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S.C. SUPREME COURT

NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

David Pierce Caraker, Jr., Circuit Court Judge

Case No. 2019-CP-32-04714

Talida Balaj, Asst Attorney General
The State,.....Respondent,

Charles Morehouse,.....Appellant,

Notice of Appeal

Charles Morehouse appeals the order of the Honorable David Pierce Caraker, Jr., dated August 14, 2025, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on October 21, 2025.

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Charles A. Morehouse, #371083, Applicant, v. State of South Carolina, Respondent.	CASE NO. 2019–CP–32–04714 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. David Pierce Caraker, Jr.
Applicant's Attorney:	Ola A. Johnson, Esq.
Respondent's Attorney:	Talida Balaj, Esq.
Trial Counsel:	John M. Hilliard, Esq.
Date of Hearing:	August 28, 2024

This matter comes before the Court by way of Charles A. Morehouse's (Applicant) application for post-conviction relief (PCR) filed on November 22, 2019. Respondent, the State of South Carolina, filed its Return and Motion for Partial Summary Dismissal on March 24, 2020, requesting an evidentiary hearing to resolve the claims set forth in the application. Applicant filed an amended application on August 16, 2024.

On August 28, 2024, an evidentiary hearing was held at the Lexington County Courthouse before the Honorable David Pierce Caraker, Jr. Applicant was present and represented by Ola A. Johnson, Esquire. Assistant Attorney General Talida Balaj represented Respondent. Applicant proceeded forward on the claims set forth in his original application and his amended application. In support of these claims, Applicant testified on his behalf. Respondent presented testimony from Eleventh Circuit Deputy Solicitor Suzanne Mayes (Solicitor Mayes).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish that Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lexington County Clerk of Court. In the December 2015 term, the Lexington County Grand Jury indicted Applicant for Murder (2015–GS–32–02939). In the February 2016 term, the Lexington County Grand Jury indicted Applicant of Possession with Intent to Distrubute Methamphetamine, 2nd Offense (2016–GS–32–00642). In the October 2016 term, the Lexington County Grand Jury indicted Applicant for Possession of a Weapon During Commission of a Violent Crime (2016–GS–32–02152) and Criminal Conspiracy (2016–GS–32–02151). Applicant was represented by John M. Hilliard, Esquire (Trial Counsel).[1] Deputy Solicitor Suzanne Mayes and Assistant Solicitor Lester McGill Bell, Jr., prosecuted the case.

Applicant's case proceeded to a jury trial on January 9–13, 2017, before the Honorable Eugene C. Griffith, Jr. The jury acquitted Applicant of possession of methamphetamine with intent to distribute but convicted him of the lesser–included offense of possession of methamphetamine. The jury convicted Applicant as indicted on the remaining charges of murder, possession of a weapon during a violent crime, and criminal conspiracy. Judge Griffith sentenced Applicant to life imprisonment for murder, ten (10) years imprisonment for criminal conspiracy, five (5) years imprisonment for possession of a weapon during commission of a violent crime. Additionally,

[1] Trial Counsel did not testify at the evidentiary hearing, as he is deceased.

Applicant was convicted of the lesser offense of possession of methamphetamine and sentenced to five (5) years, running concurrently to Applicant's other convictions.

Applicant filed a timely Notice of Appeal. Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense perfected Applicant's appeal by filing an Anders[2] brief to the Court of Appeals on January 2, 2018, presenting the following issue:

> Whether the trial court erred in admitting appellant's statement to police because it was induced by implied promises of leniency for his wife, rendering it involuntary?

The Court of Appeals dismissed Applicant's appeal pursuant to Anders v. California and granted counsel's motion to be relieved. State v. Morehouse, Op. No. 2018–UP–452 (S.C. Ct. App. filed Dec. 12, 2018). The Remittitur was returned to the lower court on December 28, 2018.

SUMMARY OF FACTS ADDUCED AT TRIAL

Michael Merckel (Merckel) of the Lexington County Sheriff's Department testified he responded to a meth lab in a house in Lexington County on May 8, 2015. (Trial Tr. p. 459). Merckel testified that there were four occupants in the house whom he arrested. (Trial Tr. p. 460). Merckel testified that James David Porter, III (Victim), arrived on the scene with another person, and Merckel interviewed them both. (Trial Tr. p. 460). Merckel testified he did not arrest Victim. (Trial Tr. p. 461). Merckel testified he spoke with Victim about becoming a confidential informant. (Trial Tr. p. 460). Merckel testified that Victim did not become a confidential informant. (Trial Tr. p. 461). Merckel testified that Chad Andrews had previously been a confidential informant. (Trial Tr. p. 491). Merckel testified that in his opinion, when four people are busted at a scene, but one or two are not, those two are put under suspicion by the others. (Trial Tr. p. 492).

[2]Anders v. California, 386 U.S. 738 (1967).

Victim's father, James David Porter, Jr. (Porter), testified Victim was addicted to methamphetamine. (Trial Tr. pp. 259–60). Porter testified he had observed a very large weight loss in Victim since January of 2015. (Trial Tr. p. 286). Porter testified that Victim told him on the day of the drug bust that he had an addiction and that law enforcement had detained him and let him go. (Trial Tr. pp. 259–60). Porter testified he had a conversation with Victim about Victim potentially becoming a confidential informant for law enforcement and advised Victim not to become one. (Trial Tr. p. 271). Porter testified that to his knowledge, Victim did not become a confidential informant. (Trial Tr. p. 271).

Kelin Martinez (Martinez) testified that in the weeks leading up to Victim's murder, she attended a birthday party for a person named Hollywood at a bar called Mojo's Lounge. (Trial Tr. p. 624). Martinez testified she saw Applicant there that night and overheard him telling Hollywood that Victim was a snitch and an informant and that everyone else around Victim went down except him. (Trial Tr. pp. 624–25, 631). Martinez also testified that Applicant believed that the "Feds" were watching him and that he was being watched. (Trial Tr. p. 627).

Riley Furman (Furman) testified he knew of rumors about Victim being an informant, of which Victim was concerned. (Trial Tr. p. 296). Furman testified that Victim's concern appeared to grow closer to the date of the murder. (Trial Tr. p. 297).

Heather Owens (Owens) testified she met Applicant through mutual friends in early 2015 and would buy Xanax, pain pills, and similar things from him. (Trial Tr. p. 817). Owens testified that she and Applicant became closer to where they were intimate and hung out a lot. (Trial Tr. pp. 817–18). Owens testified she and Applicant were "friends with benefits." (Trial Tr. p. 819). Owens testified that early on August 3, 2015, Applicant visited her home in his burgundy Impala to help her with her water. (Trial Tr. p. 819). Owens testified that later that day, sometime between

9:30 pm and 11:30 pm, Applicant returned with Wiley Sisk (Sisk). (Trial Tr. pp. 819, 821, 823). Owens testified that Sisk worked for Applicant and would handle business and do whatever Applicant would tell him to do. (Trial Tr. p. 823). Owens testified that the word she heard to describe Sisk was "gun boy." (Trial Tr. p. 823). Owens testified that Sisk retrieved a handgun from her house that Applicant had left there on another occasion. (Trial Tr. p. 823).

Owens testified that Applicant and Sisk entered her house, and Sisk stood in the kitchen while she and Applicant went into her bedroom to talk. (Trial Tr. p. 824). Owens testified she asked Applicant to drive her and her kids to her mother's house in North Augusta, but Applicant told her he had to go help his friend handle something. (Trial Tr. pp. 823–24). Owens testified she asked Applicant what they were going to do, and Applicant responded by telling her they were going to "split somebody's wig." (Trial Tr. p. 825). Owens testified that Applicant appeared really anxious and in a hurry, and it was like Applicant was "on a mission to go." (Trial Tr. p. 826). Owens testified that Applicant told her that if she did not want him to go, she should tell him, and he would not go. (Trial Tr. p. 826). Owens testified that she told Applicant to go handle what he had to handle. (Trial Tr. p. 826). Owens testified that Applicant then said to her, "It's either him or me." (Trial Tr. p. 826). Owens testified that Applicant left the bedroom after the conversation, and both Applicant and Sisk left in Applicant's car. (Trial Tr. pp. 826–27). Owens testified that Applicant did not return to her house after he left with Sisk. (Trial Tr. p. 827).

