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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 Daniel Coble, Circuit Court Judge

Case No. 2019-CP-19-0100

Shawn Lendell Lee, #270553, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Shawn Lendell Lee, appeals the order of the Honorable Daniel Coble, filed on or about August 19, 2025, and received by the undersigned on August 26, 2025



September 4, 2025

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STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
)
)
Shawn Lendell Lee, SCDC #270553,)
)
Applicant,)
)
v.)
)
)
State of South Carolina,)
)
Respondent.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-19-0100

ORDER OF DISMISSAL

This matters comes before this Court by an application for post-conviction relief (PCR) by Shawn Lendell Lee (Applicant) on April 22, 2019. The Respondent made a Return and Motion to Dismiss without Prejudice on November 17, 2020 due to a pending September 8, 2015 motion to reconsider his sentence. On December 20, 2020, the Motion to Reconsider Sentence was denied. On April 14, 2022, the Court appointed Ashley A. McMahan to represent the Applicant. On March 7, 2024, counsel made a motion for discovery that was granted by Judge J. Cordell Maddox, on April 25, 2024. On February 27, 2025, the Applicant made an amendment to the post-conviction relief application.

On March 7, 2025 this matter was convened before this Court. The Applicant was present and represented by Ashley A. McMahan. The Respondent was represented by Donald J. Zelenka, Deputy Attorney General. The Court heard testimony from the Applicant and Dietrick Andre Lake. At the conclusion of the hearing, this Court took the matter under advisement. This Order of Dismissal follows:

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 April 2, 2015, after selling crack cocaine to a confidential informant working with the Edgefield County Sheriff's Office during a controlled drug buy. On May 28, 2015, then appointed counsel Bennett Casto made a Rule 5 and Brady motion according to the Public Index. During its June 2015 term, the Edgefield County Grand Jury indicted Applicant for two counts of distribution of crack cocaine—third or subsequent offense (2015-GS-19-0212, -0214) and one count of unlawful neglect of a child or helpless person. (2015-GS-19-0213).

On August 31, 2015, Applicant appeared before the Honorable R. Knox McMahon and pleaded guilty to as indicted to one count of distribution of crack cocaine without formal negotiations or recommendations from the State as to sentencing.¹ Public Defender Erik J. Drylie, Esquire represented Applicant at the plea. Assistant Solicitor Ervin J. Maye prosecuted the case. Judge McMahon accepted Applicant's plea and sentenced him to eighteen (18) years' imprisonment.

On September 8, 2015, Applicant, through counsel Drylie, moved to reconsider his sentence. After the postconviction relief action was filed, it became apparent that the motion for reconsideration was still pending.

On November 4, 2020, a hearing on the motion to reconsider the sentence was held before the Honorable Walton J. McLeod, IV. The Applicant was present and represented by new counsel

¹ According to the Edgefield County Public Index, the remaining indictments were *nolle prossed* on the same day Applicant pleaded guilty.

Dietrich Lake.² The State was represented by a new prosecutor, Douglas Fender of the 11th Circuit Solicitor's Office.

On November 19, 2020, a WebEx hearing was held to allow the family member to testify because they were unable to appear in court at the November 4 hearing due to COVID restrictions. Present at the hearing on November 19 on the video were Judge McLeod was counsel Lake and Assistant Solicitor Fender. Statements were received from the Applicant's mother Maurice Butler, Jashawna Lee (his oldest daughter), and Erica Coleman (his girlfriend). Counsel requested a reduction of his sentence to 12 years.

On December 1, 2020, Judge McLeod entered an order denying the request for a motion for reconsideration. No appeal was taken from the guilty plea and denial of the motion for reconsideration.

MATTERS BEFORE THE COURT

This Court has before it the Edgefield County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the records of the current PCR action. Included in the materials are the motion for reconsideration of sentence, the transcript of the reconsideration hearing of November 4, 2020, and the Order of December 1, 2020 denying reconsideration. The Court also has been available the WebEx hearing of November 19, 2020 of Judge McLeod.

This Court was advised that the transcript of the August 31, 2015 guilty plea was not available due to the time lapse of over five years pursuant to SCACR Rule 607(i)(1). Reconstruction of the record was deemed unavailable by counsel due to the death of Judge

² At the time of the November 2020 hearings, his former counsel Erik Drylie was an Assistant Solicitor who could no longer represent Applicant and did not participate in the hearings

McMahan (the plea judge), Eric Drylie (the plea counsel) and Ervin Maye (the prosecutor at the plea).³

ALLEGATIONS BEFORE THE COURT

In his *pro se* application dated April 17, 2019, the Applicant alleged as grounds:

- I. Ineffective assistance of Counsel:
 - a. Violated my rights to a reconsideration.
 - b. Failed to respond or assist me.

