting some ten minutes, comes to them and his statement to them is, "I shot the bitch." Two separate people would have testified to that.

Your Honor, we would have also had some witnesses saying that the defendant and Ms. Patricia Love, they had a very volatile relationship. They would argue, fight. Next thing you know, they're getting along just great. That night somebody had seen them on that same love seat and said they heard both of them saying, I love you, to one another. Yet about a week before, we would have been able to produce a witness said, Patricia confided in me that he held a gun to me in one of their many arguments. Very volatile relationship.

> Your Honor, based on that and knowing that our case, more than anything else, ran -- hinged on what he said versus the forensics, we sat down and explored the option of a plea, and that if the defendant had testified, Your Honor may very well have felt compelled to offer a jury two [choices] -- two alternatives, voluntary manslaughter or murder, so it only made sense to offer this.
>
> What we did, though, is offer a range, and we've asked Your Honor to please treat it as negotiated, if Your Honor would do so, 15 to 25. Obviously, the defense gets the benefit of taking the top end off, and our victim's family and the State gets the benefit of taking the low end off. . . .

[Plea Tr. p. 8, l. 5 – p. 14, l. 1.]

The Solicitor confirmed that two weapons charges were also being dismissed. [Plea Tr. p.15.]

Summary of Post-conviction Relief Hearing Testimony

Testimony of Deputy Solicitor Shawn Graham

During the PCR Hearing, Applicant called Deputy Solicitor Shawn Graham to testify. Concerning his involvement in the case, Graham stated that when Solicitor Hubbard was elected in 2016, it led to a review of outstanding cases, particularly murder, homicide, and manslaughter cases that had been pending with defendants in jail for a significant period of time. [PCR Tr.p. 6-7.] Graham stated that he and Deputy Solicitor Suzanne Mayes focused on Lexington while Deputy Solicitor Al Eargle focused on the tri-county dockets in McCormick, Saluda, and Edgefield. During Deputy Solicitor Eargle's review of the matters, he presented the Solicitor with the Jody Jones case and Solicitor Hubbard asked Graham to assist in the case. Graham stated that he began working on the cases with the assistance of Investigator Matt Martin. He stated that he reviewed the file and began talking to witnesses. These included all the law enforcement officers involved, including SLED firearms examiner Susan Cromer and Dr. Ross, the pathologist. [PCR Tr.p. 7.] Graham stated that there were not many witnesses remaining in the area. He stated that at the time of the crime the victims were wintering in Edgefield, because they were traveling in the fairs and

circus events around the East Coast. They were, however, able to track down two or three witnesses. Graham described meeting with his investigator and some witnesses at a local fair in Alabama at the fairgrounds. [PCR Tr.p. 7.] Although Graham did not have any weapons with him, he imagined that Investigator Martin was armed. He stated that the witnesses were speaking with them of their own free will because they had no authority in Alabama nor any subpoenas.

Graham recalled that Jones had made four different statements during police interviews after the incident. He believed the facts supported a manslaughter charge rather than a murder. [PCR Tr.p. 9.] He learned from the witnesses that Jones and the victim were in a volatile relationship. They had recently argued and victim was threatening to leave Jones. Id. [PCR Tr.p. 9-10.] Graham opined that it was a very triable case which became stronger as they worked on it. [PCR Tr.p. 9.] Graham stated that he expected the witnesses he spoke with would come to a trial. [PCR Tr.p. 9-10.]

On cross-examination, Graham confirmed that when he got on the case Ervin Maye was still employed in the office. It was his opinion when he reviewed the prosecution file that not much work had been done by Maye, as the file lacked any new information that law enforcement had not had at the time of the arrest. [PCR Tr.p. 10.] Graham stated that he found the original statements by the witnesses to be very short and there was no indication that Investigators had followed up with the witnesses. Graham noted that as time passes, witnesses' fears about something happening to them goes away and they frequently become more willing to share information. Graham explained this is the reason why it is his practice to speak with witnesses again before a trial. [PCR Tr.p. 11.]

Concerning plea negotiations, Graham stated that he and Matt Martin would have done the investigation and then met with Solicitor Hubbard to talk about the case and discuss a plea offer.

