

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

**JUL 29 2025**

**S.C. SUPREME COURT**

APPEAL FROM Horry COUNTY  
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2023-CP-26-00337

Michael J. Walton, *pro se*, .....Petitioner,

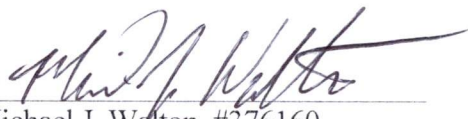
V.

Ryan T. Kowalski, Assistant Attorney General, .....Respondent.

**NOTICE OF APPEAL**

Michael J. Petitioner appeals the judgment of the Honorable Dale E. Van Slambrook dated June 11, 2025 and filed with the Horry County Clerk of Court on June 13, 2025. Petitioner received written notice of entry of this judgment on June 30, 2025.

July 24, 2025

S/   
Michael J. Walton, #376160  
Perry Correctional Institution  
430 Oaklawn Road / Q1A-109  
Pelzer, SC 29669  
*pro se*

Other Counsel of Record:

Ryan T. Kowalski  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3970



**RECEIVED**  
JUL 29 2025  
S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

April 29, 2025

Michael J. Walton, # 376160  
Dorm/Room/Bunk: Q1A-0109-B  
430 Oaklawn Road  
Pelzer, SC 29669

**Re: Michael J. Walton, # 376160 v. State of South Carolina**  
**Case No.: 2023-CP-26-06248**

Dear Mr. Walton,

Enclosed is a copy of the filed Order of Dismissal with Prejudice for the above-captioned case signed by the Honorable Dale E. Van Slambrook and filed with the Horry County Clerk of Court.

Sincerely,

Ryan T. Kowalski  
Assistant Attorney General

RTK/ls  
Enclosure

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

FILED  
HORRY COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

Michael J. Walton # 376160, 2025 APR 28 10 58 AM CASE NO. 2023-CP-26-00337

Applicant, RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL  
WITH PREJUDICE

Presiding Judge:	Hon. Dale E. Van Slambrook
Applicant's Attorney:	Steven W. Fowler, Esq.
Respondent's Attorney:	Ryan T. Kowalski, Esq. & Bryan T. Hall, Esq.
Plea Counsel:	Ralph J. Wilson, Sr., Esq.
Solicitor:	Leigh Andrew, Esq.
Date of Hearing:	March 19, 2025

This matter comes before the Court by way of a post-conviction relief (PCR) application filed by Michael J. Walton (Applicant) on January 19, 2023. Respondent, the State of South Carolina, made its return and partial motion to dismiss on September 19, 2024, moving to dismiss the application as untimely and requesting an evidentiary hearing.

The evidentiary hearing convened on March 19, 2025, at the Horry County Courthouse, before the Honorable Dale E. Van Slambrook. Applicant was present and represented by Steven W. Fowler, Esq. Assistant Attorneys General Ryan T. Kowalski and Bryan T. Hall represented Respondent. At the hearing, Applicant moved to have his PCR counsel relieved and proceed *pro se*. This Court explained to Applicant the risks, dangers, and disadvantages of representing himself pursuant to *Faretta v. California*, 422 U.S. 806 (1975). Applicant indicated he understood what was explained to him, and in light of what was advised, still wished to represent himself. This Court further questioned Applicant under oath regarding his decision. Applicant indicated that his

decision was being made freely and voluntarily, and he was not being forced or coerced to represent himself.

Thus, this Court found Applicant's waiver of counsel and decision to represent himself was made freely, voluntarily, knowingly, and intelligently with awareness of the risks and dangers of self-representation. Accordingly, this Court relieved Steven W. Fowler, Esq. as counsel of record. Representing himself at the evidentiary hearing, Applicant proceeded forward on the claims as set forth in his application. Respondent presented testimony from Ralph J. Wilson, Sr. (Plea Counsel).

This Court finds that the application was filed untimely and grants Respondent's motion to dismiss all allegations except for the direct appeal issue. On the direct appeal issue, this Court finds that Applicant knowingly and voluntarily waived his right to an appeal. Therefore, the application is denied and dismissed.

#### PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections (SCDC), serving a sixteen (16) year sentence. On June 22, 2017, the Horry County Grand Jury indicted Applicant for two (2) counts of criminal sexual conduct with a minor (CSC with a minor), second degree (2017-GS-26-02831; 02833) and criminal sexual conduct with a minor, third degree (2017-GS-26-02832). On April 26, 2018, Applicant pled guilty before the Honorable Benjamin Culbertson. Assistant Solicitor Leigh Andrew prosecuted the case. Applicant was represented by Ralph J. Wilson, Esq. In exchange for Applicant's plea, one count of CSC with a minor, second degree (-02831) and CSC with a minor, third degree (-02832) were *nolle prosequi*. The State recommended a sentence of twenty (20) years. Judge Culbertson sentenced Applicant to sixteen (16) years. Applicant did not appeal. On July 2, 2018, Judge Culbertson issued orders to amend

the sentencing sheet and indictments to correct a scrivener's error regarding an erroneously cited statute (correcting "16-03-655(C)" to "16-03-655(B)").

#### FACTUAL HISTORY

Between December 1, 2014, and December 31, 2016, Applicant gave a post-Miranda confession to engaging in oral sex, digital penetration, masturbation in front of, and showing pornography to his then fourteen (14) year old daughter. (Tr. 7). Applicant further admitted the events happened too many times to count and occurred at least on a weekly basis for more than a year. (Tr. 7). Minor victim indicated that Applicant engaged in penial/vaginal penetration on at least two occasions. (Tr. 7).

#### CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held unlawfully based on the following:<sup>1</sup>

- I. Ineffective Assistance of Counsel
  - a. Failure to inform Applicant of right to a direct appeal.
  - b. Failure to file a direct appeal on Applicant's behalf.
  - c. Failure to object to the amendment of an indictment after the expiration of the court term.
  - d. Misadvising Applicant that he was illegible to file a PCR.
  - e. Failure to develop a strategy for Applicant to proceed to trial.
  - f. Failure to object to the State conducting a post-trial hearing to amend the indictment and sentencing sheet.
  - g. Failing to object to the State not forwarding a motion and notice to amend until after the hearing and failing to serve Applicant who was without legal counsel.
  - h. Failure to object to the original indictments that deprived court of subject matter jurisdiction.
  - i. Failure to object to malicious prosecution of the solicitor introducing nolle processed indictments that were defectively flawed.
  - j. Failure to object to the solicitor intentionally misinforming the court concerning fictitious statements of victim.
  - k. Failure to object to absence of Applicant's accusers during the course of the hearings.
  - l. Failure to object to witness-tampering and witness bolstering by the solicitor.

<sup>1</sup> Applicant's allegations have been summarized for brevity and clarity.

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- m. Failure to object to hearsay made by solicitor that were intended by the solicitor to inflame the passions of the court.

Applicant requested relief in the form of a vacated sentence.<sup>2</sup>

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

Before this Court are the records of the Horry County Clerk of Court records regarding the subject convictions, Applicant's records from SCDC, and the PCR application. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); *Lucero v. State*, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

#### *RESPONDENT'S MOTION TO DISMISS*

Respondent moved for summary dismissal of this application because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (the Act).

<sup>2</sup> The appropriate remedy would be to grant a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating the relief to be granted is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial"). If this Court finds Applicant did not knowingly and intelligently waive his right to a direct appeal, the appropriate remedy is to grant Applicant a belated appeal. *White v. State*, 263 S.C. 110, 208 S.E. 35 (1974).

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S.C. Code Ann. § 17-27-10 to -160. Summary dismissal of a claim is appropriate if (1) it is apparent on the face of the application that there is no need for a hearing to develop facts, and (2) the applicant is not entitled to post-conviction relief. S.C. Code Ann. § 17-27-70(b)-(c) (2014); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). When considering the State's motion for summary dismissal, the Court must assume the facts presented in the application are true and view those facts in the light most favorable to the Applicant. *Leamon*, 363 S.C. at 434, 611 S.E.2d at 495.

#### Summary Dismissal Based on Statute of Limitations

Pursuant to the Act, a PCR application "must be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur, whichever is later." § 17-27-45(a). The statute of limitations applies to all PCR applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996). A motion for summary judgment may be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. Of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994).

In the present case, Applicant failed to timely file his PCR application within a year of sentencing as required by the Act. Applicant pled guilty and was convicted on April 26, 2018. Applicant did not appeal his conviction. To be timely, Applicant was required by statute to file his PCR application by April 26, 2019. Applicant filed his application on January 19, 2023, outside of the one (1) year statutory period.

At the evidentiary hearing, Applicant testified that Plea Counsel told him he could not file a PCR application because he pled guilty. Equitable tolling has been deemed available where extraordinary circumstances prevented the plaintiff from filing despite his due diligence, the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the

statutory period, or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass, and the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008).

This Court finds Applicant has failed to meet his burden to show that he is entitled to equitable tolling. Plea Counsel credibly testified that he did not tell Applicant, or any client he has represented, that they were ineligible to file a PCR application. Thus, Applicant's application is untimely, and this Court dismisses and bars all allegations contained in the application except Applicant's allegation that he did not waive his right to a direct appeal, because the statute of limitations does not apply to a claim that an applicant was denied his right to a direct appeal. *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002).

#### *INEFFECTIVE ASSISTANCE OF COUNSEL*

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813,

814 (1985). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable.” (citation and internal quotation marks omitted)).

**Allegation: Plea Counsel Failed to File a Direct Appeal**

Applicant alleged Plea Counsel was ineffective for failing to file a direct appeal on Applicant's behalf, denying Applicant his right to appeal. This Court finds that Plea Counsel informed Applicant of his right to appeal, and that Applicant waived that right.

Generally, there is no constitutional deprivation in not being advised of the right to appeal from a guilty plea absent extraordinary circumstances, such as when there is a reason to think a rational defendant would want to appeal—where a non-frivolous ground exists to appeal—or defendant reasonably demonstrated an interest in appealing. *Turner v. State*, 380 S.C. 223, 225, 670 S.E.2d 373, 374 (2008) (citing *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)).

At the evidentiary hearing, Applicant testified that he did not file an appeal because Plea Counsel told him it would be “ridiculous”. Applicant testified that he relied on Plea Counsel's advice when deciding not to appeal.

On direct examination, Plea Counsel testified that he informed Applicant of his right to

appeal his guilty plea. Plea Counsel testified that Applicant did not ask him to file an appeal. On cross-examination, Plea Counsel testified that he did not tell Applicant that he could not appeal his guilty plea.

This Court finds Applicant knowingly and voluntarily waived his right to a direct appeal after being advised of that right. Further, this Court finds that Applicant failed to prove Plea Counsel was deficient by not advising him of his right to appeal. Plea Counsel credibly testified Applicant did not inform him he wished to appeal his guilty plea after being advised of his right to an appeal. Plea Counsel also credibly testified that he did not tell Applicant he was ineligible to appeal his conviction. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

#### CONCLUSION

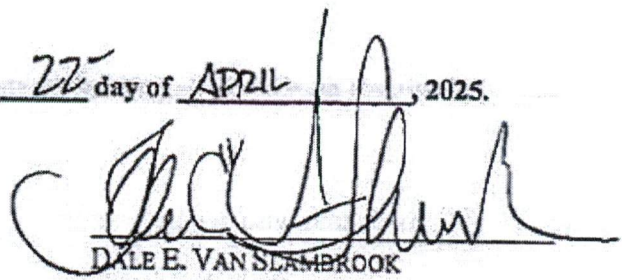
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED with PREJUDICE**.

This Court notifies 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 review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on Applicant's behalf if 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 shall be denied and dismissed with prejudice; and
2. The Applicant shall be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 22 day of APRIL, 2025.



DALE E. VAN SLAMBROOK  
Presiding Judge  
Fifteenth Judicial Circuit

Moncks Corner, South Carolina

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