Alicia Danielle Cline (Cline) testified that on August 3, 2015, Victim was at Porter's house with her, Molli Anna Bush (Bush), and Austin Lynch (Lynch) around 2:00 pm. (Trial Tr. p. 341–42, 354). Cline testified that the four of them were smoking methamphetamine, and that Lynch was becoming paranoid and aggressive. (Trial Tr. p. 342). Cline testified that Lynch was taking apart a cooler and claiming that he had found a camera in the cooler's fan. (Trial Tr. p. 343). Porter

testified that his career was installing surveillance cameras and that his home had surveillance cameras, but that he had never installed any surveillance camera in a cooler, fan, or any similar device to spy on Victim and his friends. (Trial Tr. pp. 276, 284–85). Bush testified that Lynch showed her the part of the fan that he claimed had the camera, but no camera was there. (Trial Tr. p. 319). Cline testified that they took Lynch to his grandmother's home. (Trial Tr. p. 343). Cline testified that after dropping Lynch off at his grandmother's house, they went to Furman's house. (Trial Tr. p. 345). Furman testified that Victim, Cline, and Bush arrived at his house at 8:00 pm. (Trial Tr. p. 305). Furman testified that he gave Victim a pair of brass knuckles because Victim was acting nervous. (Trial Tr. p. 298).

Cline testified that after leaving Furman's house, they returned to Victim's house before meeting with Furman again and going to the Days Inn, where they rented a room at 10:22 pm. (Trial Tr. pp. 346–48). Cline testified that Victim was in contact with someone via phone and text messaging while they were at the hotel. (Trial Tr. p. 349). Furman testified that Victim left the hotel about fifteen minutes after arriving there. (Trial Tr. p. 300). Furman testified that Victim was acting very nervous after Victim was on the phone. (Trial Tr. pp. 300–01). Cline testified that Victim was acting nervous and uneasy before leaving the motel. (Trial Tr. p. 350). Furman testified that Victim left the hotel alone. (Trial Tr. p. 301). Cline testified that she was not able to go with Victim. (Trial Tr. p. 350).

Christopher Williams, a.k.a. Snoop (Snoop), testified that Applicant was "a good friend to [him] when he could be," whom he had known for about two months. (Trial Tr. p. 495). Snoop testified that he would see Applicant at his house "pretty much every day," and Applicant had methamphetamines with him nearly every time Snoop saw him. (Trial Tr. p. 495). Snoop also testified that he saw Applicant with three different weapons a few times, with those weapons being

a .40 semiautomatic, a .45 semiautomatic, and a .45 revolver. (Trial Tr. pp. 495–96). Snoop testified that around 10:00 pm on August 3, 2015, Applicant and Sisk arrived at his home in a burgundy Impala. (Trial Tr. pp. 496–97). Snoop testified that he, Applicant, and Sisk were in Snoop's room and "did a line" of methamphetamine that Applicant provided. (Trial Tr. p. 499).

Snoop testified that Applicant talked about teaching somebody a "lesson" and asked Snoop if he knew a place where he could do that. (Trial Tr. p. 499). Snoop told Applicant nowhere near him and not at his place. (Trial Tr. p. 499). Snoop testified that Applicant was not afraid of Sisk and that Sisk looked up to Applicant. (Trial Tr. pp. 499–500). Before Snoop left his house, he saw Applicant and Sisk outside and spoke with Applicant, and he asked Snoop to switch his .45 handgun for the .40 handgun because the latter was quieter. (Trial Tr. p. 503). Snoop gave the .40 handgun to Applicant and put the .45 handgun under the couch. (Trial Tr. p. 503). Snoop did not see Sisk with a firearm that day or that night. (Trial Tr. p. 504).

Moody testified that Applicant and Sisk returned to Snoop's house together, and the three of them, as well as Erika Waters (Waters), used methamphetamine. (Trial Tr. p. 524). Moody testified that when Applicant and Sisk returned, Sisk handed an aluminum baseball bat to Waters. (Trial Tr. p. 527). Moody also testified that Applicant went to the bathroom and washed his hands and arms with Comet before rinsing off. (Trial Tr. p. 528). Moody testified that Sisk went to the back bedroom and changed his clothes after she gave him a pair of basketball shorts and a t-shirt. (Trial Tr. p. 528). Moody testified that, during this time, neither Applicant nor Sisk appeared to be in fear of or threatened by the other. (Trial Tr. p. 530). Moody testified that they all went into a bedroom and took methamphetamine, and Applicant suggested they watch the news to see if anything came about. (Trial Tr. pp. 530–31). Moody testified that Applicant left the residence by himself a few hours later after he announced that he was going to take the gun to Charles Belk.

(Trial Tr. p. 531). Waters testified that Applicant stated that he had to get alibis before leaving Snoop's house alone. (Trial Tr. p. 549).

Moody testified that the clothes that Sisk wore were taken outside behind Snoop's house and burned. (Trial Tr. pp. 528–29). Waters testified that Sisk was trying to light something on fire in the yard, and she told him to use Coleman's camp fuel in the house, which he used to burn his clothes and shoes that he was wearing. (Trial Tr. p. 551). Waters testified that Applicant asked Sisk what he did with the bat, and Sisk replied that he had forgotten about the bat. (Trial Tr. p. 553). Waters testified that Applicant told him to do something with it. (Trial Tr. p. 553). Waters testified that Sisk got the bat, washed it off in the shower in Snoop's old bedroom, and then hid the bat underneath the sink in the bathroom. (Trial Tr. p. 553–54). Moody testified that Applicant was gone for thirty minutes and, when he returned, told everyone that the gun was taken care of. (Trial Tr. p. 531–32).

Charles Belk, III, (Chip) testified that on the night of the murder, he was awoken by Applicant knocking at his door. (Trial Tr. p. 579). Chip testified that Applicant was "shaken up" and "frantic" and came to Chip's house because he did not know what to do with a gun he had. (Trial Tr. p. 580). Chip testified that Applicant handed him the gun, which was a semiautomatic handgun with a black action and a silver slide. (Trial Tr. p. 580–81). Chip testified that Applicant took the handgun back and removed the bullets from the magazine before handing it back to him. (Trial Tr. p. 581). Chip testified that the four or five bullets that Applicant removed from the gun had a brass casing and copper coating, and Applicant did not leave them with Chip or in Chip's house. (Trial Tr. p. 582). Chip testified that he got rid of the gun and had not seen it since then. (Trial Tr. p. 583).

Detective Joeseph Andaloro testified that while surveilling Applicant's house, he observed

Applicant arriving home in a burgundy or purple Chevy Impala and entering the residence between 4:00 am and 6:00 am on August 4th, 2015. (Trial Tr. p. 589). Detective Benjamin Booth (Booth) of the Lexington County Sheriff's Department testified that Applicant arrived alone in his burgundy Impala at the Whiskey Tavern at 12:00 am on August 4, 2015. (Trial Tr. p. 772). Booth testified that Applicant left the Whiskey Tavern in his vehicle at around 12:50 am on August 4, 2015. (Trial Tr. p. 772). Booth testified that Applicant returned alone to the Whiskey Tavern in the exact vehicle at 2:40 am on August 4, 2015. (Trial Tr. p. 773). Booth testified that Applicant left the Whiskey Tavern in the exact vehicle at 3:06 am on August 4, 2015. (Trial Tr. p. 774).

