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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S. Bryan Doby, Circuit Court Judge

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Case No. 2024-CP-24-00907

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State of South Carolina,

Respondent,

v.

Zy'tawn Kenias Childs, Appellant.

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# NOTICE OF APPEAL

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Zy'tawn Kenias Childs appeals the order of the Honorable S. Bryan Doby dated July 11, 2025 and entered on July 21, 2025 denying the Applicant's application for post conviction relief.

Additionally, the Applicant appeals the denial of his Motion to Reconsider, Alter, or Amend Judgment, which was filed pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure. The Motion to Reconsider was denied by the Honorable S. Bryan Doby on September 26, 2025.

This Notice of Intent to Appeal is filed pursuant to Rule 203 of the South Carolina Appellate Court Rules (SCACR).

{signature to follow}

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| STATE OF SOUTH CAROLINA | ) | COURT OF COMMON PLEAS |
| | ) | FOR THE 8th JUDICIAL CIRCUIT |
| COUNTY OF GREENWOOD | ) | Case No.: 2024-CP-24-00907 |
| Zy-Tawn Keinas Childs, #390397, | ) | |
| Applicant, | ) | **ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT** |
| v. | ) | |
| State of South Carolina, | ) | |
| Respondent. | ) | |

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Zy'Tawn Keinas Childs ("Applicant") on August 23, 2024. On July 11, 2025, this Court issued an order denying and dismissing Applicant's PCR application with prejudice.

On July 31, 2025, Applicant filed a motion to alter or amend the Court's order pursuant to SCRCP 59(e). After careful consideration of the record and evidence presented before the Court, this motion is denied.

**AND IT IS SO ORDERED.**

S. BRYAN DOBY
PRESIDING JUDGE, 8TH JUDICIAL CIRCUIT

9/22, 2025
Bradford, South Carolina

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| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENWOOD | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE EIGHTH JUDICIAL CIRCUIT |
| Zy'Tawn Keinas Childs, #390397,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | Cases No. 2024-CP-24-00907<br><br>**ORDER OF DISMISSAL** |

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Zy'Tawn Keinas Childs ("Applicant") on August 23, 2024. An evidentiary hearing was held on April 3, 2025, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by J. Falkner Wilkes and Robert C. Childs, III. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant submitted a memorandum in support of his PCR claims entitled "Applicant's Memorandum on the Suppression of Drug Evidence." Respondent subsequently submitted a memoradum in response.

After reviewing all records and evidence before the Court, as well as the legal arguments made by the attorneys on both sides, this Court finds Applicant has not met his requisite burden of proof to warrant granting post-conviction relief. The Court finds as follows:

## PROCEDURAL HISTORY

During the September 2021 term, the Greenwood County Grand Jury indicted Applicant for homicide by child abuse (2021-GS-24-1707). Applicant subsequently waived presentment of indictments for resisting arrest (2023-GS-24-0441) and possession of methamphetamine (2023-GS-24-0442). Applicant was represented, first by Tristan M. Shaffer, Esquire, and then by Colie

J. Stancil, Esquire (collectively, "Counsel"). Deputy Solicitor C. Yates Brown, of the Eighth Circuit Solicitor's Office, prosecuted the case.

On February 27, 2023, Applicant appeared before the Honorable Eugene C. Griffith and pled guilty as indicted. Judge Griffith sentenced Applicant to twenty-three (23) years' imprisonment on the charge of homicide by child abuse and time served on the other two charges. Pursuant to a global plea agreement, the State dismissed multiple additional charges.

Applicant sent a *pro se* letter to the South Carolina Court of Appeals on March 8, 2023, which that court construed as a notice of appeal. On August 24, 2023, the court of appeals directed Counsel to cure the deficiencies present in Applicant's *pro se* notice of appeal. Counsel subsequently filed an amended notice of appeal and guilty plea explanation on September 1, 2023. The court of appeals dismissed the appeal on September 20, 2023. Counsel filed a motion to reconsider the order of dismissal and reinstate the appeal on October 5, 2023, which was denied. The remittitur was sent on December 5, 2023.