In the Amended application dated February 27, 2025 by counsel McMahan, the Applicant alleged the following:

- I. Ineffective Assistance of Counsel:
 - a. Erik Drylie failed to have the motion for reconsideration heard in a timely manner. Had the motion to reconsider been heard in a timely manner it would have been heard before the original Circuit Court judge who had knowledge of the facts from the original guilty plea.

SUMMARY OF EVIDENCE FROM THE RECONSIDERATION HEARINGS

THE NOVEMBER 4, 2020 RECONSIDERATION HEARING BEFORE JUDGE MCLEOD

During the November 4, 2020 reconsideration hearing before Judge McLeod, counsel Lake noted that the motion was filed after the Applicant received an 18 year sentence. Counsel Lake explained that the delay was caused because the case fell through the cracks, although Lee was aware that it had been filed and he never heard anything about the disposition of the motion. Lake stated Lee filed a PCR action because he had not heard anything about the motion. Lake stated

³ This Court can take judicial notice that Ervin Maye died on March 30, 2021, Erik Drylie died on April 23, 2023, and J. Knox McMahan died on April 23, 2023. This Court can take further notice that Judge McMahan served until he retired in June 2018.

that he was retained by the family and he stated that his request is about a reduction based upon mercy. He noted that it was not that he did not do wrong but is admitting he did wrong. He advised the Court that he initially pled before Judge Keesley (in Saluda) and Judge Keesley allowed him a period of time to get his affairs in order because he was expecting a child with his girlfriend, although not born by the time he was to turn himself in by August 4, 2014. Lake noted that Lee then complicated matters by picking the charge that resulted in the 18 year sentence.

Investigator Warren Miller of the Edgefield Sheriff's Department stated that in October 2014 he sold crack or cocaine base in Edgefield to a confidential informant. A search warrant was done where he was staying on April 2, 2015. At that time there was a white rock like substance found in the residence, of 2.29 grams. It was pointed out that this charge from April 2015 was dismissed as part of the guilty plea before Judge McMahon in August 2015. Tr.p. 7.

Lake stated that his client deserved mercy. He stated that they were looking for he had an opportunity and he didn't take advantage of it. He stated that they were not coming before the Court and ask for the same 10 year sentence, but asked for a 12 year sentence to reflect that he did something wrong when he got out. He had good intentions to care for the baby who was not born until November 2014. Tr.p. 8-9.

However, while deciding to stay out, he decided to try to care for his family the wrong way, which they have talked about. Lake stated that his client understand now that he needs to take opportunity of the classes available in the prison facility and he has gone through ATU, parenting and critical thinking classes to train him to make better decisions. As an additional reason for a reduction and atonement, Lake pointed to the fact that he now has a young child and showed Judge McLeod his photograph. Lake urged that what he has done has also had an effect on his daughter who is 15. Lake noted that his mother, girlfriend and daughter were here and wanted to

talk about the effect on her in their relationships. His daughter wants an opportunity to see her father to develop a better relationship. Lake stated that Lee understands he will not get out next week and if you give him a sentence of 12 years he become parole eligible in 2025. Lake urged that 12 years is a significant sentence. Tr.p. 10.

Lake indicated that one reason that he thought Drylie asked for reconsideration of the sentence was that it was a significant sentence based upon the plea when Lee had accepted responsibility for this incident since he was taken down to SCDC and came back to plead guilty. He never asked for a jury trial or other kinds of things and wanted to start the process moving according to Lake. Tr.p. 11.

Lake stated that Lee has a support system and he knows better because his mother raised him better than that. Lake stated that he was 38 and received a GED. With the classes, Lake contended that Lee understands the impact he had on his family and that his old lifestyle he led is only going to lead to incarceration. Tr.p. 11

Lake further urged that on the original trafficking sentence of ten years, he will still have an additional 2 years of monitoring. Again, Lake urged that Court that a 12 year sentence reflects the fact that he did not turn himself in on time and that he got himself into more trouble. Although this would represent a 6 year reduction from the 18 years given by Judge McMahan, they seek the opportunity to be part of his family's lives. Tr. 12

Lake stated that he had spoken with the family that they would be given the opportunity to speak at a later time and no decision about resentencing would be made this date. Counsel lake stated that his client understood it, Tr.p. 12. Judge McLeod inquired of the Applicant concerning whether he would agree to allow the second proceeding on WebEx to proceed in his absence.

Judge McLeod indicated he would allow his family to speak as long as they would like. Lee indicated that he consented to the matter proceeding in the future. Tr.p. 13.

Lee then indicated that he admitted what he did was wrong and that he had made “dumb decisions.” He was aware of the pain that he had caused his family and children. He stated that his daughter resented me because he lied to her and she lost trust in him because he said that he would never leave her again. Tr.p. 13. Lee described the pain in his daughter’s eyes and he did not want it to be the same with his little boy. He stated that he was trying to get out and had a trade cutting hair as a barber and wanted to be a productive and good father. Tr.p. 14.