Agent Michelle Eichenmiller (Eichenmiller) of the South Carolina Law Enforcement Division, who was an expert in firearms analysis, testified that the three fired cartridge cases from the scene were brass colored and had nickel–colored primers. (Trial Tr. pp. 757–58, 761). Eichenmiller testified that the three cartridge cases were .40 S&W caliber and were fired from the same firearm. (Trial Tr. p. 761). Eichenmiller testified that two projectiles recovered from Victim's body were consistent with being .40 S&W caliber and were fired from the same firearm. (Trial Tr. p. 761–62). Eichenmiller testified that based on his search in their database on the rifling specifications of the bullets, the bullets were fired from a Smith & Wesson. (Trial Tr. pp. 762–63). Eichenmiller testified that when a semiautomatic firearm is fired, the casings are "usually ejected with some force behind them," but it is possible for the bullets to eject a couple of feet away from the firearm. (Trial Tr. p. 764).

Doctor Janice Edwards Ross (Doctor Ross) of the Newberry Pathology Associates testified she conducted an autopsy of Victim and determined that the cause of death was exsanguination "due to multiple lacerations of multiple blood vessels primarily from a gunshot wound to the abdomen." (Trial Tr. pp. 836–37). Doctor Ross testified that the manner of death was homicide.

(Trial Tr. p. 837). Doctor Ross testified that Victim had a total of six to ten gunshot wounds, which were distant wounds, meaning the gun was fired at least two feet away from the wound. (Trial Tr. pp. 837, 839-40). Doctor Ross testified that several gunshot wounds were consistent with someone standing over Victim and firing downward. (Trial Tr. pp. 844–48). Doctor Ross testified that the gunshot wound to Victim's right torso is consistent with Victim rolling over. (Trial Tr. pp. 847–48). Doctor Ross testified that the wounds to Victim's forearm were consistent with the forearm being up in a defensive nature, and the wounds through Victim's palm that exited the back of his hand were consistent with a defensive maneuver. (Trial Tr. p. 848).

Rachel Grant (Grant), a DNA technical leader and CODIS administrator for the DNA lab at the Richland County Sheriff's Department, testified she was not able to develop a DNA profile on the swabs from the three .40-caliber Smith & Wesson shell casings. (Trial Tr. p. 729–30).

Edward Richardson (Richardson) of the Lexington County Sheriff's Department testified an undisturbed cigarette butt was located within six to ten feet from Victim's body at the crime scene. (Trial Tr. pp. 244, 248). Grant testified she developed a complete DNA profile on the major contributor of the DNA on the burnt cigarette found at the crime scene, and the profile was a match with DNA samples taken from Applicant. (Trial Tr. pp. 732–36). Grant testified that the statistical number assigned to the DNA match concerning Caucasian males among the general population was approximately one in twenty-five octillion. (Trial Tr. p. 736). Grant testified that in her opinion, the DNA on the cigarette belonged to Applicant. (Trial Tr. p. 737).

Detective Brian Travis (Detective Travis) of the Criminal Intelligence Unit of the Lexington County Sheriff's Department testified that on August 3, 2015, there were forty-nine cellular communications between Applicant and Sisk, with thirty-three of those communications being phone calls. (Trial Tr. p. 794). Detective Travis testified that the first call made that day

was at 12:35 am. (Trial Tr. p. 794). Detective Travis testified that the final communication made that day was at 10:48 pm. (Trial Tr. p. 794). Detective Travis testified that on August 4, 2015, there were eight cellular communications and two voicemails between Applicant and Sisk. (Trial Tr. p. 794). Detective Travis testified that on August 4, 2015, there were three calls at 12:05 am, 12:08 am, and 12:10 am. (Trial Tr. p. 794). Detective Travis testified that Applicant sent Sisk a text message at 12:13 am on August 4, 2015. (Trial Tr. p. 796).

Detective Travis testified that on August 3, 2015, there was a communication between Lynch and Applicant around 5:00 pm. (Trial Tr. p. 796). Detective Travis testified that on August 3, 2015, there were text communications between Applicant and Victim between 9:46 pm and 11:11 pm. (Trial Tr. p. 797). Detective Travis testified that after the text message between Applicant and Victim at 9:48 pm, Applicant contacted Sisk. (Trial Tr. p. 798). Detective Travis testified that between 10:48 pm and 11:59 pm on August 3, 2015, Applicant and Sisk had no communications. (Trial Tr. p. 798).

Detective Travis testified that, using information from Applicant's call detail records for between 10:47 pm and 11:59 pm on August 3, 2015, there were numerous calls that pinged off the towers closest to 2400 Old Orangeburg Road and the data placed the location of Applicant's cell phone in the same area as the incident location. (Trial Tr. p. 801–02). Detective Travis testified the last ping from Applicant's cell phone was from a cell site closest to the Congaree River and Knox Abbott Bridge in Cayce, South Carolina. (Trial Tr. p. 803).

CURRENT ACTION BEFORE THIS COURT

In his original PCR application Applicant alleges he is being held in custody unlawfully based on the following allegations of ineffective assistance of counsel:

1. "Counsel was ineffective by failing to make a contemporaneous objection on the record to the court's evidentiary presumption

charge on the element [of] malice[.]"

2. "The trial court committed reversible error under the well settled principles embedded within the Fourteenth Amendment of the United States Constitution, when the trial court gave an evidentiary presumption in its charge to the jury that had the effect of relieving the State of its burden of proof on the critical element of intent (malice) in a criminal prosecution, which contributed to the jury's verdict of guilt against Applicant."
3. "Counsel was ineffective by failing to make a contemporaneous objection on the record to the ten (10) year sentence the Court imposed upon Applicant for his conviction under Indictment No. 2016–GS–32–02151, for Conspiracy."

On August 16, 2024, Applicant filed an amended PCR application, alleging additional grounds regarding his claim of ineffective assistance of counsel based on the following:

4. Applicant's counsel, John M. Hilliard, failed to properly investigate the case against the applicant.
5. Applicant's counsel, John M. Hilliard, failed to review evidence with applicant and meet with the applicant a sufficient number of times to prepare for trial.
6. Applicant's counsel John M. Hilliard failed to object to phone records (p.134).
7. Applicant's counsel John M. Hilliard failed to object to the jury charge regarding inferred malice and the use of a deadly weapon (p. 945).
8. Applicant's counsel John M. Hilliard failed to object to the statements by the solicitor in closing regarding applicants statement, stating that he said he "fired 3 shots" but this did not include the statement by applicant to police that he "fired off to the side" (p. 897).
9. Applicant's counsel John M. Hilliard failed to object to testimony by Heather Owens regarding previous drug transactions between her and applicant, (p. 817).
10. Applicant's counsel John M. Hilliard failed to object to the search, testimony and introduction of exhibits from officer Heather Clary (p.687–689) regarding a search of the applicants residence with a search warrant resulting in the introduction of Exhibits 73–83 (photographs of clothing and illegal drugs).
11. Applicant's counsel John M. Hilliard failed to cross examine witnesses regarding the difference in descriptions collected by law enforcement regarding handguns.
12. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed

> issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d (2006).

At the evidentiary hearing, Applicant pled additional claims of ineffective assistance of counsel, as follows:

> 13. Trial Counsel failed to advise Applicant of right to testify.
> 14. Failure to call an expert witness to testify.

Applicant requests relief in the form of "[v]acate conviction and sentence under Indictment No. 2015–GS–32–02[9]39" and "[r]e–[s]entencing under Indictment No. 2016–GS–32–02151."

Before this Court are the Lexington County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the trial transcript, and the records of this PCR action, including the PCR evidentiary hearing transcript.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[3] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
> 2. That the court was without jurisdiction to impose sentence;
> 3. That the sentence exceeds the maximum authorized by law;
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

[3] S.C. Code Ann. § 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A).

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), SCRCP; 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. at 687. 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.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT & CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As an initial matter, this Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has

cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 3: **Counsel was ineffective by failing to make a contemporaneous objection on the record to the ten (10) year sentence the Court imposed upon Applicant for his conviction under Indictment No. 2016–GS–32–02151, for Conspiracy**

Applicant alleges that Trial Counsel was ineffective for failing to make a contemporaneous objection on the record to the ten (10) year sentence the Court imposed on Applicant for his conviction for Conspiracy under Indictment No. 2016–GS–32–02151. The Court finds this allegation is with merit.