[PCR Tr.p. 11.] Graham stated it was ultimately Solicitor Hubbard's decision.

Graham opined that with the additional discovery in the case, he felt it was a very winnable case. He stated that in looking at the original file he saw that Maye had been talking with defense counsel and had made an offer of assault and battery of a high and aggravated nature with a cap of 15 years, but Jones had let that offer expire. [PCR Tr.p. 12, l. 10-14.] Graham stated that this was the posture when they took over the case from Maye. Graham stated that they started looking at Jones's statements which did not line up with the physical facts concerning his claim that it was an accident. Graham noted that the victim was shot in the left temple. [PCR Tr.p. 12.] The case just got better as they spoke with the several lay witnesses who were going to come forward and talk about the relationship. He recalled as they were preparing for trial, he and Solicitor Hubbard went to Edgefield and spoke with several of the witnesses at the courthouse which resolved to him it was a "very winnable case." [PCR Tr.p. 12-13.]

Graham stated that he did not think that Matt Martin spoke with any witnesses out of his presence, unless he was setting up a meeting by phone. During their meetings, he denied that Investigator Martin ever became coercive. [PCR Tr.p. 13.] Graham testified that he had been a prosecutor for 25 years and had worked with Martin for 18 years and he had never seen him do anything that was either coercive or threatening. Graham found that the witnesses were willing to speak with them. [PCR Tr.p. 14.]

Concerning the involvement of Solicitor Hubbard, Graham recalled meeting with witnesses at the Edgefield County Courthouse. He did not find anything coercive in Solicitor Hubbard's interaction with the witnesses.

Graham expressly denied that any *ex parte* conversations took place between himself, Solicitor Hubbard, and Judge Griffith. [PCR Tr.p. 16.]

Testimony of Robert Masden

The Applicant called former Public Defender Rob Madsen who indicated that he was the circuit public defender at the time of Applicant's guilty plea. He stated he became involved in the Applicant's PCR matter because as public defender he had become aware of the Applicant's case when the tr-county public defender Bennett Casto was handling it. He stated that he later received a call from Ervin Maye, in either late December 2019 or January, making allegations of misconduct on behalf of the Solicitor's Office, his former employer. At that point, Madsen stated that he scheduled an appointment with the Applicant. Madsen stated the allegations from Maye included claims of threatening or intimidating witnesses and possible *ex parte* communications with Judge Griffith. [PCR Tr.p. 18.] Madsen noted that Ervin Maye subsequently committed suicide.

Madsen described his meeting with Applicant at the prison, where he told Jones about Maye's allegations. Madsen stated that he did not go into a lot of specifics with Jones because he assumed his assigned PCR lawyer would investigate the allegations. [PCR Tr.p. 19, 21.] Madsen stated that he explained the PCR process with Jones and what would happen if he was successful. At some point, Madsen stated that he provided Applicant with a PCR application. [PCR Tr.p. 19.] He concluded the meeting with explaining everything to him, but not getting into specifics. At that point, the Applicant told Madsen that he was going to talk with his friends and family or others and he would let Madsen know. Madsen stated that he followed up confirming the information and advising him of the one-year Statute of Limitation applicable to after discovered evidence. Madsen was clear that he prepared the application so that he would not be misquoted, but did not recall whether he took it with him or whether he mailed it to Jones afterwards. [PCR Tr.p. 20.]

Madsen stated that he did not contact Deputy Solicitors Eargle or Graham about Maye's allegations. Madsen also stated that he did not follow up with Maye. Madsen felt that his job at

that point, since his office's representation had ended, was to tell Jones about the allegations. [Tr.p. 21.]

On cross-examination, Madsen described the allegations that Maye had told him included an assertion that Solicitor Hubbard had forced witnesses to change their statements and some other unethical conduct. Madsen recalled Maye contended deceased investigator Jimmy Smith had mentioned to him that he was uncomfortable with what the Solicitor's office was doing, but he did not ask for specifics because he thought that would be someone else's job. [PCR Tr.p. 21.] Madsen stated that he did not talk with Smith at that time and thinks Smith may have already died at that time. [PCR Tr.p. 22.[3]] According to Madsen, Maye claimed that Solicitor Hubbard had ex parte conversations with Judge Griffith and was bragging that he was going to have Mr. Jones brought to Lexington to plead in front of Judge Griffith. As to the witness intimidation, Madsen stated Maye did not give him any witness names and Madsen did not ask. [PCR Tr.p. 22.]