## FACTS PRESENTED AT THE GUILTY PLEA HEARING

The solicitor summarized the underlying facts at the guilty plea hearing as follows:

> Judge, this happened back on April 28, 2021, with the child homicide. Mr. Childs was in the care of his daughter, India Childs, who was approximately a year old. His child was with his grandma -- with the grandmother earlier in the day. And the child was dropped off with Mr. Childs.
>
> Law enforcement got the call when they received information from the hospital that an infant or one-year-old had been brought there unresponsive, and then ultimately died there, or was pronounced dead there at the hospital. The attending physician didn't notice any kind of trauma to the outside of the body. They ended up having to do tox -- an autopsy. And when the tox came back, it did show that India Childs overdosed from fentanyl.
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> And after speaking with Mr. Childs there at the hospital, law enforcement went to the house, or the -- the home where India Childs and Zy'Tawn Childs were. They looked around. And they

did see there was a bag of fentanyl by the bedside -- that was on bedside table next to the bed. And it was opened.

They then talked to Mr. Childs. And I think he admitted at that point that he got home from work. He had taken some pills. He didn't realize the bag was still open, but it was open. The child -- they laid down the bed to watch TV. And the child got into the pills and ultimately consumed the pills and died as a result.

He then was out on bond from that. And -- well, this actually happened while he was out on probation for a distribution of fentanyl. That was a 2020 conviction, along with the other convictions that are on the information sheet that I provided you. He was out on probation for that. I believe it was a BOPHAN, pistol charge, distribution of fentanyl, and then this happened, where he's got another bag of fentanyl, where his child dies.

Mr. Childs then got another bond after the child homicide. And while out on bond for that, he is stopped as a traffic violation. Officers pull him over. They smell marijuana in the vehicle; get him out. They understand or know that he's on probation and out on bond at that time. They do find that he's in possession of methamphetamine. While they have him detained on the roadside, he runs from them. He goes and hides in the woods. They have to get dogs out. They, ultimately, make the arrest. So that's where the resisting and the possession of meth come from.

(Plea Tr. pp. 8–10).

## CURRENT APPLICATION

On August 23, 2024, Applicant timely filed an application for PCR. Applicant raises the following claims as grounds for relief:

1. "Ineffective assistance of counsel"
   a. Trial counsel failed to properly investigate the case, interview witnesses, understand the medical evidence, prepare a defense, research prepare and move to suppress illegally obtained evidence, to properly hand off and ensure adequate representation when counsel changed within the office, failure to take appropriate measures to allow new counsel to be properly prepared before the case was placed on the docket, to prevent undue pressure on the Applicant to plead guilty and suffer probation revocations because newly appointed counsel appeared ill-prepared to proceed to trial, failure to properly advise the Applicant on the procedure and merits of his case and any plea offers so as to allow

> Applicant to make an informed decision as to whether or not to enter a guilty plea or proceed to trial.

As requested relief, Applicant seeks "[t]o have the conviction(s) and sentence(s) reversed, set aside, and new trials granted and probation revocations reversed or remanded and probation reinstated."

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

### *INEFFECTIVE ASSISTANCE OF COUNSEL*

Applicant alleges Counsel was ineffective for failing to file a motion to suppress the drug evidence found at his residence as "fruit of the poisonous tree," since the search warrant whose execution led to the discovery of the drugs was itself partly based on evidence obtained during a prior, warrantless "sweep" of the residence. Applicant claims that, if counsel had moved to suppress the drugs, the motion would likely have succeeded, and Applicant would not have pleaded guilty but would have insisted on going to trial.

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). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. *Id.* at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* at 668.

In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). *Strickland*, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Id.*, *see also Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Rather, Counsel's performance, even if "far from exemplary," will only be found deficient if "no competent lawyer" would have acted the same way. *Dunn v. Reeves*, 594 U.S. 731, 739 (2021).