Counsel Lake followed up with information that Lee had been acting as a barber the entire 5 years he has been in prison. Lake contended that Lee had picked up a trade and skills that will allow him to not be standing again before the court in the future. He learned that Lee would eventually look to start his own shop in the future. He learned these skills after he went to jail and did not have them before. He was asking for the opportunity to come home a little earlier and to allow him to build that trust and relationship with his family. Tr.p. 15.

The prosecutor, Douglas Fender stated that the Applicant was 38 years old and his criminal career started when he was 18. Tr.p. 15. Assistant Solicitor Fender noted that Lee had been caught for possession with intent to distribute crack which was pled down to possession of crack and convicted of trespassing that same year. In 2002, he was convicted of distribution of crack within the proximity of a school. Solicitor also indicated distribution of crack, second offense three years later, possession with intent to distribute, second offense in 2013, unlawful neglect of a child (2013), distribution third offense (2015) and graduated to trafficking (2015). The prosecutor indicated that Lee had been in serious trouble with drugs +five different times over 15 years, with four chances to get it right. He stated he had been given an 18 year sentence the last time. The

solicitor noted that even with a taster of what it is like behind bars, when he gets out he continues to be involved in drugs. Tr.p. 16.

The State urged that the sentence Judge McMahon gave when he heard the facts was appropriate. Fender based this upon the fact that he continued to commit crimes when he was released despite the graduated sentences. Although counsel Lake's arguments made a compelling case for the Applicant, the State position was to not give the Applicant another chance and the defense was only asking Judge McLeod to release this criminal sooner. The prosecutor stressed the impact of drugs in Edgefield. The people that come before the court are struggling and have issues with addiction that leads them to commit crimes leading to job loss and families. The prosecutor described Lee as a career drug dealer which is what got him the 18 year sentence. He closed with asserted the earlier sentence was an appropriate sentence. Tr.p. 17-18.

Counsel Lake urged that the law allows for a sentence to be reconsidered. However he also urged that "no man is as bad as his worst days." He disagreed with the state's assertion that he was bound by Judge McMahon's decision. . He stated that people do change and his bad decision does not mean that Lee is incapable of change. He described the impact of his daughter's eyes and the significance of his crimes impact upon her with her hurt and the hatred towards him. Counsel closed with requesting a twelve (12) year concurrent sentence, two more years than the prior sentence of ten (10) years he was already serving. Tr.p. 19.

THE NOVEMBER 19, 2020 WEBEX RECONSIDERATION HEARING

At the second hearing on the motion for reconsideration before Judge McLeod, the Applicant presented his family members on WebEx. The first witness was his mother, Maurice Butler. She told the court that she knew her son had made a mistake and that he was raised better

as a Christian. She wanted him to be reduced for the children and he loves his kids. She stated that she tried her best and had talked to her son. She stated that he understands what he did. She asked for a lesser sentence a little bit so as to allow him to get back to his children and to get into the church.

The Applicant's girlfriend, Erica Coleman spoke next. She stated that when they met he helped with her children doing go things that a father would do like giving Christmas and birthday gifts. She stated that she became pregnant early on in their relationship. She said that they hoped to have their child born before he had to turn himself in, However, when that time came to turn himself in, the child had not been born. She stated that Lee decided to not turn himself in then and stay out for the child's birth. She said that in the past five years, the Applicant had changed from a boy to a man and stopped communicating with his past network and communicated with a different group. She asked the court to allow for him to get a chance to spend time with their son's childhood rather than when he is 18 years old. She also said he had seen his daughter since incarcerated. She thought he would be able to tell his story help a lot of men to know what to do and what not to do.

His oldest daughter Jashawna Lee stated that the Applicant knows what he did was wrong and that he is responsible for it. She felt that if he got a chance to come home he could change things and make everything right. She also stated that this would be good for her brother because this is his first time experience with this. She stated that she graduates in a couple of years and would like to have her father home. She asked the court to be lenient and reduce the sentence.

SUMMARY OF EVIDENCE FROM THE POSTCONVICTION RELIEF HEARING

TESTIMONY OF SHAWN LEE

The underlying case concerns the Applicant's guilty plea to distribution of crack cocaine on indictment 2015-GS-19-00212 and arrest warrant 2015A1910100178. In the arrest warrant, it sets out the charges as follows:

That on [October 21, 2014] one Shawn Lendell Lee did knowingly, willfully, intentionally and unlawfully sale, transfer and or distribute to a Confidential Informant known to Edgefield County Sheriff's Office a quantity of an off whitish rock type substance believed to be Crack Cocaine, a Schedule II Controlled Substance for a certain amount of documented ECSO funds. Saaid Confidential Informant and Surveillance Officers are prepared to testify to the same. This violation did occur at approximately 3:52 p.m. at or near 15 lassie lane, Trenton, S.C. 29847. Same being in Edgefield County.