Testimony of Bennett Casto

The Applicant called former Tri-County Public Defender Bennett Casto to testify. He stated that his role as public defender was to cover Edgefield, McCormick and Saluda counties. Jones stated that the State initially offered a 15-year sentence in exchange for Jones' plea to assault and battery of a high and aggravated nature. [PCR Tr.p. 23-24.] Casto testified that Jone srefused the initial offer, hoping to get a better offer in the future because of possible weaknesses in the state's case. Casto conceded that the initial offer was a really good offer for a murder case. Casto stated it was difficult to locate the witnesses because they worked in a carnival, and traveled throughout the country. [PCR Tr.p. 25.] This difficulty impacted the defense and the state, equally. Casto speculated that the Sate's favorable offer was likely the result of this difficulty in locating

[3] Edgefield County Sheriff Department Investigator Jimmy C. Smith died October 18, 2019 according to his obituary in the *Augusta Chronicle*.

witnesses. [PCR TR p. 25-26]

Casto stated that he never had any discussion with Maye about his allegations against Hubbard.

Casto did not recall any issue with the judge and could not remember whether Judge Griffith was going to be the trial judge, although he thought Judge Griffith may have been the circuit administrative judge at that time. [PCR Tr.p. 26.] It was common practice for the chief administrative judge to take guilty pleas. [PCR Tr.p. 26-27.]

On cross-examination, Casto indicated that he spoke with Maye 5 to 10 times prior to Jones' guilty plea. Casto testified that the 15-year offer was made prior to Solicitor Hubbard's election. Casto stated that the Solicitor and Deputy Solicitor Graham took over the case in 2016. Casto stated he became aware of the additional investigation that Solicitor Hubbard's team did. Solicitor Hubbard's team located and interviewed the carnival witnesses then forwarded them to him. As a result of those witnesses being tracked down, located, and interviewed, that additional information was forwarded the additional information to him. Casto stated that he saw no evidence of witness tampering by the Solicitor's Office. [PCR Tr.p. 27.]

Casto recalled at some point Solicitor Hubbard and Deputy Solicitor Graham sat down with Casto and his client to talk about that case and review the discovery. [PCR Tr.p. 29.] After that meeting, the State made a plea offer.

Casto stated he was unaware of any so-called "judge shopping". Casto was also not aware of any ex parte communications between Solicitor Hubbard and Judge Griffith. After Maye was terminated he filed a lawsuit as well as a grievance against the Solicitor, but Casto had no firsthand knowledge about Maye's allegations. [PCR Tr.p. 29-31.]

Testimony of Deputy Solicitor Al Eargle

The State called Deputy Solicitor Al Eargle to testify. He stated that after Solicitor Hubbard was elected and took office in 2017, he was assigned to the tri-counties. Solicitor Hubbard requested that he review the older cases that were pending and particularly where the defendants were incarcerated. [PCR Tr.p. 31.] As a result, Eargle reviewed Applicant's case, which he recalls was the oldest pending matter in Edgefield for a jail detainee. He stated that Ervin Maye was the assigned prosecutor at that time, after Eargle had initially handled the original bond hearing. [PCR Tr.p. 32.]

On cross-examination, Eargle testified that he never spoke with either Mr. Madsen or Mr. Casto about the case. He stated that the Ervin Maye was the deputy solicitor over the tri-counties before him. [PCR Tr.p. 33.]

Testimony of Solicitor Rick Hubbard

Solicitor Hubbard testified that he was elected in 2016 and took office on January 11, 2017. [PCR Tr.p. 33.] He testified that when he took over, his biggest concern was resolving the oldest cases. He recalled Maye had handled the Hunsberger murder cases, that languished for 12 years before trial and were ultimately reversed and vacated. He stated that based upon the Hunsberger cases, every solicitor was instructed to try cases in a timely fashion. Hubbard stated that he put a priority on resolving the oldest cases. "And I also asked him whatever you find, put me in the mix, give me a case, I don't care what it is, just make sure it's one of the old cases." [PCR Tr.p. 34.] Hubbard testified that Eargle brought him the Jody Jones file, which he did not know anything about at that time.