S.C. Code Ann. § 16–17–410 sets out the maximum sentence that a person convicted of criminal conspiracy can be given:

> A person who commits the crime of conspiracy is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned more than five years. A person who is convicted of the crime of conspiracy must not be given a greater fine or sentence than he would receive if he carried out the unlawful act contemplated by the conspiracy and had been convicted of the unlawful act contemplated by the conspiracy or had he been convicted of the unlawful acts by which the conspiracy was to be carried out or effected.

S.C. Code Ann. § 16–17–410 (2024).

Judges have discretion in sentencing within statutory limits, and a sentence is not deemed excessive if it is within the statutory limits and is not the results of partiality, prejudice, or corrupt motive. State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974); Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Wood v. State, 257 S.C. 179, 184 S.E.2d 702 (1971).

Findings

This Court finds that Trial Counsel was deficient for failing to object to the illegal sentence Applicant received concerning his conspiracy conviction. However, this Court finds that Applicant cannot show prejudice, as even had Trial Counsel objected to the illegal sentence, it would not have changed the overall outcome of Applicant's case, but grants this allegation and remands the sentence to the Court of General Sessions for the purpose of judicial equity. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 420 n.8 (2001) ("Given that Roscoe was sentenced in excess of the maximum penalty for armed robbery, we affirm the PCR court's remand for resentencing. See State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999).").

Accordingly, as Applicant was improperly sentenced on this charge, this Court **GRANTS** this allegation and **VACATES** Applicant's sentence for criminal conspiracy and **REMANDS** the conviction to the Court of General Sessions for **RE-SENTENCING**.

Allegation 4: Trial Counsel failed to properly investigate the case against the Applicant.

Applicant alleges that Trial Counsel failed to properly investigate the case against Applicant. Specifically, that Trial Counsel failed to consult with and hire an investigator, and did not advise him whether he had interviewed any witnesses. Additionally, Applicant alleges that had Trial Counsel hired an expert, the expert could have counteracted the State's experts. The Court finds this allegation to be without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends [on] a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent

investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's

judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

Additionally, Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant and make an independent investigation of the facts and circumstances of the case. Edwards, 392 S.C. at 456, 710 S.E.2d at 64; Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover, 318 S.C. at 498-99, 458 S.E.2d at 540. The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel never had him meet with any experts regarding the investigation. (PCR Tr. p. 11). Applicant testified Trial Counsel never advised him that he interviewed any witnesses. (PCR Tr. p. 12). Applicant testified he could not think of anything else Trial Counsel failed to investigate or failed to perform adequately at trial. (PCR Tr. p. 15).

On cross-examination, Applicant testified Trial Counsel did not hire an investigator. (PCR Tr. p. 16). Applicant testified that Trial Counsel could have investigated the letter he received from Heather Owens to counteract the evidence presented at trial, and investigated the murder weapon, as there were two different descriptions of the guns. (PCR Tr. p. 17). Applicant testified there is a difference between "a gun" and "the gun," and that there were other people who confessed to "going to get the murder weapon." (PCR Tr. p. 17). Applicant testified that a supplemental report contained someone's confession that they had the murder weapon. (PCR Tr. p. 17).

Applicant testified that an investigator could have checked all the facts. (PCR Tr. p. 17). Applicant testified he recalled that Trial Counsel argued and cross-examined various witnesses about the different descriptions of the gun. (PCR Tr. pp. 17–18).

On direct examination, Solicitor Mayes testified Trial Counsel had "many years' experience." (PCR Tr. p. 27). Solicitor Mayes testified Trial Counsel was "very engaged" and "making a lot of objections during the trial . . . appropriate objections." (PCR Tr. p. 27). Solicitor Mayes testified that the evidence in the case was "overwhelming." (PCR Tr. p. 27). Solicitor Mayes testified that Trial Counsel "understood the evidence" and "was addressing evidence as it should be addressed." (PCR Tr. pp. 27–28). Solicitor Mayes testified that Trial Counsel went "above and beyond" in his representation of Applicant. (PCR Tr. p. 27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* This Court finds, based on a combination of the record and Solicitor Mayes's **credible** testimony, that Trial Counsel thoroughly investigated Applicant's case and subjected the prosecution to intense adversarial testing. Solicitor Mayes **credibly** testified that Trial Counsel was an experienced attorney who effectively represented Applicant at trial, considering the overwhelming evidence of guilt. An overview of the nearly 1000-page trial transcript reveals that Trial Counsel intensely examined the various facts and expert witnesses concerning the firearms, indicating his knowledge and familiarity with Applicant's case. Notably, Trial Counsel questioned Investigator Jesse Laintz about the co-defendant's letter confessing to being the shooter and that the co-defendant had taken full responsibility for the crime (ROA pp. 423–24), and testimony was elicited from various witnesses

about the different firearms and people who had possessed them. Otherwise, the only specific testimony Applicant provided concerning Trial Counsel's failure to investigate concerned a letter he had received from Heather Owens that he alleged would have counteracted the evidence at trial. However, Applicant did not provide the Court with this letter nor what evidence the letter allegedly countered. Overall, Applicant provided generalized testimony that Trial Counsel did not adequately investigate or advise him of the witnesses he interviewed, failing to point out any specific deficiency. Therefore, Trial Counsel is not deficient.

Additionally, Applicant failed to provide any evidence or defenses that Trial Counsel could have discovered with more investigation, which would have changed the outcome of his trial. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared))). Applicant merely testified that Trial Counsel could have investigated the murder weapon more, but did not provide, through testimony or otherwise, what Trial Counsel could have discovered that would have changed the result of the proceeding. The same applies to the Heather Owens letter.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 5: **Trial Counsel failed to review evidence with Applicant and meet with Applicant a sufficient number of times to prepare for trial.**

Applicant alleges that Trial Counsel failed to review evidence with Applicant and meet with Applicant a sufficient number of times to prepare for trial. This Court finds this allegation without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v.

State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

PCR Evidentiary Hearing

On direct examination, Applicant testified Trial Counsel represented him in his case, but he had two lawyers prior to Trial Counsel. (PCR Tr. p. 9). Applicant testified Gerald Caulder (Counsel Caulder) represented him prior to Trial Counsel, but Counsel Caulder had lost his license or was suspended, and Trial Counsel represented Applicant at trial. (PCR Tr. p. 9). Applicant testified Trial Counsel met with him approximately four times, and Counsel Caulder met with him a few times separately, as well. (PCR Tr. p. 11). Applicant testified a lot of his discussion of the case was between him and Counsel Caulder. (PCR Tr. p. 11). Applicant testified Trial Counsel met with Applicant at the most five times. (PCR Tr. pp. 11–12). Applicant testified the number of meetings was insufficient to prepare for trial, and he had no ideas what was going on. (PCR Tr.

p. 12). Applicant testified that Trial Counsel received the witness and met with him around two days before the trial for about an hour. (PCR Tr. p. 12).

On cross–examination, Applicant testified that Trial Counsel did not review discovery with him. (PCR Tr. p. 18). Applicant testified that Trial Counsel brought his two assistants with him to trial, and they had an entire bench filled with three or four cases of materials. (PCR Tr. p. 18). Applicant testified he had provided Trial Counsel with some of the evidence in discovery. (PCR Tr. pp. 18–19). Applicant testified he got around 500 pages while the discovery was 15,000 pages. (PCR Tr. p. 19). Applicant testified he had "some stuff," including the letter that Heather Owens (Owens) had written him and a letter that "Smith" had written him, one of which he gave to Counsel Caulder and the other to Trial Counsel. (PCR Tr. p. 19). Applicant testified he looked for these letters in the discovery to impeach the witnesses, but they were not in the discovery. (PCR Tr. p. 19). Applicant testified that there was a lot he had not seen in the discovery, such as the crime scene photos. (PCR Tr. p. 19).

