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THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM THE COUNTY OF GEORGETOWN

Court of Common Pleas

The Honorable Circuit Court Judge, Dale E. Van Slambrook

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Case No. 2023-CP-22-00077

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JAVON J. HAIR, SCDC # 388395..... Petitioner,

v.

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

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**NOTICE OF APPEAL**

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The Petitioner hereby appeals the Honorable Judge Dale E. Van Slambrook Order filed denying post conviction relief to the Petitioner.

The Order was received by the undersigned counsel on July 26, 2025. The said Order was filed on July 8, 2025, at 3:51 p.m. in the Georgetown County Clerk of Court and is in their records.

This is the 26nd day of July 2025.



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### PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections (“SCDC”), serving a twenty-five (25) year sentence. On October 28, 2020, the Georgetown County Grand Jury indicted Applicant for murder (2020-GS-22-01072), armed robbery (-01074), and possession of a weapon during the commission of a violent crime (-01073). On July 11, 2022, Applicant pled guilty before the Honorable Jennifer B. McCoy. Assistant Solicitor Elizabeth Smith prosecuted the case. Applicant was represented by B. Alex Hyman, Esq. (“Counsel”). In exchange for his guilty plea, Applicant pled to voluntary manslaughter, the lesser included offense. Pursuant to a negotiated sentencing range of twenty-five (25) to thirty (30) years, Judge McCoy sentenced Applicant to twenty-five (25) years for voluntary manslaughter. Applicant did not appeal.

### FACTUAL HISTORY

On February 5, 2020, Herman McCray, Jr. (“Victim”) was at a tire shop in Georgetown when Applicant and his co-defendant arrived. (Tr. 5). Applicant and Victim, who knew each other, got into a verbal altercation. (Tr. 6). Applicant chased Victim around the building with a gun. (Tr. 6). A bag was stolen. (Tr. 6). Applicant and his co-defendant got back into their car, and Victim threw an object at the car. (Tr. 6). Applicant got out of the car, and Victim began to run away. (Tr. 6). Applicant shot Victim in the back, causing Victim’s death. (Tr. 6).

### CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held unlawfully based on the following:

- I. Ineffective Assistance of Counsel
  - a. Failure to object to affidavit presentment.<sup>1</sup>
  - b. Failure to file a direct appeal.

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<sup>1</sup> This Court interprets this allegation to mean either the arrest warrant or the indictments. At the evidentiary hearing, Applicant alleged that the arrest warrant and the police affidavit thereon were defective, rendering his indictments invalid.

- c. Failure to file a motion to quash indictment for insufficiency prior to Applicant's guilty plea.
- d. Failure to advise Applicant on double jeopardy.

II. Involuntary Plea

III. Newly Discovered Evidence

- a. Applicant contends affidavit does not contain sufficient facts to establish guilt beyond a reasonable doubt to support a conviction for a jury to decide. Applicant alleges the affidavit is evidence of material facts not previously heard.

Applicant requests relief as follows: evidentiary hearing with counsel appointed.<sup>2</sup>

Before this Court are the records of the Georgetown County Clerk of Court records regarding the subject convictions, Applicant's records from SCDC, and the PCR application.

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

Before this Court are the records of the Georgetown 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), SCRCPP (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

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<sup>2</sup> If this Court finds a defect in the original proceedings, the appropriate remedy is 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").



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.").

#### *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 post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). 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).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption “by proving that his attorney’s representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy.” *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); *cf. Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, make every effort “to eliminate the distorting effects of hindsight,” and “evaluate the conduct from counsel’s perspective at the time” in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. In order to establish counsel’s performance was deficient, the applicant must demonstrate “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687. Accordingly, counsel’s performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply “deviated from best practices or most common custom.” *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the

burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691. To meet this burden, counsel’s deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; see *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Richter*, 562 U.S. at 112.

#### ***Guilty Pleas Based on Ineffective Assistance of Counsel***

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged, the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58-59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the range of competence demanded of

attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58-59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

#### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

Before this Court are the records of the Georgetown 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 this Court to evaluate and scrutinize their credibility.

From the transcript of Applicant’s guilty plea, this Court makes the following findings: 1) Applicant understood the charges and sentences he faced (Plea Tr. p. 3); 2) Applicant was informed

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of his constitutional rights to a trial, to confront witnesses, and to remain silent (Plea Tr. pp. 4-5); 3) Applicant's decision to plead guilty was entered freely, voluntarily, knowingly, and intelligently. (Plea Tr. p. 6). 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.

**Allegation: Plea Counsel Failed to Advise Applicant of his Right to 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. *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029 (2000); *Turner v. State*, 380 S.C. 223, 225, 670 S.E.2d 373, 374 (2008).

At the evidentiary hearing, on direct examination, Applicant testified that Plea Counsel did not advise him of his appellate rights, and that Plea Counsel did not mention them to Applicant. On direct examination, Plea Counsel testified that Applicant never asked him to file an appeal. Plea Counsel also testified that he did not see any appealable grounds in Applicant's case because he pled guilty, had numerous charges dismissed, and was given the lower sentencing range of the charges he was pleading guilty to.

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 and that Plea Counsel did not see any appealable grounds. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation: Plea Counsel Failed to Advise Applicant of Sentencing Range**

At the evidentiary hearing, Applicant alleged that he was under the impression that he was going to be receiving a twenty-five (25) year sentence by pleading guilty, and that Applicant was not advised that the negotiated sentencing range was in fact twenty- five (25) to thirty (30) years. This Court finds that Applicant has failed to prove that he suffered prejudice as a result of this alleged discrepancy.

Plea Counsel credibly testified that the Solicitor made an offer of twenty-five (25) years for manslaughter. Plea Counsel credibly testified that he discussed that offer with Applicant and they had signed an acceptance of that offer. Plea Counsel credibly testified that on the day of the plea, the Solicitor informed Plea Counsel that she needed to put the offer on the record as a range of twenty- five (25) to thirty (30) years. Plea Counsel credibly testified that he and the Solicitor met with Judge McCoy in her chambers about this discrepancy, and Judge McCoy indicated that she was going to sentence Applicant to twenty-five (25) years. Upon review of the record, this Court finds that Applicant was given the twenty- five (25) year sentence he had anticipated and thus suffered no prejudice as a result of the alleged discrepancy in the negotiated offers. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation: Plea Counsel Failed to Object to or Move to Quash Indictment**

**Allegation: Plea Counsel failed to Advise Applicant on Affidavit and Warrant**

Applicant alleges that the arrest warrant and police affidavit thereon in his case were defective, thus his indictments were defective, and that these alleged facts qualify as newly

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discovered evidence. This Court finds that this does not constitute newly discovered evidence. As an initial matter, Applicant's allegations are not newly discovered evidence because indictments are not evidence, they are notice documents. *McCoy v. State*, 401 S.C. 363,371, 737 S.E.2d 623, 627 (2013) (Newly discovered evidence is evidence that is material to the accused's guilt or innocence and concerns the substance of the State's case or the accused defense); *See State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("An indictment is a notice document").

Applicant's alleged issues with his indictments and the arrest warrant could have been discovered by the exercise of reasonable diligence at the time of Applicant's indictment. The Uniform Post-Conviction Procedure Act (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).

At the evidentiary hearing, Applicant testified that the way his arrest warrant was written accused him of being guilty prior to being proven guilty. Applicant testified that the affidavit on the arrest warrant convicted him before he was convicted by the court system. Applicant testified that Plea Counsel should have reviewed the warrant to ensure it was sufficient. Applicant testified that he went over the warrant with Plea Counsel.

Plea Counsel credibly testified that the indictment was the charging document in this case, and that the police affidavit, the warrant, and the indictment listed in the affirmative that Applicant committed the crimes. Plea Counsel credibly testified that if they had gone to trial, the judge would have instructed the jury that the indictments were merely a charging document, not evidence. Plea Counsel credibly testified that he did not see any issues with Applicant's indictments. Upon reviewing the indictments contained in the record, this Court finds they were not defective. Additionally, Applicant pled guilty, which waived his right to challenge his indictments.

Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant his application for post-conviction relief. This Court finds that Plea Counsel was not deficient in any manner, and Applicant was not prejudiced by his representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR, provides if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, 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 must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of June, 2025.

  
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DALE E. VAN SLAMBROOK  
Presiding Judge  
Fifteenth Judicial Circuit

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