Hubard stated that in reviewing the file, he found there was not a single note or any indication that an investigation had been conducted. [PCR Tr.p. 35.] Solicitor Hubbard testified he

had concerns about Maye's performance and lack of follow through. He initially retained Maye, but continued to be dissatisfied with Maye's performance and ultimately fired Maye on July 31, 2017. [PCR Tr.p. 35]

Hubbard stated that Maye did not take his termination well and was actively trying to recruit someone to run against him for Solicitor.

Hubbard confirmed that Maye did not have any involvement in Applicant's case after Hubbard took it over. [PCR Tr.p. 37.]

Hubbard stated when he took over the case he met with Edgefield investigator Jimmy Smith and his supervisor Randy Doran. [PCR Tr.p. 37.] The three men went to the mobile home, where the incident occurred, where Jones was residing with Patricia Love. They spoke with witnesses present at the campground and eventually tracked down some of the key witnesses.

Hubbard initially found the witnesses reluctant to speak to law enforcement. Hubbard stated that once they told them they were investigating Patricia Love's death, they would talk. Hubbard stated that the witnesses indicated Love and Jones were in a volatile relationship and both drank heavily. The witnesses described that the couple would be loving and affectionate one moment and then fighting the next. Witnesses who were sleeping down the hall at the time of the incident stated they heard a pop and the 10 minutes later a knock on the door. [PCR Tr.p. 39.] Witnesses told Hubbard that Jones stated "I shot the b__."

Hubbard testified that the forensic evidence was very important in the case. Hubbard testified that Dr. Ross, who did the autopsy, determined the existence of a contact wound to the left temple, which meant the gun had been pressed there. Furthermore, the wound was at a downward angle, which ruled out an accidental discharge or suicide. [PCR Tr.p. 40.] Hubbard denied he or his investigators did anything to intimidate the witnesses.

Hubbard stated that another key witness they spoke with was SLED firearms investigator Susan Cromer. Hubbard noted that in her initial report, she confirmed that Jones' gun fired the bullet that was retrieved from the Love's head. Hubbard stated that asked her to look at Jones's four different statements where he claimed that it was an accidental discharge. Hubbard stated that Cromer tested the trigger pull which was a heavy eight - pound pull. He stated that Cromer was unable to make the gun misfire after 50 tries. Hubbard stated that Agent Cromer was prepared to come to court and testify to refute Jones' claim of an accidental discharge. [PCR Tr.p. 41.] This took accident off the table for Hubbard. Hubbard stated that the forensic evidence was a significant problem for Jones' defense.

Hubbard stated that they reached out to Love's family in Indiana and spoke with her mother. She advised Hubbard that the last person she talked with from law enforcement was on the day her daughter was shot. Solicitor Maye had not contacted then in the two years since Love's death. [PCR Tr.p. 41.] Hubbard stated the family came down and spoke at the guilty plea.

Hubbard stated that after interviewing witnesses and going over the forensic evidence, they met with Casto and Jones to review the evidence. Hubbard reviewed the evidence with Jones and explained why they were extending an offer of 15-25 years and the reason they had rescinded the 15-year offer. Hubbard felt that Jones was misled about the strength of the State's case by the original low offer. [PCR Tr.p. 43.]

Hubbard denied the State had engaged in "judge shopping" or that he had any *ex parte* communication with Griffith. Hubbard stated they were a week out from the April 17th trial date when Jones pled guilty on April 10th. Hubbard stated that Judge Goldsmith was scheduled for the April 10 Edgefield term and he had never been in front of Judge Goldsmith. Hubbard testified that he did not care who the judge was or what sentence Jones received, as long as it was within the

recommended range. Hubbard stated that he knew he had a chief judge who was expecting this case to be on the trial docket. Hubbard stated he reached out to Judge Griffith about whether he would like to hear this plea if Casto was willing to go to Lexington. Judge Griffith agreed to take the plea. [PCR Tr.p. 43-44.]