To satisfy the second, or "prejudice," prong of *Strickland*, an applicant must demonstrate counsel's deficient performance prejudiced him such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In the context of a guilty plea, the applicant must show that there is a reasonable probability that, but for counsel's

alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee v. United States*, 582 U.S. 357, 368–69 (2017) (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'").

This Court finds Applicant has not met his burden of proving that Counsel was deficient for failing to file a motion to suppress. Counsel credibly testified at the PCR hearing that they considered the possibility of filing a suppression motion on the grounds that the initial warrantless "sweep" of Applicant's residence tainted the subsequent search warrant; however, they were not confident of success because a trial judge might have decided that the other evidence in the search warrant affidavit was not tainted and was independently sufficient to establish probable cause. Reasonable lawyers may well have reached a different conclusion; however, that is not the relevant inquiry. To prove deficiency, Applicant must show that "no competent lawyer" would have acted as Counsel did. *Dunn*, 594 U.S. at 739.

It is also important to note that Counsel's conduct occurred in the context of plea bargaining. "[S]trict adherence to the *Strickland* standard [is] all the more essential when reviewing the choices an attorney made at the plea bargain stage." *Premo v. Moore*, 562 U.S. 115, 125 (2011). "Plea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks." *Id.* at 124.

> [T]he decision to plead guilty before the evidence is in frequently involves the making of difficult judgments. All the pertinent facts normally cannot be known unless witnesses are examined and cross-examined in court. Even then the truth will often be in dispute. In the face of unavoidable uncertainty, the defendant and his counsel must make their best judgment as to the weight of the State's case. Counsel must predict how the facts, as he understands them, would be viewed by a court. If proved, would those facts convince a judge or jury of the defendant's guilt? On those facts would evidence seized without a warrant be admissible? Would the trier of fact on those facts find a confession voluntary and admissible? Questions like these cannot be answered with certitude; yet a decision to plead guilty must necessarily rest upon counsel's answers, uncertain as they may be. *Waiving trial entails the inherent risk that the good-faith evaluations of a reasonably competent attorney will turn out to be mistaken either as to the facts or as to what a court's judgment might be on given facts.*
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> . . .
>
> Courts continue to have serious differences among themselves on the admissibility of evidence, both with respect to the proper standard by which the facts are to be judged and with respect to the application of that standard to particular facts. That this Court might hold a defendant's confession inadmissible in evidence, possibly by a divided vote, hardly justifies a conclusion that the defendant's attorney was incompetent or ineffective when he thought the admissibility of the confession sufficiently probable to advise a plea of guilty.

*McMann v. Richardson*, 397 U.S. 759, 769–70 (1970) (emphasis added).

The mere possibility that Counsel's appraisal of the likelihood of successfully suppressing the drug evidence might have been unduly pessimistic "hardly justifies a conclusion that [Counsel] was incompetent or ineffective." *Id.*; *see also Parker v. North Carolina*, 397 U.S. 790, 797–98 (1970) ("[E]ven if Parker's counsel was wrong in his assessment of Parker's confession, . . . we think the advice he received was well within the range of competence required of attorneys representing defendants in criminal cases. Parker's plea of guilty was an intelligent plea not open to attack on the grounds that counsel misjudged the admissibility of Parker's confession.").

Moreover, even if the fentanyl had been suppressed, Counsel testified the State's case

would not have been unwinnable: there was no denying that Victim had been left in Applicant's care for hours before she was found unresponsive and rushed to the hospital, where she ultimately died of a fentanyl overdose. The circumstances of Victim's death arguably supported the State's theory that Applicant had caused Victim's death through child abuse or neglect, even without the corroborating evidence that fentanyl was later found in the house. In addition, Applicant had given incriminating statements admitting that he kept fentanyl pills in a bag next to the bed where Victim was sleeping on the day of her death. While Counsel had discussed a possible defense on the theory that Victim had ingested a fatal dose of fentanyl sometime before she had been left with Applicant, both attorneys testified they did not think that theory was plausible given the typically rapid action of fentanyl and the fact that multiple hours passed before Victim was taken to the hospital.