Applicant testified he attempted to fire Trial Counsel over the phone and once in a meeting. (PCR Tr. p. 19). Applicant testified that he went to court to relieve counsel, and the judge denied his request to relieve Trial Counsel because the trial date was close. (PCR Tr. p. 19). Applicant testified he met with Trial Counsel two days before trial for an hour, another time when he was moved, and one time in Aiken County with Counsel Caulder concerning what could happen in his case. (PCR Tr. pp. 19–20). Applicant testified that his attorneys never prepped him. (PCR Tr. p. 20). Applicant testified Counsel Caulder asked him about the letters, but nothing came of it. (PCR Tr. p. 20). Applicant testified he was not able to review any of his discovery, but he discussed the letters with Counsel Caulder and what happened the night of the murder. (PCR Tr. p. 20). Applicant testified he had three or four meetings with Counsel Caulder, who was trying to be

involved, but he never saw his discovery motion. (PCR Tr. p. 21). Applicant testified he saw very little of his motion of discovery. (PCR Tr. p. 21).

On direct examination, Solicitor Mayes testified that Applicant was held in custody at the Lexington County Detention Center at the time of the trial. (PCR Tr. p. 27). Solicitor Mayes testified the State's discovery they provided at that time would have been in written form. (PCR Tr. p. 27). Solicitor Mayes testified that digital evidence, such as the phone records, would have been in a CD format and would have been provided in a way that attorneys could access easily. (PCR Tr. p. 27). Solicitor Mayes testified that if attorneys felt the need to do so, they could print those materials and consult with their clients about them. (PCR Tr. p. 27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* The Court finds Applicant's testimony **not credible** as to this issue. Solicitor Mayes **credibly** testified that Applicant was in custody prior to trial, and that discovery was provided to Trial Counsel in an easily accessible format—whether written or digital. This Court has no reason to believe that Trial Counsel failed to review pertinent discovery or adequately meet prior to trial based on a review of the record. The records establish a Jackson v. Denno hearing took place, extensive cross-examinations were conducted on 22 out of the 30 witnesses, various *in-camera* hearings were conducted by the State and Trial Counsel, and Trial Counsel conducted a *voir dire* of expert witness Detective Brian Travis. Trial Counsel would not have been able to perform as he did at Applicant's trial had he not consulted and met with Applicant. Additionally, it is beyond comprehension that Trial Counsel—an

experienced attorney with a good reputation—failed to do the most basic of duties of a trial attorney, review discovery.

This Court finds it even more difficult to consider this possibility based on the broad, confusing, and at times inconsistent testimony of Applicant. Applicant testified he met at most five times with Trial Counsel prior to trial, and separately a few times with Counsel Caulder, who was working as a team with Trial Counsel. However, Applicant testified that at no point did either attorney review discovery with him, but they did discuss the progress of his case, the "letters," and Applicant's version of what took place that night. At one point, Applicant testified he had 500 pages of discovery, which he had with him at trial and asked questions about, but also that he did not review "any" discovery.

Additionally, Applicant failed to provide what evidence or defenses could have been discovered with more time in consultation and review of the discovery. To prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Applicant merely referred to the Owens letter, testified he was not prepped, and that four to five meetings were not an adequate time to prepare for trial, without more.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Failure to Object Allegations

"An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[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.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that

failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

When analyzing counsel's performance, the reviewing court will "strong[ly] presum[e] that he did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 8 (2003); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second–guessing on questions of strategy as basic as the handling of a witness.").

Also, "[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 establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

A strategic or tactical decision does not have to be articulated by counsel on the record before the Court may acknowledge it, nor does counsel have to personally identify his or her thinking. It is enough that the record reflects strategic design, such that the Court may fairly infer from the record what the strategy was, even if trial counsel cannot or will not subsequently articulate it. See Wood v. Allen, 558 U.S. 290 (2010) (finding the PCR court was reasonable in

inferring from evidence in the record that trial counsel's failure to pursue or present evidence of defendant's mental deficiencies was a strategic decision); Koon v. Rushton, 364 Fed.Appx. 22, 29 (4th Cir. 2010) (upholding PCR court finding that applicant failed to carry his burden where trial counsel had an articulable strategy behind his method of impeaching a witness); McNair v. Campbell, 307 F.Supp.2d 1277, 1312 (M.D.Ala 2004) ("Generally, courts have found that where counsel had an *articulable* strategy at sentencing, and where mitigation evidence at issue contradicted or weakened that strategy, counsel's decision not to enter the mitigation evidence was reasonable.") (emphasis added); Geralds v. State, 111 So.3d 778, 794 (Fl. 2010) (finding trial strategy from the record where trial counsel was deceased, and therefore not able to testify).

Allegation 1:	**Trial Counsel failed to make a contemporaneous objection on the record to the court's evidentiary presumption charge on the element of malice, which constituted burden shifting.**
Allegation 7:	**Failure to Object to Jury Charge Regarding Inferred Malice and Use of a Deadly Weapon.**

Applicant alleges Trial Counsel was constitutionally deficient for failing to make a contemporaneous objection on the record to the court's evidentiary presumption charge on the element of malice, which constituted burden shifting. The Court finds this allegation is without merit.

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). "A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere contention that the jury might

accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

When administering a jury instruction, the instruction must be supported by facts. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003). The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

Belcher prohibits a jury charge instructing an inference of malice only in cases where evidence has been presented that would reduce, mitigate, excuse or justify the homicide. See State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) ([T]he "use of a deadly weapon" implied malice instruction has no place in a murder (or assault and battery with intent to kill) prosecution **where evidence is presented that would reduce, mitigate, excuse or justify the killing** (or the alleged assault and battery with intent to kill)).

Trial

At trial, the court instructed the jury that "[m]alice aforethought may be either expressed or it may be inferred...Inferred malice may also arise when the deed is done by a deadly weapon." (Trial Tr. pp. 944-45).

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsel should have objected to the inferred malice charge as it improperly shifted the burden, as no one could know his state of mind. (PCR Tr. pp. 10–11). Applicant testified that it does not make sense to infer malice by carrying a weapon. (PCR Tr. p. 11). Applicant testified that Trial Counsel did not explain to him why he failed to object to the jury charge on use of a deadly weapon and inferred malice. (PCR Tr. p. 13).

On cross–examination, Applicant testified that self-defense was not charged. (PCR Tr. pp. 22–23). Applicant testified his defense was that he had nothing to do with the murder and that it was just a surprise that just happened. (PCR Tr. p. 22). Applicant testified Sisk was high and in the woods using the restroom before he came out and began hitting Victim with a bat. (PCR Tr. p. 23). Applicant testified he shot the gun he had to the left and did not know what was going on. (PCR Tr. p. 23). Applicant testified that Sisk took the gun from him and shot Victim. (PCR Tr. p. 23). Applicant testified he did not plan the murder, despite everybody saying he did. (PCR Tr. p. 23). Applicant testified he did not plan on going to the scene of the murder to hurt Victim. (PCR Tr. p. 23). Applicant testified that at the worst, he planned to beat up Victim, because Victim had his friend's "stuff." (PCR Tr. p. 23). Applicant testified he had nothing against Victim. (PCR Tr. p. 23).

On direct examination, Solicitor Mayes testified that the trial was in January of 2017 and State v. Belcher[4] was decided in 2009. (PCR Tr. p. 28). Solicitor Mayes testified she did not recall any inconsistency in the jury charge with the state of the law at the time of the trial. (PCR Tr. p. 28). Solicitor Mayes testified Applicant's case was not a self-defense case. (PCR Tr. p. 28).

[4] 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009).

Solicitor Mayes testified that the case was not a self–defense case, but if the case had been, then she was sure the judge would have addressed self-defense appropriately. (PCR Tr. p. 28). Solicitor Mayes testified that in addition to the charge on inferred malice, evidence of express malice would also have existed in the case beyond inferred or implied malice. (PCR Tr. p. 29). Solicitor Mayes testified that evidence of express malice existed in this case beyond inferred or implied malice in the form of the Applicant's statement about "going to split a wig." (PCR Tr. pp. 26, 28–29).