State v. Lee, 2015A1910100178. In the sentencing sheet, it indicated that charge "as indicted" and the plea is "without Negotiations or Recommendation" was checked.

The Applicant testified that he was represented by Erik Drylie. Lee was in custody prior to the plea and contended that counsel met with him one time. He claimed that counsel stated that because he was already incarcerated on a different trafficking charge that we were going to go ahead and plead guilty. Lee clarified that he was locked up on this charge while he was serving a ten year sentence for a different charge for trafficking in cocaine.⁴ Lee stated that ultimately it was always a plea deal rather than a trial. Lee asserted that Drylie advised him that since he was already doing 10 years for trafficking that he should plead guilty and it would run concurrent. He claimed that it was his understanding that that it would be 10 years running concurrent with 10 years. He stated that that is not what happened though. He stated that he had to file a motion for

⁴ The prior 10 year trafficking conviction was from Saluda County.

reconsideration that was not heard for 5 years. It was heard by Judge McLeod in Edgefield. Lee stated that he did not have any complaints with Mr. Lake.

On cross-examination, the Applicant contended that Mr. Drylie told him that he should receive a 10 year concurrent sentence. He stated that he advised Judge McLeod in the reconsideration hearing that he had been given a promise of a 10 year sentence.⁵ He confirmed that he had a second reconsideration hearing because his family was unable to attend the first hearing to speak on his behalf. He claimed he was not at the second reconsideration hearing because he was not allowed.⁶ Lee indicated after the reconsideration hearings he was still ended up with the same sentence.

Lee further stated that he was aware that he had a right to a jury trial when he entered the plea and that he indicated to the plea judge that he was satisfied with Drylie. He admitted that the plea judge went over the range of punishment that he was facing. He stated that he did not indicate to the judge that he had a promise of 10 years and claimed he spoke with Drylie and he said to go along with whatever the judge says and to answer “no.” He confirmed that after the sentence he wanted the sentence to be reconsidered because he claimed that he was not aware he was going up on an open plea. Lee stated that Drylie filed the motion for reconsideration.

⁵ Contrary to this testimony, during the reconsideration hearing, all the Applicant specifically asked for was leniency. Tr. p. 15, l. 17-18. There was no reference to any promise of a 10 year sentence. Further, counsel Lake stated at the reconsideration hearing that he had told Lee he was not asking for the same 10 year sentence, but was asking for a 12 year sentence. Tr.p.8, l. 17-22. See also Tr.p. 10, l. 20-p. 11, l. 13, p. 12, l. 6-12, p. 19, l. 14-19.

⁶ This may not accurate based upon a review of the reconsideration hearing. During the first reconsideration hearing, the later WebEx hearing with his family was discussed by Judge McLeod. He stated who stated it might be tough to get a WebEx hearing set up. At that time, Lee stated he was OK with it proceeding without him being present. Lee stated he consented to not having to be there. Tr.p. 13, 1-25. Lee was not present during the second reconsideration hearing.

Lee stated that when he told the plea court that he was guilty, that he was telling the truth. He stated that he was guilty of the charges.

On re-direct, Lee indicated that he was aware that the solicitor was pushing them hard so Drylie indicated to him that we're going in and plead guilty. He stated that 10 years came into his head because Drylie was saying the judge would go along with what he's already doing. Lee stated that this meant to him that he was going to get the 10 years he was already serving. Lee also said he wondered why he was not signing any type of negotiation paperwork. Lee stated that after sentencing he was upset with the 18 year sentence because he was not expecting it. He thought was that he had not been shown any paperwork and no motion to even fight to see what type of evidence they had on him under Rule 5. Lee stated that he had those materials now. Lee stated that Drylie did explain the facts of the case to him when he explained to him that it was a controlled buy. He stated that he asked who it was, but that he did not receive the information from counsel.

This Court inquired what Mr. Drylie ask the Court for. Lee indicated to the Court that the State left it up to the court's discretion and Drylie asked for 10 years.

On re-cross, Lee thought that he signed the sentencing sheet which included that it was checked "without negotiations or recommendation" after he received a sentence.