Hubbard testified he felt that Maye's complaints against him all stemmed from the fact that Hubbard had demoted him, taken away his state-issued vehicle, and ultimately fired him for job performance issues. He denied any unethical conduct and testified he and his team had thoroughly investigated Jones' case and prepared the case for trial, while Maye had done virtually no work at all on the case.

Conclusions of Law Based Upon Findings of Fact.

This Court finds that the allegations raised by the Applicant arise from claims of prosecutorial misconduct which he asserts should require the court to vacate his guilty plea to voluntary manslaughter. The allegations arise from unspecified allegations made by the late Ervin Maye about his former employers, Solicitor Rick Hubbard and Deputy Solicitor Al Eargle. Due to Mr. Maye's suicide, the full extent of Maye's claims may be unknown, however, this Court believes the essential substance of his claims have been presented before this Court. In summary, the Applicant is contending that:

1. The prosecution threatened and bullied potential witnesses against the Applicant.

2. The prosecution met with the Applicant and his counsel and coerced the guilty plea.

3. The prosecution had *ex parte* communication with the plea judge in order to ensure the plea judge would be the one to sentence him.

Based upon this Court's review of the guilty plea transcript of April 10, 2017, the post-conviction relief hearing transcript of April 4, 2023, and a review of records of the clerk of court this Court must deny the request for post-conviction relief in its entirety.

At the outset, this Court finds that the Applicant's guilty plea entered on April 10, 2017 was freely and voluntarily entered within the mandates of *Boykin v. Alabama*, 395 U.S. 238 (1969). "[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory

minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

An applicant who enters a plea on the advice of counsel may "only attack the voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding

refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

"Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has 'special force with respect to convictions based on guilty pleas'." Lee v. U.S., 582 U.S. 357, (2017) (internal citations omitted); *cf. Hill v. Lockhart*, 474 U.S. 52, 58 (1985) ("[R]equiring a 'showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel will serve the fundamental interest in the finality of guilty pleas."). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*,

410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"); *cf. United States v. Broce,* 488 U.S. 563, 569 (1989) ("A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.").

Of import here, a defendant is "bound," absent clear and convincing evidence to the contrary, "by the representations he made under oath during a plea colloquy." *Fields v. Attorney Gen. of Md.*, 956 F.2d 1290, 1299 (4th Cir. 1992). Indeed, "a defendant's solemn declarations in open court affirming a [plea] agreement ... 'carry a strong presumption of verity.'" *Lemaster*, 403 F.3d at 221 (*quoting Blackledge*, 431 U.S. at 74, 97 S.Ct. 1621).

"What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof." *McMann v. Richardson,* 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained).

Applicant was arrested for murder on January 14, 2015. He was represented by public defender Bennett Casto. At some point, then Deputy Solicitor Maye made a plea offer of a negotiated sentence of 15 years for assault and battery of a high and aggravated nature, which the

Applicant rejected. Applicant remained in custody at that time, and a motion for speedy trial was filed on July 20, 2016.

Subsequently in January 2017, Solicitor Rick Hubbard took over the prosecution of Applicant and re-evaluated the case with the assistance of Deputy Solicitor Shawn Graham and Eleventh Circuit Solicitor Office investigator Matt Miller. As a result of their investigation, they prepared for trial scheduled before the Honorable Judge Eugene C. Griffith, set for the April 17th, 2017 term of court.

This Court finds that prior to that term, Solicitor Hubbard met with Plea Counsel and Applicant. In the meeting, Hubbard went over the strength of the State's case and what the State intended to prove based upon the forensic evidence and witness statements. This Court finds that the State provided the results of its investigation to Plea Counsel and Applicant as required by Rule 5.

This Court further finds that after this meeting, the State offered a negotiated sentence range of 15 to 25 years, in exchange for Applicant's plea to the lesser offense of voluntary manslaughter. Applicant agreed accept the plea offer with the negotiated range.

This Court finds that an agreement was reached between the parties to have the matter heard on Monday April 10th in Lexington before Circuit Chief Administrative Judge Griffith who was set to be the April 17 trial judge in Edgefield, consistent with the expressed practice in the Eleventh Circuit to have the assigned trial judge on the docket to handle the pleas.