Applicant faced a sentence of twenty years to life on the homicide by child abuse charge alone. He also had unrelated charges for resisting arrest and possession of methamphetamine arising from a separate incident occurring while he was out on bond. In addition, at the time of the homicide, he was on probation for distribution of fentanyl, possession with intent to distribute marijuana, carrying a weapon on school property, and breach of peace of a high and aggravated nature; he was facing substantial sentences on those charges due to the revocation of his probation. The State offered a global plea that would resolve all those matters and result in the dismissal of additional charges arising out of yet another incident; however, Counsel credibly testified that the solicitor intended to withdraw that plea offer if Applicant were to file a motion to suppress.

Therefore, even if the evidence obtained from the search warrant were patently inadmissible, it would not have been unreasonable for Counsel to advise Applicant that the risk of conviction at trial outweighed the benefits of rejecting the plea offer to make a suppression motion.

The suppression motion was not guaranteed to succeed; like many other trial strategies, it would have been a gamble. And even if the suppression motion had succeeded, Counsel could not be confident of an acquittal; the State still had substantial evidence to establish Applicant's guilt. Under such circumstances, in "the face of unavoidable uncertainty," it cannot be said that Counsel's decision was incompetent or ineffective. *McMann*, 397 U.S. at 769.

Weighing the risks and benefits of pleading guilty, compared with going to trial and gambling on the success of a suppression motion, "is precisely the sort of calculated risk that lies at the heart of an advocate's discretion." *Yarborough*, 540 U.S. at 9. Though it may be tempting to second-guess Counsel's performance with the benefit of hindsight, *Strickland* requires a more deferential review. The mere fact that different lawyers might have reached a different decision in those same circumstances does not, by itself, render Counsel's decision deficient.

Furthermore, the Court finds Applicant has not met his burden of proving prejudice. At the evidentiary hearing, Applicant testified that he would not have pled guilty had he known the fentanyl evidence was likely to be suppressed but would have insisted on a trial. Counsel, on the other hand, testified Applicant had no interest in going to trial but directed Counsel to work out a plea deal. Counsel testified that Applicant was motivated by his remorse and by his desire not to make his family relive the tragedy by going through trial.

A reviewing court "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*, 582 U.S. at 368. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.*

The Court finds Counsel's account is more consistent with "contemporaneous evidence"; namely, the transcript of the guilty plea proceeding. During mitigation, Counsel stated:

> Mr. Childs made it clear to me at no point did he want to [go to] trial on this. It was always going to be a plea. He—he doesn't want to put himself through reliving this. He doesn't want to put his family and friends who are here in support of him through that again. I commend him for that. He's here taking responsibility and wants to get this put behind him. . . . Mr. Childs, every time I've met with him, has made it very clear that this is the worst moment of his life. He said it was the worst thing that's ever happened to him. It absolutely broke his heart. But he still is here to take responsibility for his—his actions and get this behind him.

(Plea Tr. pp.18–19). Similarly, Applicant's own statements during the guilty plea proceeding indicate that his decision to plead guilty was motivated by his remorse and concern for his family: "First off, I would like to apologize to everybody, to all my family. This was a tragedy for me. Some nights I can't sleep. She be on my mind. But yes, it happened. Hopefully, one day I'll be able to take care of my kids again. Thank you." (Plea Tr. p.27). For these reasons, the Court finds Counsel's testimony at the PCR hearing credible, and Applicant's contrary testimony not credible, as to this issue. Accordingly, the Court finds Applicant was not prejudiced.

[*conclusion and signature on following page*]

## 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 for post-conviction relief. 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** 3 **day of** July **, 2025.**

S. BRYAN DOBY
Presiding Judge
Eighth Judicial Circuit

Bishopville, South Carolina