TESTIMONY OF DIETRICH LAKE

Counsel Dietrich Lake testified that he was the attorney on the motion for reconsideration which had been pending for about 5 years. When he got hired he reached out to the Public Defender's Office and learned that Drylie was now working in the Solicitors Office. Lake testified that he was trying to figure out why the motion had been pending so long. He stated that he tried to subpoena the file to find out what they had before the hearing, but Lake had not received discovery from anyone. Lake stated he reached out to the Solicitors office and tried to reach the

solicitor. He recalled having a conversation with Drylie and how they no longer had a file. Lake stated that he called Doug Fender who gave him some background and ended up scheduling the matter around the time COVID hit. He stated that Assistant Solicitor Fender was coordinating the matter because Drylie was working in the Solicitor's office at the time. Lake stated that he spoke with Fender on whether he would agree to reduce it but Fender indicated that he would leave it up to the judge. Lake stated that he spoke with Drylie as well. Lake specifically recalled speaking with Drylie about a 10 year sentence and Erik indicated that he was surprised about the sentence, but Lake did not think Drylie gave him a specific amount of time and knew that there was nothing specifically negotiated. This was a reason why Lake indicated as the basis for only asking for a 12 year sentence at the reconsideration hearing. At the time of reconsideration hearing, Judge McMahon had already retired. Lake said he attempted to speak with Drylie about getting the sentence reduced, but that because he was in the solicitor office at that time he could not get involved, although they spoke on several occasions. Drylie indicated to him after the hearing that he was frustrated with the process because of his new employment.

Lake stated that he visited with the Applicant on several occasions, spoke with his family and spoke on the telephone with him. Lake indicated that the biggest facts working against the Applicant was that it had been a long time since the motion had been filed and his family was not at the original plea. He recalled that his client had told him that he had not seen the videos of the controlled buy. However, Lake indicated that he could never confirm what the nature of the sentence was supposed to be.

On cross-examination, Lake clarified that while Lee "believed" he thought 10 years concurrent, Lake was unable to confirm those terms and no record of anything. Lake stated he was just trying to strike a balance between what the State wanted and what Lee wanted, hence 12

years. Lake confirmed that they agreed to do the second part of the reconsideration hearing on WebEx. Lake stated he recalled the judge asking Lee about being present because of the logistics of the WebEx and Lee agreed not to be present. The Applicant motion for reconsideration was denied after the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon its review of the records provided, the testimony from each of the witnesses and credibility determination, this Court is constrained to deny post-conviction relief in its entirety. The Court makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. §17-27-80.(2023) (a PCR court must “make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented”). *Fishburne v. State*, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019) (“The PCR court's general denial of all claims not specifically addressed in the PCR court's order ‘does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.’ ” (quoting *Simmons v. State*, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016))); *id.* at 517, 832 S.E.2d at 590 (remanding the matter “to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order”); *id.* at 516, 832 S.E.2d at 589 (explaining that “because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming ... to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80”).

CRITICAL LEGAL STANDARDS

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRPC. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

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). When reviewing a guilty plea, 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 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, 369, 137 S. Ct. 1958, 1966 (2017). However, the 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. Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. *Lee v. United States*, 582 U.S. 357, 369, 137 S. Ct. 1958, 1967, 198 L. Ed. 2d 476 (2017)

Judges must “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Lee*, 582 U.S. at 369, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). 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). See *Jordan v. State*, 297 S.C. 52, 54, 374 S.E.2d 683, 685 (1988) (finding counsel deficient for failing to draw the plea court’s attention to

the terms of a plea agreement and subsequently move to withdraw his client's plea after the State breached the terms of the agreement). *Lee v. U.S.*, 582 U.S. at 367 (“Where a defendant has no plausible chance of an acquittal at trial, it is highly likely that he will accept a plea if the [State] offers one.”)); *cf. Jordan*, 297 S.C. at 54, 374 S.E.2d at 685 (finding PCR applicant demonstrated he was prejudiced by counsel's failure to withdraw his plea because the record showed his “original vehemence” in pursuing a trial). Accordingly, counsel's performance was not deficient even though he related his belief to respondent that the court would give a twenty-two year sentence instead of the thirty years respondent received. *See Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact defendant “hoped” and “expected” to get reduced sentence does not render plea invalid; “wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences”); *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984) (fact defendant “thought” judge would give lighter sentence not ground for relief); *State v. Dozier*, 263 S.C. 267, 210 S.E.2d 225 (1974) (disparate sentences between co-defendants is not per se abuse of discretion); *cf. Knox v. State*, 340 S.C. 81, 530 S.E.2d 887 (2000) (to be knowing and voluntary, plea must be entered with awareness of consequences of plea, i.e. proper advice by judge on mandatory minimum sentencing). *Accord, Griffin v. State*, 361 S.C. 173, 177, 604 S.E.2d 394, 396 (2004) . In *Griffin*, trial counsel's act of advising defendant that he would likely receive a sentence comparable to codefendant's twenty-two year sentence if he entered guilty pleas to a number of charges was not deficient performance, as element of ineffective assistance claim, even though defendant received thirty-year sentence. The Court found counsel informed defendant there were no plea negotiations and informed defendant of the possible range of sentences, plea court informed defendant prior to entering plea of the maximum sentences he could receive, and when plea court asked defendant whether he understood there were no promises made regarding guilty

plea, defendant's answers reflected an awareness of potential range of sentences and an understanding that he had not been promised anything in return for guilty plea.