During the plea, Applicant affirmed the truth of the factual basis for the plea set forth by the Solicitor. [Tr.p. 14, l. 16-23.] Applicant further denied the existence of any threats or coercion to get him to plead guilty. [Tr.p. 16, l. 2-4.] He further confirmed that his attorney had been over everything with him, including the State's file, and explained his rights. [Tr.p. 17-18,] Applicant

asserted that he understood his discussions with Plea Counsel and was satisfied with the advice he received, and indicated that he did not need further discussion with Plea Counsel. [Tr.p. 18, l. 7-12.] Importantly, Judge Griffith asked Applicant the following:

> THE COURT: Any complaints against the Eleventh Circuit Solicitor's Office or the Edgefield County Sheriff's Department in their handling the prosecution of this charge?
>
> DEFENDANT: No, sir.

[Tr.p. 18, l. 14-18.] During the plea, Applicant also waived venue in allowing the case to be heard in Lexington rather than Edgefield. [Tr.p. 19, l. 4-17.]

During Applicant's plea hearing, Plea Counsel pointed out that Solicitor Hubbard had met with Applicant and Plea Counsel to review the State's evidence. Plea Counsel described the meeting as very transparent and good. [Tr.p. 31-32.]

Applicant admitted his guilt during the plea, stating "we had been drinking" and "I made the wrong decision. I done something terrible that I can never go back from. I can never take it back, I can't replace her. If I can swap my life for hers, I would. I accept responsibility for my actions." [Tr.p. 38, l. 24 – p. 39, l. 5.]

This Court finds that these comments during the plea are persuasive in this setting. "For the representations of the defendant, his lawyer, and the prosecutor at such a 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. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible. *Blackledge v. Allison*, 431 U.S. 63, 73–74, 97 S. Ct. 1621, 1629, 52 L. Ed. 2d 136 (1977).

Traditionally, in South Carolina, " '[t]o obtain a new trial based on after discovered

evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.' " *McCoy v. State*, 401 S.C. 363, 368 n. 1, 737 S.E.2d 623, 625 n. 1 (2013) (*quoting Clark v. State*, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993)).

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (*citing Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). "'A guilty plea represents a break in the chain of events which has preceded it in the criminal process.'" Id. at 332, 737 S.E.2d at 486 (*quoting Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973)). By entering a guilty plea, "[a]n accused [ ] waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions." *Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (citation omitted). "A plea of guilty is an admission or a confession of guilt, and [is] as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury." *State v. Fuller*, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970) (citations omitted); *see North Carolina v. Alford*, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). Thus, "'[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" *Rice*, 401 S.C. at 332, 737 S.E.2d at 486 (*quoting Tollett*, 411 U.S. at 267, 93 S.Ct. 1602).

Nevertheless, the PCR Act provides that "[a]ny person who has been convicted of, or sentenced for, a crime and who claims ... 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" is entitled to seek post-conviction relief. S. C. Code Ann. § 17–27–20(A)(4) (2014). Thus, by its plain language, the PCR Act affords "any person" the ability to seek post-conviction relief on the basis of newly discovered evidence—not just individuals convicted and sentenced following trial. *Jamison v. State*, 410 S.C. 456, 467–69, 765 S.E.2d 123, 128–29 (2014)

Although the Court in *Jamison* found that a guilty plea does not preclude post-conviction relief following a guilty plea in all circumstances, it nonetheless concluded that the traditional, five-factor newly discovered evidence test is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea. As the Supreme Court of Colorado has noted, in the case of a guilty plea:

> [I]t was not an independent trier of fact that determined the defendant's guilt based upon sworn trial testimony—it was the defendant who acknowledged his own guilt. Because of that simple fact, the trial court handling the postconviction proceeding is necessarily in a different position. That court does not have the full record of the prior trial, but it does have the defendant's own statements of guilt. [The traditional, five-factor newly discovered evidence test] presumes that the [PCR] judge is in a position to weigh the new testimony against that provided at the prior trial and assess whether an acquittal verdict would enter based upon new evidence. In the circumstance in which there never was a trial on the charges, the [PCR] court is hampered in that assessment.