Solicitor Mayes testified Trial Counsel had "many years' experience." (PCR Tr. p. 27). Solicitor Mayes testified Trial Counsel was "very engaged" and "making a lot of objections during the trial . . . appropriate objections." (PCR Tr. p. 27). Solicitor Mayes testified the evidence in the case was "overwhelming." (PCR Tr. p. 27). Solicitor Mayes testified Trial Counsel "understood the evidence" and "was addressing evidence as it should be addressed." (PCR Tr. pp. 27–28). Solicitor Mayes testified that Trial Counsel went "above and beyond" in his representation of Applicant. (PCR Tr. p. 27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* This Court finds, based on a combination of the record and Solicitor Mayes's **credible** testimony, that Trial Counsel was not constitutionally deficient for failing to object to the properly given inferred malice charge. Solicitor Mayes **credibly** testified that Applicant's case was not a self-defense case, and the challenged charge was correct based on the controlling law at the time. At the time of Applicant's trial, Belcher was controlling law and held that "where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon,

juries shall not be charged that malice may be inferred from the use of a deadly weapon." Belcher, 385 S.C. at 612, 685 S.E.2d at 810. However, the "permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill)." Id. Therefore, the jury charge was proper because Applicant put up no evidence reducing, mitigating, excusing, or justifying a homicide. Notably, at the evidentiary hearing Applicant testified he meant to harm Victim, but did not intend to kill him, and he was in possession of the gun that he claims fired by "surprise." See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); see also U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 6: Trial Counsel failed to object to phone records.

Applicant has alleged Trial Counsel is constitutionally ineffective for failing to object to the phone records.[5] This Court finds this allegation to be without merit.

Trial

At trial, prior to opening statements, Solicitor Mayes brought to the trial court's attention a stipulation Trial Counsel and the State reached that considered the Sprint records of Applicant and Sisk to be records maintained in the ordinary course of business pursuant to Rule 803.6 of the South Carolina Rules of Evidence, which Trial Counsel confirmed. (Trial Tr. p. 134). Solicitor Mayes specified that Trial Counsel stipulated that the Sprint records were considered business records and did not stipulate that the Sprint records were admissible. (Trial Tr. p. 134). Upon the State moving to admit the Sprint Records (States Exhibit 94–97), Trial Counsel did not object.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not explain at all why he failed to object to the phone records during trial. (PCR Tr. p. 13).

On cross-examination, Applicant testified that there were implications that Victim was an informant, and no evidence existed that Applicant had sold drugs to Victim. (PCR Tr. p. 21). Applicant testified there were some unanswered texts and calls that did not mention drugs in the phone records, and he did not sell drugs to Victim, and without evidence, there would be no case. (PCR Tr. p. 21). Applicant testified that Victim's friend had bought drugs from Applicant, but not Victim. (PCR Tr. pp. 21–22). Applicant testified that Trial Counsel attacked the credibility of his phone records on cross-examination, but did not attack the credibility of the Victim's phone

[5] See page 134 of the trial transcript.

records. (PCR Tr. p. 22). Applicant testified his carrier, Sprint, did not show the contents of text messages, but Victim's carrier, Verizon, showed the details of text messages. (PCR Tr. p. 22).[6]

On direct examination, Solicitor Mayes testified that she did not recall the phone records being significant in any way in terms of overwhelming evidence. (PCR Tr. p. 26). Solicitor Mayes testified that she thought the primary evidence in the trial was the DNA on the cigarette near Victim's body at the crime scene and the cell phone communication where Victim agreed to meet Applicant. (PCR Tr. p. 26). Solicitor Mayes testified that she did not recall specifically how the phone records were used in the case, whether it was location data or "something beyond that." (PCR Tr. pp. 26–27).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* The Court finds, based on a combination of the record and Solicitor Mayes's **credible** testimony, that Trial Counsel was not constitutionally ineffective for failing to object to the phone records.

The record establishes that the phone records were properly admitted into evidence under the business phone records Hearsay exception, and as there was no basis to object to their admission, Trial Counsel stipulated to their admission. See Rule 803(6), SCRE; see also State v. Young, 432 S.C. 535, 854 S.E.2d 615 (Ct. App. 2021) (Alleged untrustworthiness of text messages on defendant's cell phone, because State could not identify who sent some of the messages, did not affect whether cell phone company's records of text messages were admissible under business records exception to hearsay rule.). Applicant failed to articulate a legal basis on which Trial

[6] Applicant failed to provide expert testimony or any evidence to support this claim.

Counsel could have objected to the admission of the phone records, merely testifying that Trial Counsel failed to communicate why he did not object to the phone records and expressed his frustration that the credibility of the victim's phone records was not attacked. Therefore, as there was no meritorious basis to object to the admission of the phone records, Trial Counsel is not constitutionally ineffective for failing to object to them. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); see also U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Notably, Solicitor Mayes **credibly** testified that she did not recall Applicant's phone records being very significant in terms of overwhelming evidence, but that Applicant's DNA evidence on a cigarette butt near the victim's body and evidence that the victim agreed to meet with Applicant was the primary evidence.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 8: **Trial Counsel failed to object to the Solicitor's comments in closing.**

Applicant alleges that Trial Counsel failed to object to the statements by the solicitor in closing regarding Applicant's statement. Specifically, stating that Applicant said he "fired 3 shots" but this did not include the statement by Applicant to police that he "fired off to the side." The Court finds this allegation is without merit.

"A solicitor may not rely on statements not in evidence during closing argument." State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). However, "[t]he solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses." State v. Raffaldt, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995). "[C]onsiderable latitude is generally allowed in the matter of drawing and arguing inferences and deductions from evidence." Johnson v. Life Ins. Co. of Ga., 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955). Provided however that a solicitor's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor calculated to arouse his passion or prejudice." State v. Linder, 276 S.C. 304, 278 S.E.2d 335, 339 (1981).

To prevail on a claim that trial counsel was ineffective for failing to object to a solicitor's purportedly improper comment during closing argument, the PCR applicant "bears the burden of demonstrating the improper comment deprived him of a fair trial." Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). "Improper comments do not require reversal if they are not prejudicial . . . and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). "A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Huggins, 325 S.C. at 107, 481 S.E.2d at 116.

Trial

At trial in her closing argument, Solicitor Mayes referenced Applicant's statement to law enforcement that he fired three shots, but she did not mention that Applicant also stated he fired those shots off to the side. (Trial Tr. p. 897). Trial Counsel did not object to Solicitor Mayes statements.

In his closing statement, Trial Counsel mentioned Applicant's statement to law enforcement about firing three shots off to the left. (Trial Tr. pp. 930–31).

PCR Evidentiary Hearing

On direct examination, Applicant testified Trial Counsel never explained to him why he failed to object to the statement Solicitor Mayes made in her closing. (PCR Tr. p. 13). Applicant testified he told police he fired three shots off to the left because he is night blind, and he did not intend to shoot anyone. (PCR Tr. p. 13). Applicant testified that Solicitor Mayes said that he shot the victim, but that is not what he told law enforcement. (PCR Tr. p. 13). Applicant testified he felt that Trial Counsel should have objected to Solicitor Mayes' statements in closing. (PCR Tr. p. 14).

On direct examination, Solicitor Mayes testified she would have addressed the credibility of Applicant's statement about firing three shots to the side in her closing. (PCR Tr. p. 30). Solicitor Mayes testified that they would have relied on Applicant's statement of what took place, but what was important to the State was that Applicant admitted to being at the scene and firing three shots. (PCR Tr. p. 30). After reading a portion of Trial Counsel's closing argument from the trial transcript, Solicitor Mayes testified that Trial Counsel rebutted what she said in her closing argument. (PCR Tr. p. 31). Solicitor Mayes testified she recalled Trial Counsel closing last because he did not put up any witnesses. (PCR Tr. p. 31).

Solicitor Mayes testified that counsel objects during closing arguments, if necessary, but in this case, the State and defense had different positions on the credibility of Applicant's statement to law enforcement. (PCR Tr. p. 32). Solicitor Mayes testified that the audio statement to the police had already been offered in the State's case-in-chief and would have gone to the jury room for further evaluation if the jury chose to. (PCR Tr. p. 32). Solicitor Mayes testified that from the State's perspective, Applicant is acknowledging he was at the crime scene and firing three shots at Victim. (PCR Tr. p. 32). Solicitor Mayes testified that it came down to how believable the Applicant's statement was about firing off three shots to the left. (PCR Tr. p. 32). Solicitor Mayes testified that other evidence was offered to show Applicant had fired all the shots, except the final shot. (PCR Tr. p. 32).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Solicitor Mayes **credibly** testified that the audio statements were available to the jury to review, and the State and the defense addressed the credibility of Applicant's statements in closing based on their positions. Further, Solicitor Mayes **credibly** testified that other evidence was presented to the jury that Applicant had fired all the shots, except for the final shot. See Raffaldt, *supra* ("The solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses."). Notably, the record reflects that Trial Counsel rebutted Solicitor Mayes's statement in his closing argument. This Court finds any objection on this issue would not have been meritorious, and Trial Counsel cannot be deficient for failing to make a non-meritorious objection, nor can Applicant be prejudiced by this failure. See U.S. ex rel. Link v. Lane, 811 F.2d 1166,

1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for the objection).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

Allegation 9: **Trial Counsel failed to object to testimony by Heather Owens regarding previous drug transactions between her and applicant. (p. 817)**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to Heather Owens (Owens) testimony that she knew Applicant because he had sold drugs to her. This Court finds this allegation is without merit.

Trial

On direct examination, Owens testified she would buy "Xanax and pain pills and things like that[]" from Applicant. (Trial Tr. p. 817). Trial Counsel did not object to Owens' testimony.

On cross-examination, Trial Counsel questioned Owens about her drug use and her addiction to drugs. (Trial Tr. pp. 828–29).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not object to Owens' testimony about purchasing illegal drugs from Applicant and did not explain to Applicant why he failed to do so. (PCR Tr. p. 14).

On cross–examination, Applicant testified he knew Owens because he was having an affair with her. (PCR Tr. p. 23). Applicant testified that the letter from Owens that she wrote while he was in jail would have contradicted her old testimony. (PCR Tr. pp. 23–24).

On direct examination, Solicitor Mayes testified she recalled Owens' testimony concerning her relationship with Applicant, but she did not recall the specifics of the testimony. (PCR Tr. p. 29). Solicitor Mayes testified that she knew Owens was Applicant's girlfriend and Applicant had been at Owens' house prior to committing the murder, which Owens would have addressed. (PCR Tr. p. 29). Solicitor Mayes testified she could not remember how it came out at trial that Owens received drugs from Applicant, but she did think Trial Counsel insinuated at trial that Owens had a drug problem. (PCR Tr. p. 29).

On cross-examination, Solicitor Mayes testified that it was known that Owens had received drugs from Applicant in the past, and that was likely the reason Applicant was at Owens's residence the night of the murder. (PCR Tr. pp. 34–35). Solicitor Mayes also testified that she had no memory of Trial Counsel raising any objection to Owens's testimony. (PCT Tr. p. 35).

On re-direct examination, Solicitor Mayes testified her understanding was that Trial Counsel used Owens's testimony about her drug transactions with Applicant to attack Owens's credibility based on the fact that she has a drug problem. (PCR Tr. pp. 35–36). Upon reviewing Trial Counsel's cross-examination of Owens (Trial Tr. p. 817), Solicitor Mayes testified that Trial

Counsel extensively cross-examined Owens about her drug use, and Trial Counsel had suggested that several other witnesses' drug use affected their credibility. (PCR Tr. p. 36).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* Applicant's records indicate he was tried for several crimes, including possession with intent to distribute methamphetamine. At trial, the State had to show (1) that the substance involved was in fact methamphetamine; (2) that the defendant had possession of that methamphetamine, either actual or constructive possession; and (3) that the defendant possessed the methamphetamine with intent to distribute. See S.C. Code Ann. § 44-53-375(B). In prosecuting this charge, the State presented evidence that methamphetamine was seized at Applicant's residence during a search. (Trial Tr. p. 385). To show Applicant intended to distribute the seized methamphetamine, the State presented evidence that Applicant was a known drug dealer and sold drugs to various witnesses, including Owens (Trial Tr. pp. 117, 125, 385, 388, 392, 400, 499, 562, 570, 635–36, 820–21). This evidence was appropriately presented by the State to prove the element of intent. State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000) ("A defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense."); See State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) ("We have held that evidence of a prior drug transaction is relevant on the issue of intent when the defendant has been charged with possession of a controlled substance with intent to distribute."). Therefore, there was no objectionable basis to the challenged testimony, and therefore, Applicant cannot show Trial Counsel was deficient or any resulting prejudice. See U.S. ex rel. Link v. Lane,

811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for the objection). Notably, Solicitor Mayes credibly testified that Trial Counsel's strategy was to attack various witnesses' drug use in order to diminish their credibility.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

Allegation 10: **Trial Counsel failed to object to the search, testimony, and introduction of exhibits from officer Heather Clary (p. 687–89) regarding a search of the Applicant's residence with a search warrant resulting in the introduction of Exhibits 73–83 (photographs of clothing and illegal drugs).**

Applicant alleges Trial Counsel failed to object to the search, testimony, and introduction of exhibits from Officer Heather Clary (Officer Clary) regarding a search of Applicant's residence with a search warrant resulting in the introduction of Exhibits 73–83. This Court finds this allegation is without merit.

Trial

In pre-trial, Trial Counsel objected to the search of Applicant's residence based on the lack of sufficient probable cause contained within the four corners of the search warrant, and the

testimony did not provide additional information upon which the search warrant was executed. (Trial Tr. pp. 130–35). The trial court found the search warrant was properly issued based upon probable cause in the affidavit presented to Judge Morgan. (Trial Tr. p. 136)

On direct examination, Officer Clary testified that a search warrant was executed on Applicant's residence and vehicles, and several items were seized and photographed, including clothing (State's Ex. 69–72) and drugs (State's Ex. 73–83). (Trial Tr. pp. 686–92). Exhibits 73-83 were admitted subject to the Trial Counsel's pre-trial objection. (Trial Tr. pp. 689–93).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not explain to him why he failed to object to the search, testimony, and introduction of exhibits from Officer Clary. (PCR Tr. p. 15).

On direct examination, Solicitor Mayes testified that she did not recall any problems with the search of Applicant's residence where the evidence of the drugs and clothing was found. (PCR Tr. p. 29). Solicitor Mayes testified that Trial Counsel's objection to the search warrant for having no probable cause would have been addressed pre-trial. (PCR Tr. p. 30).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* First, Trial Counsel objected to the search warrant on Applicant's residence and vehicles for lack of probable cause; however, the trial court ruled the search warrant was properly executed. Officer Clary testified to her knowledge, involvement, and observations of the properly executed search. Additionally, Trial Counsel objected to the admission of the photographs of the drugs, subject to his pre-trial objection. Based

on this Court's review of the record, Trial Counsel unsuccessfully attempted to suppress the search, and there was no meritorious basis to object to all the exhibits that would have prevented their admission. See U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for the objection). Solicitor Mayes **credibly** testified that she could not recall any problems related to the search of Applicant's residence. Further, Applicant failed to provide a meritorious basis that Trial Counsel could have objected to the admission of the exhibit, other than his testimony that Trial Counsel did not advise him why he failed to object.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegations 11: **Trial Counsel failed to cross–examine witnesses regarding the difference in descriptions collected by law enforcement regarding handguns.**

Applicant alleges Trial Counsel failed to cross–examine witnesses regarding the difference in descriptions collected by law enforcement regarding handguns. This Court finds this allegation is without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not go into any detail or cross–examine any witnesses sufficiently to indicate that an accurate description of the handgun might not have been given. (PCR Tr. p. 15). Applicant testified he tried to tell Trial Counsel that two different descriptions of the handguns existed, but Trial Counsel said to him that it wasn't important. (PCR Tr. p. 15).

On cross-examination, Applicant testified he recalled that Trial Counsel argued and brought up multiple times in cross-examination and closing that there were two different handguns and that they were swapped out. (PCR Tr. p. 17). Applicant testified that what was said at trial was that Snoop "gave me one gun and that I gave a different gun too, or I gave a description of the guns was swapped out and they kept trying to reaffirm the point that Snoop gave me the gun and that I got rid of the murder weapon." (PCR Tr. pp. 17–18).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* It is clear, based on a review of the record, that evidence was presented that Applicant had been seen with multiple firearms—two .45 calibers and one .40 caliber—one of which matched the firearm used to kill the victim, and a witness testified Applicant possessed the night of the murder. (Trial Tr. pp. 495–503). On the cross-examination of "Snoop," Trial Counsel questioned Snoop concerning his drug use the night of the murder, the .45 caliber and .40 caliber firearms, his testimony that the guns were swapped, and the different characteristics of the firearms (Trial Tr. pp. 513–16). Additionally, it was elicited from the direct examination of Erica Waters that she had seen Applicant with pistols and a revolver

on several occasions (Trial Tr. p. 546). Therefore, this Court finds that Trial Counsel was not deficient in this matter, as he cross-examined witnesses, one being Snoop, about the different firearms, and evidence of the various firearms was presented to the jury.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED.**

Allegations 13: Trial Counsel advised Applicant not to testify.

Applicant alleges Trial Counsel advised Applicant not to testify. This Court finds this allegation is without merit.

Trial

At trial, Trial Counsel informed the trial court that Applicant told him he did not wish to testify. (Trial Tr. p. 873). Trial Counsel asked the trial court if it would like to question Applicant on his right to testify, and the trial court confirmed it would. (Trial Tr. p. 873). The trial court informed Applicant of his right to testify:

> Now you understand this is your case, this is your trial, these are the allegations the State has made against you. The State has a burden of proving your guilt beyond a reasonable doubt and that's what they've presented is evidence for the jury to consider. You don't have to present any defense. It's been represented to me through your lawyer that you do not wish to present anything in your

> defense, including your own testimony.
>
> Now have you had enough time to discuss with [Trial Counsel] and anyone else of your choosing your opportunity to present a defense and to present testimony by you?

(Trial Tr. pp. 873–74).

Applicant informed the trial court he would like a few more minutes to decide, and the trial court gave Applicant until the following morning to do so and further informed him of his right to testify:

> I'll probably ask you again in the morning the same question, but here's what I want to understand is this is your opportunity and you've got all night to think about it. You can present testimony if you'd like. It's your decision solely. [Trial Counsel] can give you advice, but it's still your decision that you need to make with a clear head and upon cool reflection about what you want to do.
>
> [Applicant acknowledged his understanding].
>
> Now if you don't testify, you understand I will instruct the jury, it will be one of the last things I say to the jury is that they will not be allowed to discuss your exercising your constitutional right to not testify.
>
> [Applicant acknowledged his understanding].
>
> And they will not be allowed to even discuss your making that decision and basically claiming that constitutional right. They would have to consider and confine their decision solely on the basis of the State's evidence presented, not on your not testifying. They can't hold that against you in any manner whatsoever and I will emphasize that at the very end of the instructions. Do you understand that?
>
> [Applicant acknowledged his understanding].

(Trial Tr. p. 874–75).

Applicant told the trial court that he needed to ask Trial Counsel one more question, and the trial court gave Applicant and Trial Counsel time to discuss. (Trial Tr. p. 875).

The following morning, the trial court questioned Applicant about his decision not to testify. (Trial Tr. p. 886). The trial court asked Applicant if he had plenty of opportunity to speak to Trial Counsel about his right to testify and if he had enough time to discuss this right fully with Trial Counsel, which Applicant confirmed. (Trial Tr. pp. 886–87). The trial court asked Applicant if he was clearheaded and if he had gotten a good night's sleep, which Applicant confirmed. (Trial Tr. p. 887). The trial court asked Applicant if he was confident about his decision not to testify, which Applicant confirmed. (Trial Tr. p. 887). The trial court asked Applicant whether his decision to testify was his own, which Applicant confirmed. (Trial Tr. p. 887). The trial court asked Applicant if he was not going to testify, which Applicant confirmed he was not going to do. (Trial Tr. p. 887).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel asked him not to testify. (PCR Tr. p. 11). Applicant testified that he was not called to testify, so no one knew his state of mind. (PCR Tr. p. 11).

On direct examination, Solicitor Mayes testified that the State would not be able to call Applicant as a witness, and there is a lot of strategy in the decision of whether a defendant testifies or not. (PCR Tr. pp. 32–33). Solicitor Mayes testified that one consideration would be that if a defendant doesn't testify, then the defense gets the last argument. (PCR Tr. p. 33). Additionally, Solicitor Mayes testified that if Applicant had testified, he would have been subjected to cross-examination on his statement, as well as other evidence. (PCR Tr. p. 33).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all

significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds Applicant's testimony **not credible** concerning this issue. The record indicates that the trial court advised Applicant that he could discuss his right to testify with Trial Counsel, but that it was his decision alone whether he would testify or not, and Applicant took time to consider his decision. Additionally, the record indicates Applicant discussed his right to testify fully with Trial Counsel and advised the trial court that it was his decision alone not to testify. Therefore, Trial Counsel was not ineffective for advising Applicant not to testify, where he was given an opportunity to testify to his version of events, and Applicant voluntarily, knowingly, and intelligently waived his right to testify.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED**.

Allegation 14: **Trial Counsel Failed to call an expert to testify concerning the differentiation of the firearms and contradict the expert's testimony about how the victim was shot.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to call an expert to differentiate between the firearms and contradict the State experts concerning the manner in which the victim was shot. (PCR Tr. p. 18). This Court finds this allegation to be without merit.

An applicant for post-conviction relief "*must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis original). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. (quoting Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)).

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On direct examination, Applicant testified that Trial Counsel presented no expert testimony on his behalf, and an expert would have been beneficial to differentiate the firearms and contradict the State's experts concerning how the victim was shot. (PCR Tr. p. 18). Applicant testified that the way the State's experts testified that Victim was shot was not what happened, and an expert would have been beneficial to show that he did not shoot the victim but missed. (PCR Tr. p. 18).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. To show prejudice from Trial Counsel's failure to call an expert, Applicant must produce the favorable testimony that would have been produced from said witness's testimony. See Bannister, Glover, *supra*. Applicant merely provided that an expert witness would have been helpful to contradict the State's experts, without more. Therefore, Applicant has failed to meet his burden in showing Trial Counsel was constitutionally ineffective. See 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."),

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS THAT ARE PROCEDURALLY BARRED

Allegation 2: **The trial court committed reversible error under the well settled principles embedded within the Fourteenth Amendment of the United States Constitution, when the trial court gave an evidentiary presumption in its charge to the jury that had the effect of relieving the State of its burden of proof on the critical element of intent (malice) in a criminal prosecution, which contributed to the jury's verdict of guilt against Applicant.**

Applicant alleges that the trial court committed reversible error when it gave an evidentiary presumption in its charge to the jury that relieved the State of its burden of proof on the element of intent, which contributed to the jury's verdict of guilt against Applicant. This allegation is not properly before this Court, and therefore, is denied and dismissed.

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

These facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR.").

Accordingly, this Court finds that the allegations of trial court error are not cognizable PCR claims upon which this Court can provide relief. Thus, this allegation must be **DENIED** as **IT IS PROCEDURALLY BARRED**.

CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief, except for Applicant's allegation of failure to object to the improper sentence imposed on Applicant's criminal conspiracy conviction. Therefore, this application is denied and dismissed with prejudice, but Allegation 3 is granted, and Applicant's criminal conspiracy sentence is vacated, and the conviction is remanded to the Court of General Sessions for re-sentencing based on judicial equity.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203 SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

[ORDER AND SIGNATURE ON FOLLOWING PAGE]

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

3. Allegation 3 is granted, and Applicant's conspiracy sentence is vacated, and the conviction is remanded to the Court of General Sessions for re-sentencing.

AND IT IS SO ORDERED this 14th day of August, 2025.

DAVID P. CARAKER, JR.
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Lexington, South Carolina