GENERAL LAW RELATED TO MOTION TO RECONSIDER OR REDUCE SENTENCES.

Rule 29 of the South Carolina Rules of Criminal Procedure authorizes a post-trial motion such as a sentence reconsideration. It states:

(a) Generally. Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence. In cases involving appeals from convictions in magistrate's or municipal court, post-trial motions shall be made within ten (10) days after receipt of written notice of entry of the order or judgment disposing of the appeal. The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial or hearing was held. The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument.

Rule 29(a), SCRCrimP. (emphasis added).

The authority to change a Defendant's sentence rests “solely and exclusively in the hands of the sentencing judge within the exercise of his discretion.” *State v. Smith*. 276 S.C. 494, 280 S.E.2d 200 (1981) (citing *State v. Cagle*. 241 N.C. 134, 84 S.E.2d 649, 653 (1954)). Our State Supreme Court has also said, “it is the established rule in this State that this Court has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law and in the discretion of the Trial Judge, and is not the result of partiality, prejudice, oppression or corrupt motive.” *State v. Hall*. 224 S.C. 546, 547, 80 S.E.2d 239 (1954). In a post-trial motion such as a motion to reconsider a sentence, an issue may not be raised for the first time. *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); *State v. Geer*. 391 S.C. 179, 705 S.E.2d 441 (Ct. App. 2010).

The Court is not concerned with balancing prejudicial impact with probative value when reviewing evidence used in the sentencing phase of a non-capital crime because evidentiary rules are inapplicable in a sentencing proceeding. Rule 1101(d)(3), SCRE; *State v. Gulledge*, 326 S.C. 220, 228-29, 487 S.E.2d 590, 594 (1997); see also *Williams v. New York*, 337 U.S. 241, 69 S.Ct. 1079, 93 L.Ed. 1337 (1949). In sentencing a convicted defendant a trial court is only limited by constitutional provisions that require the evidence to be relevant, reliable and trustworthy. See *Gulledge, supra*.

In *State v. Warren*, 392 S.C. 235, 708 S.E.2d 234 (Ct. App. 2011), the Court found a request for reconsideration of sentence was untimely, where defendant filed timely posttrial motion to withdraw guilty pleas, then moved over three years later to amend the still-pending posttrial motion by requesting reconsideration of sentence and specifically abandoned the original request to withdraw pleas. The Court therein held that the trial court lost jurisdiction when the defendant abandoned the original motion and requested sentence reconsideration for the first time more than three years after the original motion to withdraw was made.⁷

Although not binding, the Court found persuasive an analogous situation in the unpublished decision in a case where an applicant had contended that his counsel should have filed a motion to reconsider his sentence but did not. In *Cwiklinski v. State*, No. 2019-002075, 2024 WL 3813162, at *3 (S.C. Ct. App. Aug. 14, 2024), the applicant argued that there was a

⁷ In *State v. Higgenbottom*, 344 S.C. 11, 542 S.E.2d 718 (2001), the Supreme Court held that a defendant's right to due process was violated when trial court denied defendant's request to reduce sentence, and instead, increased probationary sentence by six months without putting on record objective reasons for imposing harsher sentence.

reasonable probability the plea court would have granted a motion to reconsider because evidence in the record supported the reduction of his sentence. The Court of Appeals stated:

We hold the PCR court did not err in denying Petitioner's application for PCR based on his ineffective assistance of counsel claim because Petitioner failed to establish plea counsel's failure to file a motion to reconsider prejudiced him. *See Strickland*, 466 U.S. at 687 (holding that to establish a claim of ineffective assistance of counsel, a PCR applicant must show (1) counsel rendered deficient performance and (2) counsel's deficiency prejudiced the defendant's case); *id.* at 694 (stating that to demonstrate prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different”); *id.* at 700 (“Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”). Petitioner presented no mitigating evidence to the PCR court that the plea court had not already considered. *See Jones v. State*, 332 S.C. 329, 338-39, 504 S.E.2d 822, 826-27 (1998) (affirming the denial of PCR and finding the defendant was not prejudiced by counsel's failure to “fully explore[] the mitigating circumstance of his mental incapacity” because the additional evidence about the defendant's mental impairment “would not have revealed anything significantly different than that which the jury was presented” when the issue of the defendant's mental condition was clearly before the jury, the trial court charged several other mitigating factors relating to mental condition, and the jury found the existence of five aggravating factors). At the time of sentencing, the plea court was aware of the evidence Petitioner argues supports the reduction of his sentence. The plea court knew no injuries resulted from the shooting, heard from the victim that he supported Petitioner, read the letters sent in support of Petitioner, and considered other mitigating evidence the plea counsel presented related to Petitioner's family history, mental health, and education when determining his sentence. After considering this evidence, the plea court stated it found Petitioner's actions “stupid[,] incredibly dangerous ... scary[,] ... [and] surreal.” The plea court also stated that it believed justice was tempered with mercy because the State allowed Petitioner to plead guilty to a lesser-included offense instead of the attempted murder charges.⁴ The plea court then imposed a sentence that was within the statutory ranges for each of these offenses. *See Garrett*, 320 S.C. at 356, 465 S.E.2d at 350 (stating a court “is allowed broad discretion in sentencing within statutory limits”); S.C. Code Ann. § 16-3-600(B)(2) (2015) (requiring a person convicted of ABHAN to be “imprisoned for not more than twenty years”); S.C. Code Ann. § 16-23-490(B) (2015) (requiring that a person convicted of possessing a weapon during the commission of a violent crime be sentenced to a mandatory five-year sentence to run consecutively or concurrently). Because Petitioner points only to evidence the plea court had already considered when it sentenced him, Petitioner has supplied no basis upon which the plea court would have granted his motion to reconsider. Thus, we hold the evidence supports the PCR court's finding there was no reasonable probability that but for plea counsel's alleged deficient performance, the plea court would have granted Petitioner's motion to reconsider