Id. Indeed, the traditional, newly discovered evidence factors are "difficult, if not impossible to apply when the moving party pleaded guilty instead of standing trial." *In re Reise*, 192 P.3d 949, 954 (2008).

In *Jamison*, in a guilty plea setting the Court addressed the appropriate review:

> Guided by the language of section 17–27–20(A)(4) of the PCR Act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents

> evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt. *Cf. Reise*, 192 P.3d at 955 (finding a defendant may withdraw his guilty plea on the basis of newly discovered evidence only when necessary to correct manifest injustice). Such a determination will not be resolved in a formulaic manner, but will necessarily be context dependent.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Turning to the issues before this Court, the Applicant has not met his burden of proof. The Applicant's initial claim is that the prosecution threatened and bullied potential witnesses against the Applicant. This Court finds that the Applicant made an inadequate showing of the existence of improper intimidation on the part of the solicitor's office prior to the entry of the plea.

"The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutions to the jury so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19 (1967). "This right is a fundamental element of due process of law." *Id.*

As the Court has recognized, the constitutional right of a defendant to call witnesses requires that they be called without intimidation from the State. *State v. Williams*, 326 S.C. 130, 485 S.E.2d 99 (1997). In *Williams*, the Supreme Court explained:

> Improper intimidation of a witness may violate a defendant's due process right to present his defense witnesses freely if the intimidation amounts to 'substantial government interference with a defense witness' free and unhampered choice to testify.' ... Where substantial interference is found, the next issue is whether the

> error can be deemed harmless. The rule in the Fourth Circuit appears to be that governmental intimidation can be deemed harmless error where the witness nonetheless testifies. Compare *United States v. Teague*, 737 F.2d 378 (4th Cir.1984) (harmless where defendant was not denied either all or the helpful part of the witness' testimony as a result of the attempted intimidation) with *United States v. MacCloskey*, 682 F.2d 468 (4th Cir.1982). Under this rule, the intimidation in this case could not be deemed harmless. We decline, however, to adopt such an automatic reversal rule and hold that in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice.

Id. at 135, 485 S.E.2d at 102. However, even if the defendant demonstrates substantial interference and prejudice, a new trial is not always the requisite remedy. Instead, "[t]he remedy to be afforded a defendant in this situation is determined by the facts and circumstances of each case, depending on the prejudice suffered by the defendant." *Id.* at 136, 485 S.E.2d at 103.

In analyzing a claim of prosecutorial misconduct based on alleged witness intimidation, the Supreme Court acknowledged the prosecutor's "fundamental power" to "bring charges against a person the prosecutor believes has committed a crime." *State v. Needs*, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998). This power is, nevertheless, subject to "constitutional constraints." *Id.* For example, a prosecutor may not "lob baseless threats or charges at a potential defense witness in an effort to prevent the witness from testifying." *Id.* at 146, 508 S.E.2d at 863; see Lisa A. Wenger, Annotation, *Admonitions Against Perjury or Threats to Prosecute Potential Defense Witness, Inducing Refusal to Testify, As Prejudicial Error*, 88 A.L.R.4th 388 (1991 & Supp.2011) (analyzing state and federal cases where prosecutor informs defense witness that that witness could face perjury charges or other prosecution if the witness testified).

This Court finds that the Applicant has completely failed in his burden of proof to show the existence of any witness intimidation. Contrary to the speculation suggested in the allegation, the Applicant failed to show the existence of any lay witness who claimed that they were subject to any intimidation or coercion by the prosecution prior to the plea. This Court finds credible the

testimony of Shawn Graham and Solicitor Hubbard that they did not use intimidation tactics in their investigation and trial preparation concerning the lay witnesses. Mere speculation over matters relating to the interaction by the prosecution team with the witnesses does not create credible evidence that this Court can rely upon to prove a manifest injustice. As shown by the credible testimony of both Shawn Graman and Solicitor Hubbard, the added investigation by their office was completed because of concerns that the earlier investigation was lacking. This is professionally consistent with ethical standards. It does not show manifest injustice. The Applicant's initial claim must be denied.

In the Applicant's second assertion he claims that the prosecution improperly coerced Applicant into a guilty plea in a meeting with defense Plea Counsel. The Court finds no evidence of improper conduct on the part of Solicitor Hubbard. This Court finds credible the testimony of Solicitor Hubbard and Plea Counsel Casto, as well as the persuasive statements made during the guilty plea, that the meeting was evidence of professional courtesy and entirely appropriate. There was no credible evidence presented that reflected inappropriate demeanor or bullying by the Solicitor during the meeting. To the contrary, this Court finds based upon the credible statements of Hubbard and Casto that the meeting was an informative disclosure by the prosecution of the nature of its entire case and their expectation on how possible defenses would be challenged when the murder case was tried. Furthermore, this his was a meeting agreed to by the Plea Counsel and Applicant. The allegation must therefore be denied.

Applicant claims the prosecution engaged in improper *ex parte* communication Judge Griffith to allow the plea to be heard by him. This Court finds credible Solicitor Hubbard's testimony that his communication with Judge Griffith related to scheduling, not the substance of any sentencing related to the Applicant. As stated above, Applicant's case was scheduled to be

tried before Judge Griffith in Edgefield on April 17, 2017.

Rule 501, SCACR, Canon 3 addresses *ex parte* communication in the following manner:

> (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
>
> (a) Where circumstances require, ***ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized**; provided:
>
> (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and
>
> (ii) the judge makes provision promptly to notify all other parties of the substance of the *ex p*arte communication and allows an opportunity to respond.

Ex parte communications are strongly disfavored. *Bakala v. Bakala*, 352 S.C. 612, 623, 576 S.E.2d 156, 162 (2003). However, "prejudice must be shown to obtain a reversal on this ground." *Id. Cf. State v. Quinn*, 430 S.C. 115, 843 S.E.2d 355 (2020) (no evidence of improper *ex parte* communication).

This Court finds credible Solicitor Hubbard's testimony that his communication with Judge Griffith about Applicant's case was solely related to scheduling purposes in light of the possible guilty plea. This was permissible under Canon 3 and appropriate conduct on his part. The solicitor was authorized also under the administrative judge's order to communicate with the administrative judge about case dockets and scheduling. The communication was shared with Plea Counsel based upon the added need for his client to waive venue to Lexington for the entry of the plea. Since this communication was not improper, it does not provide a ground to vacate the guilty plea. Manifest injustice has not been shown. Post-conviction relief must be denied on this ground.

In his final specification, the Applicant contends that there was improper "judge shopping." He essentially claims that the prosecution sought to avoid the guilty plea presentation to Judge Goldsmith in Edgefield on April 10 in Edgefield and to enter the plea instead in front of Judge Griffith in Lexington on that date. This Court rejects this claim based upon the lack of a cognizable claim for relief. This Court finds that the Applicant's trial was scheduled to be heard at the April 17, 2017 Edgefield term of court before Judge Griffith, who was also the chief administrative judge for the 11th Circuit. Credible testimony presented to this Court was that the Eleventh Circuit had a practice to have the assigned trial judge over the case to handle the guilty pleas to avoid "judge shopping."

In *State v. Langford*, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012) the Court declared:

> A criminal defendant has a due process right to have his case heard by a fair and impartial judge. *See Schweiker v. McClure*, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities."). Similarly, he has the right to have a judge assigned to his case "in a manner free from bias or the desire to influence the outcome of the proceedings." *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir.1987) (Kozinksi, J.). On the other hand, he does not have a right to "any particular procedure for the selection of the judge." *Id.* Thus, there is no right to have one's judge selected randomly, nor is there one to have a case heard by any particular judge. *Sinito v. United States*, 750 F.2d 512, 515 (6th Cir.1984).

State v. Langford, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012).

Here, the Court finds Applicant agreed to appear before Judge Griffith in Lexington, and affirmatively waived venue in Edgefield County. Having agreed, Applicant waived any claim that he was prejudiced by having Judge Griffith as the plea judge and this claim must be denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. His claim of newly discovered evidence must fail because he failed to show a manifest

injustice from his entry of a free and voluntary guilty plea and sentence within the negotiated range. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry 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), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 27th **day of** June **, 2025.**

Kristi Curtis

THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Eleventh Judicial Circuit

Sumter, South Carolina