his sentence. *See Strickland*, 466 U.S. at 694 (stating that to demonstrate prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different”). Accordingly, we hold Petitioner failed to establish prejudice, and the PCR court did not err in denying his PCR application. *See Franklin v. Catoe*, 346 S.C. 563, 577, 552 S.E.2d 718, 726 (2001) (“In order to obtain relief on an ineffective assistance of counsel claim, a PCR applicant must establish both that his counsel’s performance fell below an objective standard of reasonableness and that he was prejudiced by counsel’s deficient performance.”); *Strickland*, 466 U.S. at 697 (stating “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one”).

Cwiklinski v. State, No. 2019-002075, 2024 WL 3813162, at *4 (S.C. Ct. App. Aug. 14, 2024).

Allegation One: Counsel was ineffective in filing to have his timely motion for Reconsideration heard by Judge McMahon prior to his Retirement in June 2018.

In his allegation, as amended, the Applicant contends that his plea counsel Erik Drylie was ineffective in failing to have his timely filed motion for reconsideration heard by Judge McMahon before he retired. The Applicant speculate that Judge McMahon would have reduced his sentence, something that Judge McLeod failed to do. This Court finds that the Applicant failed in his burden of proof to show a Sixth Amendment violation.

This Court initially finds that counsel was not deficient as it related to the request for sentencing reconsideration pursuant to Rule 29(a). Counsel filed a timely motion for reconsideration on September 8, 2015 from the August 31, 2015 sentence of 18 years for distribution of crack cocaine, under 44-53-375 (b)(3). The punishment for the crime carried between 10 to 30 years. This Court finds that the 18-year sentence was within the statutory requirements for the charge. This Court further finds that the sentencing sheet reflects it was “without negotiation or recommendation.” Further it reflects that neither “negotiated sentence” nor “recommendation by the State” was checked. Presuming the regularity of the proceedings, this

Court would find that it appears the August 31, 2015 plea was a straight up plea, leaving it to the discretion of the plea judge to sentence between 10 and 30 years. To the extent it is being made, this Court rejects any assertion that there was a plea agreement with the State for a 10-year concurrent sentence.

A review of the motion for reconsideration reflects the basis was simply that counsel Drylie asked “this Court to reconsider his sentence of 18 years that was imposed on him on August 31, 2015.” A salient point to the motion is what it did not state. The motion did not contend that it was product of an unkept plea bargain and it did not request the ability or a basis to withdraw the guilty plea. In essence, it only asked the plea judge, in his discretion, to “reconsider his sentence of 18 years that was imposed on him.”

It is unclear to this Court why the motion for new trial was not acted upon until November 2020. However, factors to that included Judge McMahon’s retirement in June 2018 and the transfer of employment by Erik Drylie to the Eleventh Circuit Solicitor’s Office. This Court finds that when the Applicant filed his PCR action in April 2019, no action had occurred on the motion for reconsideration. This Court also finds that prior to November 2020, Mr. Drylie had become a member of the Eleventh Circuit Solicitor’s Office and no longer could represent the Applicant. [it is unclear from the record when Drylie left the Public Defender’s Office or whether he had interim employment or when he began working at the Solicitor’s Office].

However, it is pure speculation that had Judge McMahon heard the reconsideration hearing that there is a reasonable probability that the result of the proceeding would have been different than occurred than when Judge McLeod heard the matter. Assuming arguendo that counsel Drylie was deficient in having the matter heard while Judge McMahon was sitting and while he was still representing the Applicant, he has failing to show 6th Amendment prejudice. This Court finds,

albeit belatedly, the Applicant's motion for reconsideration was heard by Judge McLeod who was able to consider the arguments for a reduction which the hearing judge did not find compelling to reduce the earlier sentence to the requested 12 year sentence.

Related to these conclusions is the Court's finding that the guilty plea was not the result of any plea bargain for a 10 year concurrent sentence or advice from the Applicant's earlier counsel that he would receive a 10 year concurrent sentence. This finding is made more difficult by the fact that a transcript of the guilty plea proceedings was not available. However, during this proceeding, the Applicant confirmed that the State had indicated that it asked for the sentence to be given by Judge McMahon in its discretion. Further, the Applicant indicated that his counsel did ask at the plea for a 10 year sentence. Further, the sentencing sheet which the Applicant signed indicated that it was without negotiations or recommendations, suggesting that it was a straight up plea. In addition, the Applicant confirmed he claimed he indicated at the plea that there were no promises, but indicated that prior to the plea his plea counsel indicated to him to go along. This Court further notes that reconsideration counsel indicated that he was unable to confirm the existence of any agreement for a ten year offer prior to the 2020 reconsideration hearings which was why he asked for the 12 year sentence. The Applicant acknowledge that he had not signed any plea negotiation paperwork. This Court rejects as not credible the Applicant's testimony that his counsel told him that he should plead guilty and that his sentence would be concurrent, which meant to him that it would be 10 years concurrent. Although the Applicant denied signing it until after his sentence,⁸ the sentencing sheet he signed indicated it could be a sentence from 10 to 30

⁸ This assertion of signing the sentencing sheet after the sentence in a guilty plea proceeding is contrary to the normal practice in having the defendants sign and review the sentence sheet prior to the entry of the guilty plea and sentencing by the court. This Court does not find that assertion by the Applicant credible.

years and was “ without negotiation or recommendation.” The Applicant acknowledged that the plea judge went through the full range of punishment of 10 top 30 years. The Court finds additionally persuasive the fact that the motion for reconsideration was not based upon an unkept promise of a 10 year concurrent sentence but only for reconsideration. There was no agreement for the minimum 10 year sentence.

This Court can take judicial notice that at the time of his guilty plea on the Edgefield charge he had already been convicted in Saluda Couty of trafficking in cocaine and possession of marijuana and had received a 10 year sentence, which is also reflected in the SCDC records before this Court. *State v. Lee*, 2014-GS-41-31, when he received a negotiated sentence of 10 years by Judge Keesley on May 27, 2014. The Edgefield charge before this Court occurred on October 24, 2014, subsequent to the sentence of Judge Keesley and the 10 year sentence.

As the motion for reconsideration acknowledged,

On May 27th, 2014, Shawn Lee pled guilty to trafficking cocaine more that 10 grams but less that 28 grams, 3rd offense. He was directed to report to the Saluda jail on August 4, 2014 to begin serving his [Saluda] sentence. **He did not report.** He was then arrested in Edgefield County on April 2, 2015 and charged with distribution of crack cocaine, possession with intent to distribute crack cocaine , and child endangerment...

Motion to Reconsider Sentence, September 8, 2015.

In denying relief after the two reconsideration hearings, Judge McLeod, held :

In reviewing the materials provided by the parties, the Court has sought to evaluate newly provided documents and determine if reconsideration is appropriate and whether such reconsideration would still ensure justice is appropriately rendered. In light of all the facts and circumstances, this Court believes that reconsideration is not appropriate and declines reconsideration accordingly.

State v. Lee, Order, 2015GS1900212, November 30, 2020 (McLeod) (order denying reconsideration).

The Applicant's assertive belief that he thought he should receive a 10 year sentence concurrent to his 10 year sentence that he was given before he committed the instant crime and was evading service was merely a unbelievable hope that did not undermine the voluntariness of the plea and is further supportive of the this Court's finding that the Applicant has failed to show any reasonable probability that the result of the motion for reconsideration that the result of that proceeding would have been different if done before Judge McMahon.

CONCLUSION

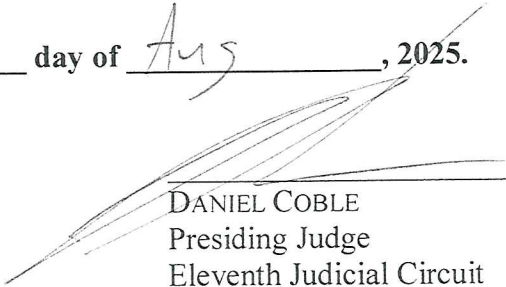
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies 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), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

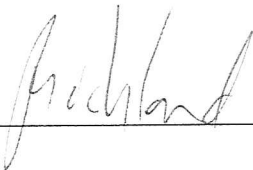
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 5 day of Aug, 2025.



DANIEL COBLE
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina