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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
Court of Common Pleas

Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No.: 2019-CP-10-05086

ADRIAN V. SIMMONS, # 369292 .....…… Appellant,

v.

THE STATE …… Respondent.

NOTICE OF APPEAL

Adrian V. Simmons, #369292, appeals the order dated October 29, 2025, of the Honorable George M. McFaddin, Jr. denying his Post-Conviction Relief application and rescinding and vacating his order granting relief filed on September 12, 2023. Appellant received written notice of entry of this order on November 10, 2025.

November 10, 2025

s/ Hervery B. O. Young

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Adrian V. Simmons, #369292,	)	CASE NO. 2019–CP–10–05086
Applicant,	)	**AMENDED ORDER GRANTING RESPONDENT'S MOTION TO RECONSIDER PURSUANT TO RULE 59(e), SCRCP, AND DENYING POST-CONVICTION RELIEF**
v.	)	
State of South Carolina,	)	
Respondent.	)	

The matter before this Court is an action for post-conviction relief (PCR) application filed on October 3, 2019, by Adrian V. Simmons (Applicant). Respondent, the State of South Carolina, made its Return, dated January 2, 2020, requesting an evidentiary hearing. An evidentiary hearing was convened at the Charleston County Courthouse on February 6, 2023, before the Honorable George M. McFaddin, Jr. Applicant was present and represented by James K. Falk, Esquire (PCR Counsel). Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant presented testimony on his own behalf, and Respondent presented the testimony of J. Seth Whipper, Esquire (Trial Counsel).

Following the hearing, the Court took the matter under advisement. Thereafter, on September 1, 2023, the Court issued an order granting PCR relief on one ground and denying relief on all others. This order was filed and received by Respondent on September 12, 2023. Thereafter, on September 22, 2023, Respondent served its Motion to Reconsider, Alter, or Amend pursuant to Rule 59(e), SCRCP, asking the Court to reconsider its prior ruling granting PCR relief.

After a thorough review of the file, the motion, the relevant portions of the trial transcript, and the PCR evidentiary hearing transcript, this Court grants Respondent's motion to reconsider it prior order granting PCR relief, rescinds and vacates the order granting post-conviction relief, and

finds Applicant has failed to establish any constitutional deprivations entitling him to relief on any of the grounds raised, and accordingly, denies the application in full.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In August 2015, the Charleston County Grand Jury indicted Applicant for Assault and Battery of a High and Aggravated Nature (ABHAN) (2015-GS-10-04889). J. Seth Whipper, Esquire, represented Applicant at trial. Ninth Circuit Assistant Solicitors Charles M. Condon Jr. and Marian Askins prosecuted the case. On August 8, 2016, Applicant proceeded to trial before the Honorable Brian M. Gibbons and a jury. The jury convicted Applicant as indicted. Judge Gibbons sentenced Applicant to imprisonment for twelve years for Assault and Battery of a High and Aggravated Nature.

Applicant filed a timely notice of appeal. Katherine H. Hudgins, Esquire, of the Office of Appellate Defense, perfected the appeal by raising the following issue:

> Did the trial judge err in refusing to instruct the jury on the lesser included offense of first-degree assault and battery?

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on March 20, 2019. State v. Simmons, Op. No. 2019-UP-109 (Ct. App. filed March 20, 2019). The Remittitur was returned to the circuit court on April 5, 2019.

FACTS ADDUCED AT TRIAL

The State's Case

In 2014, Lamont Washington (Victim) owned his own electronics repair business, specializing in smart phones, computers, video game consoles, and televisions. Courtney McDaniel, Applicant's girlfriend at the time, knew Victim through her older brothers and contacted him about repairing a pair of phones for her and Applicant. Victim met with McDaniel and

Applicant, took the phones, and told them he would contact them later and give them an estimate for what it would cost to repair the devices. (R. pp. 34, l. 19 – 38, l. 25).

Approximately one week after obtaining the phones, Victim called McDaniel and informed her the repairs would cost two hundred dollars per device. McDaniel, who was dealing with numerous expenses at the time, told Victim to fix only Applicant's phone. Victim performed the necessary repairs and informed McDaniel the phone was ready for pick-up. (R. p. 39, ll. 1 – 19).

After McDaniel failed to contact him for several weeks, Victim contacted her in an effort to complete the transaction. McDaniel gave Victim Applicant's phone number and told him she would no longer be involved in the situation. Victim contacted Applicant about the phone and, after a few attempts, set a date and time for the exchange of the device and payment. However, Applicant failed to show up to the meeting. (R. pp. 39, l. 20 – 41, l. 3).

Finally, on September 24, 2014, Victim and Applicant agreed to meet at a local juice joint. After arriving at the designated location and waiting for a period of time, Victim called Applicant to check on his status. Applicant requested that they change the location of the meeting to a nearby home. Victim went to the house, pulled in the driveway, and exited his vehicle. Applicant and another man holding a baby were in front of the house. He shook Applicant's hand and told him he would retrieve the phone from the backseat of his vehicle. After he turned around to open the door, Applicant hit him in the back of the head. (R. pp. 41, l. 4 – 43, l. 6).

Joslin Washington, Victim's cousin, was in the vehicle at the time of the assault. He saw Victim and Applicant shake hands and then looked down at his phone. Suddenly, he heard something metallic, possibly brass knuckles, make a "bam" noise and looked up to see Victim's unconscious body fall to the ground as Applicant "jumped backwards." Washington quickly exited and found Applicant patting Victim's pants and stating, "I told him not to disrespect me." Applicant, who had not seen Washington in the car, was surprised when the latter asked him what

he was doing. Applicant fled towards the house. Washington pursued him around the back and heard Applicant yell for someone to "go get the guns." Washington picked up Victim, put him in the car, and drove to Victim's parents' home. There, they called 911 for medical aid. (R. pp. 89, l. 25 – 113, l. 21).

Dr. Alejandro Spiotta, a neurosurgeon with the Medical University of South Carolina, treated Victim that night. Before Victim arrived at the hospital, EMS warned the hospital's staff he was in bad shape, showing signs of severe head trauma such as disorientation, confusion, and paralysis. By the time Victim arrived, he was unable to breathe on his own. A CAT scan revealed Victim had a skull fracture behind his right ear, which lacerated a vein and caused bleeding on his brain, which, untreated, would have killed him. (R. pp. 137, l. 7 – 141, l. 5).

Due to the severity of Victim's traumatic brain injury, Dr. Spiotta and other staff performed an emergency craniotomy to remove the fractured bone and a blood clot. Additionally, Dr. Spiotta used a piece of Victim's muscle to suture the laceration and stop the bleeding. After the pressure in Victim's brain had sufficiently decreased, Dr. Spiotta replaced the removed bone using a series of metal plates and brackets. (R. pp. 141, l. 3 – 143, l. 2; pp. 150, l. 4 – 151, l. 1).

Dr. Spiotta opined Victim's injury was caused by a "high energy" impact, such as a motor vehicle collision or falling from several stories. In his opinion, a mere fall on the pavement could not have caused Victim's skull fracture. Dr. Spiotta confirmed Victim's wound was "a severe, life-threatening injury" which, untreated, "would have resulted in death" and caused neurological damage, impacting Victim's brain functions, including his abilities to taste and smell. (R. pp. 143, l. 22 – 145, l. 5; p. 151, ll. 3 – 24).

Recordings of Applicant's phone calls from jail were also admitted into evidence. During one of Applicant's calls, he denied that he and Victim were in a fight and explained that he had hit Victim because he felt the latter had disrespected him. (R. pp. 163, l. 20 – 167, l. 17; State's Exhibit

16).

Applicant's Defense

Applicant and his family members testified to a different version of events. Nola Welcome, Applicant's mother, claimed she was inside her home when Victim arrived. She heard an "altercation" outside and saw Applicant and "a young man" arguing. When she went outside a brief time later, she saw the "young man" on the pavement. Applicant's twin brother, Andre Simmons, exited the house when he heard two people talking. He saw Applicant and Victim engaged in an argument before the two men "throw hands" at each other, at which point Applicant hit Victim, and the latter fell, unconscious, to the ground. (R. pp. 187, l. 14 – 191, l. 10; R. pp. 201, l. 25 – 209, l. 14).

Applicant testified Victim was the aggressor in the situation. He claimed Victim was upset because he had previously told him he was unable to pay for the cell phone at that time. On September 24, 2014, Victim showed up at his house, uninvited, seeking payment for the phone. After Applicant reiterated he was unable to pay for the phone at that time, Victim "tried to grab or punch [Applicant] with his hand." Applicant claimed he ducked and punched Victim in the head. As a result, Victim fell and hit his head on the concrete driveway. (R. pp. 235, l. 10 – 243, l. 7).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Failure to Request Additional Voir Dire"
2. "Failure to Consult Medical Expert"
3. "Failure to Object to Pitting Witnesses"
4. "Failure to Object to Expert Qualifications"
5. Failure to explain the elements of ABHAN which led to his rejection of the plea offer.[1]

[1] This allegation was raised at the PCR evidentiary hearing for the first time and Applicant was permitted to amend the allegations pursuant to Rule 15(b), SCRCP, without objection.

At the evidentiary hearing on February 6, 2023, Applicant proceeded forward on the allegations as set forth in his original application for PCR relief and the amended allegations raised during the evidentiary hearing.

GRANT OF RECONSIDERATION AND AMENDED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After a thorough review of the record and consideration of the arguments presented by both parties, this Court grants Respondent's motion to reconsider its prior order granting post-conviction relief pursuant to Rule 59(e), SCRCP. Additionally, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief on any of the grounds raised and, accordingly, denies the application in full.

Respondent moved this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984). After careful consideration, this Court agrees and finds Applicant has not and cannot meet his requisite burden of relief as to any of the four grounds of ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland, 466 U.S. 668; Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins v. Smith, 539 U. S. 510, 526–527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or

her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003). After an adverse verdict at trial, even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate "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." Strickland, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. at 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so 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. Strickland, 466 U.S. at 689–690. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one.

Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to

incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation: Failure To Request Additional *Voir Dire*

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to request additional *voir dire*. Specifically, Applicant asserted that Trial Counsel should have requested the following questions:

1. Is there any member of the jury panel or a member of your immediate family [or close personal friend that has] been the victim of a violent assault?
2. Is there any member of the jury panel or a member of your immediate family or close personal friend been the defendant or had any criminal charges adjudicated by the Charleston County Solicitor's Office?

(PCR Application p. 8). This Court finds this allegation to be without merit.

There are numerous methods an attorney can use to either strike or select a juror. Similarly, an attorney can ask a wide range of questions to identify any potential biases among jurors. However, South Carolina courts have not permitted extensive examination of jurors during the *voir dire* process. "The unbridled examination of jurors by counsel serves to not only unnecessarily add to the length and expense of the trial, but also serves to antagonize jurors and lessen public respect for jury duty. The extent to which *voir dire* examination is being permitted by trial judges causes this Court concern and, therefore, this admonition." State v. Smart, 278 S.C. 515, 523, 299 S.E.2d 686, 691 (1982) (overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991)).

In South Carolina, parties are not granted extensive *voir dire* rights. "The responsibility of the trial court is to focus the scope of *voir dire* examination as described in S.C. Code Ann. §14-7-1020." Wilson v. Childs, 315 S.C. 431, 438, 434 S.E.2d 286, 291 (Ct. App. 1993). "The manner in which these questions are pursued and the scope of any additional *voir dire* is within the sound discretion of the trial court." Id. "The trial court is not required to ask every question submitted by counsel." State v. Middleton, 266 S.C. 251, 257, 222 S.E.2d 763, 765 (1976).

Findings

The Court finds that the Trial Counsel submitted eight written questions for the trial court to ask potential jurors during the *voir dire* process. The trial court asked these questions as requested. The purpose of *voir dire* is to determine whether potential jurors have any biases that would prevent them from impartially considering the evidence in a case. Applicant failed to provide any evidence showing that any potential jurors, or any of the jurors seated for his case, had any vested interest in the matter, expressed or formed any opinion, or exhibited any bias or prejudice against him or the State.

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: Failure to Consult a Medical Expert

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to consult a medical expert. This Court finds this allegation to be without merit.

An applicant 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's failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Findings

This Court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of these witnesses at the evidentiary hearing, and therefore, he has

not established he was prejudiced by Trial Counsel's alleged deficient representation. See, e.g., Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his Trial Counsel's failure to hire an expert because he failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony per the rules of evidence at the PCR hearing to establish prejudice from the witness's failure to testify at trial. See Glover, *supra*.

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: Failure to Object to Pitting Witnesses

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to pitting witnesses. This Court finds this allegation to be without merit.

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] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); 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.").

Trial

During cross-examination of the Victim, the following colloquy occurred:

Q. Do you agree or disagree with his brother's testimony, Andre Simmons?
A. I disagree so much I can't even believe he sat up here and said I was fighting and he hit me in my face.

(Trial Tr. p. 251, ll. 17–20).

Findings

Trial Counsel testified at the PCR evidentiary hearing that the question and the response were not harmful to Applicant's case. Applicant's brother's version of events was in direct contradiction to the Victim's version of events. This Court agrees with Trial Counsel. The Solicitor's question, while potentially objectionable, had negligible prejudicial value. Applicant's brother's version of events was obviously in direct contradiction with the Victim's account. The Solicitor's question merely permitted the Victim to directly contradict Applicant's brother's testimony. Therefore, this Court finds Trial Counsel's decision not to object was not deficient nor was it prejudicial to Applicant's case.

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: Failure to Object to Expert Qualifications

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to expert qualifications. This Court finds this allegation to be without merit.

"The qualification of a witness as an expert and the subsequent admission of that witness's opinion testimony are matters within the sound discretion of the trial court." State v. Anderson, 407 S.C. 278, 285, 754 S.E.2d 905, 908 (Ct. App. 2014) (citing State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006)). "There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge." Id. (quoting State v. Goode, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991)).

In South Carolina, under the rules of evidence, it provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE.

Findings

As an initial matter, this Court finds Dr. Spiotta testified to his extensive teaching and experience within the field of neurosurgery. See Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003) (quoting Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252–53, 487 S.E.2d 596, 598 (1997) ("A medical practitioner's experience teaching and interacting with persons in the applicable specialty are sufficient to support his qualification as an expert."). Furthermore, this Court finds any objection to the qualification of Dr. Spiotta would have been non-meritorious. See Oken v. Corcoran, 220 F.3d 259, 269 (4th Cir. 2000) ("[T]rial Counsel [i]s not constitutionally

ineffective in failing to object ... [when] it would have been futile for counsel to have done so ...."); 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**.

AMENDED ALLEGATION RAISED AT THE EVIDENTIARY HEARING

Allegation: Failure to Explain the Elements of ABHAN and Rejection of Plea Offer

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to explain the elements of ABHAN, which led to his rejecting the plea offer. For the reasons set out below, this Court vacates its former ruling on this issue and now finds that Applicant failed to satisfy his burden of proving any deficiency by Trial Counsel and any resulting prejudice from the alleged deficiency with regard to these allegations.

A defendant has the right to effective assistance of counsel during the plea bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)); Lafler v. Cooper, 566 U.S. 156, 162 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Misadvising a defendant such that he rejects a plea

offer and instead proceeds to trial may constitute deficient performance. See, e.g., Lafler, 566 U.S. at 161 (counsel misadvised defendant "that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist."); Lee v. United States, 582 U.S. 357 (2017) (counsel misadvised a noncitizen defendant that he would not be deported as a consequence of his guilty plea). To show prejudice from the improvident rejection of a plea offer based upon the misadvice of counsel, an applicant must show (1) that but for the ineffective advice there is a reasonable probability the plea offer would have been presented to the court, (2) that the court would have accepted its terms, and (3) that the conviction, sentence, or both would have been less severe under the terms of the plea than was in fact imposed. Lafler, 566 U.S. at 164.

In the order granting PCR, this Court found Trial Counsel "*implied* that the use [of] a weapon was an important factor in [Applicant's] decision to proceed to trial" and that Trial Counsel "*admitted* that he did not explain to [Applicant] that he could be convicted of ABHAN regardless of whether he had a weapon and did not recall explaining the elements of ABHAN to [Applicant]." (Order Granting PCR Relief p. 9) (emphasis added).

After careful reconsideration and a thorough review of the record before this Court, this Court rescinds and reverses its ruling on this issue and denies PCR relief on this matter. Applicant testified that his belief that the State had to prove he used a weapon to convict him was the main reason he decided to proceed to trial, but Applicant did not testify that he communicated his reliance on this factor to Trial Counsel. Regarding "the use of a weapon," Trial Counsel testified this factor was essential to Applicant's defense, but only inasmuch as it provided him the possibility of receiving a lesser included charge. (PCR Tr. p. 36). Applicant echoed Trial Counsel's testimony in rebuttal. (PCR Tr. p. 41, l. 23 – p. 42, l. 9) (addressed further *infra*).

Additionally, this Court finds error in its conclusion that Trial Counsel admitted that he did not explain to Applicant that he could be convicted of ABHAN regardless of whether a weapon

was used or not to support its findings. The following relevant testimony occurred during the PCR evidentiary hearing on direct examination of Trial Counsel:

> Q. Could the applicant -- or excuse me could Mr. Simmons be convicted of ABHAN whether or not he had a weapon?
> A. Yes.
> Q. Did you explain that to Mr. Simmons?
> A. Not in those terms, but I stated to him that, you know, if his -- if he wasn't -- if he wasn't the victor in terms of what story these people believe, that he's going to -- he's going to be exposed to a lot of time in jail.
> Q. One last question. Did you explain the elements of ABHAN?
> A. I can't recall. I would think that we talked about the charges. But I don't -- I don't recall doing the checklist with him.

(PCR Tr. p. 35, ll. 12-25). Then Trial Counsel testified to the following:

> Q. Is it your standard practice to explain the elements of the crimes?
> A. **Oh, yes. Oh, yeah**. What I'm saying is that what was being put before us as the State's version, you know, was ABHAN, it could have been attempted murder, the whole nine yards, these are very serious charges. And so that's what it took. Our position was that, at worst, he could have been -- our position was that at worst he might have been convicted of simple assault because it was just a punch from his fist and that was our position.

(PCR Tr. p. 36, ll. 1-10) (emphasis added). Then, on cross-examination, Trial Counsel testified to the following:

> Q. Okay. And did you tell him that the State that a weapon was used in order to get convict him of ABHAN?
> A. **No, I did not**.

(PCR Tr. p. 38, ll. 18-20) (emphasis added).

After a review of the relevant testimony in the PCR evidentiary transcript, this Court finds that when Trial Counsel's testimony is viewed holistically, it does not support this Court's previous findings that Trial Counsel "implied" that the use of a weapon was a factor Applicant relied on in choosing to go to trial and that Trial Counsel "admitted" to not explaining the elements of ABHAN to Applicant. Notably, Trial Counsel testified that whether or not Applicant used a weapon was important to his defense in order to obtain a reduced charge, as the charges against Applicant were

very serious. However, Trial Counsel never implied in his testimony that he had knowledge Applicant rejected his plea offer based on the erroneous belief that the State had to prove Applicant used a weapon. Thus, Trial Counsel cannot be deficient where the testimony from Applicant and Trial Counsel does not indicate Trial Counsel had actual knowledge of Applicant's reliance on his belief of the law. This is especially true considering Applicant elicited testimony that he was advised of the specific elements of ABHAN.

In its order granting PCR, this Court included the following testimony from Applicant:

> Q. But I thought you testified earlier when you said that he -- that your lawyer told you that they had to prove that a weapon was used.
> A. Yeah. Yes, that was the main reason why I took it to trial because he stated that the State had to prove that a weapon was involved. So by my knowledge knowing that a weapon wasn't involved I said let's take it to trial.

(PCR Tr. p. 42, ll. 9-15). However, after reviewing the PCR evidentiary hearing transcript, the following testimony from Applicant just prior to the testimony above is relevant and valuable in this Court's decision to rescind and reverse its previous ruling:

> Q. Do you remember your lawyer ever telling you what the specific elements of ABHAN were?
> A. Yeah, there was -- it really was strategized as between the two -- the two different -- the two different charges between ABHAN and assault and -- assault and battery, because I was -- I stated to him if they were – if it would have been possible to get a lesser charge because of the extent of the -- the extent of the charge. And he was just basically telling me both of them -- you can be charged with -- with either one by -- by bodily -- by severe bodily harm.

(PCR Tr. p. 41, l. 23 – p. 42, l. 8).

On cross-examination, Trial Counsel testified as follows:

> Q. Okay. And did you tell him that the State had used a weapon in order to convict him of ABHAN?
> A. **No, I did not**.

(PCR Tr. p. 38, ll. 18-20) (emphasis added).

This Court finds the testimony of Applicant supports Trial Counsel's testimony that his standard practice is to explain the elements of the charges to his clients and diminishes Applicant's credibility. Here, Applicant admits, not *once* but *twice*, that Trial Counsel informed him of the specific elements of ABHAN, and this corroborates Trial Counsel's testimony concerning his usual practice.

While it may be true that Applicant understood the use of a weapon was important based on Trial Counsel's trial strategy, the only evidence before this Court that Trial Counsel told Applicant a weapon was necessary to convict of ABHAN is Applicant's testimony, which this Court does not find credible.[2] This Court further finds Trial Counsel's testimony credible that he **did not** tell Applicant a weapon was required to sustain an ABHAN conviction. 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.

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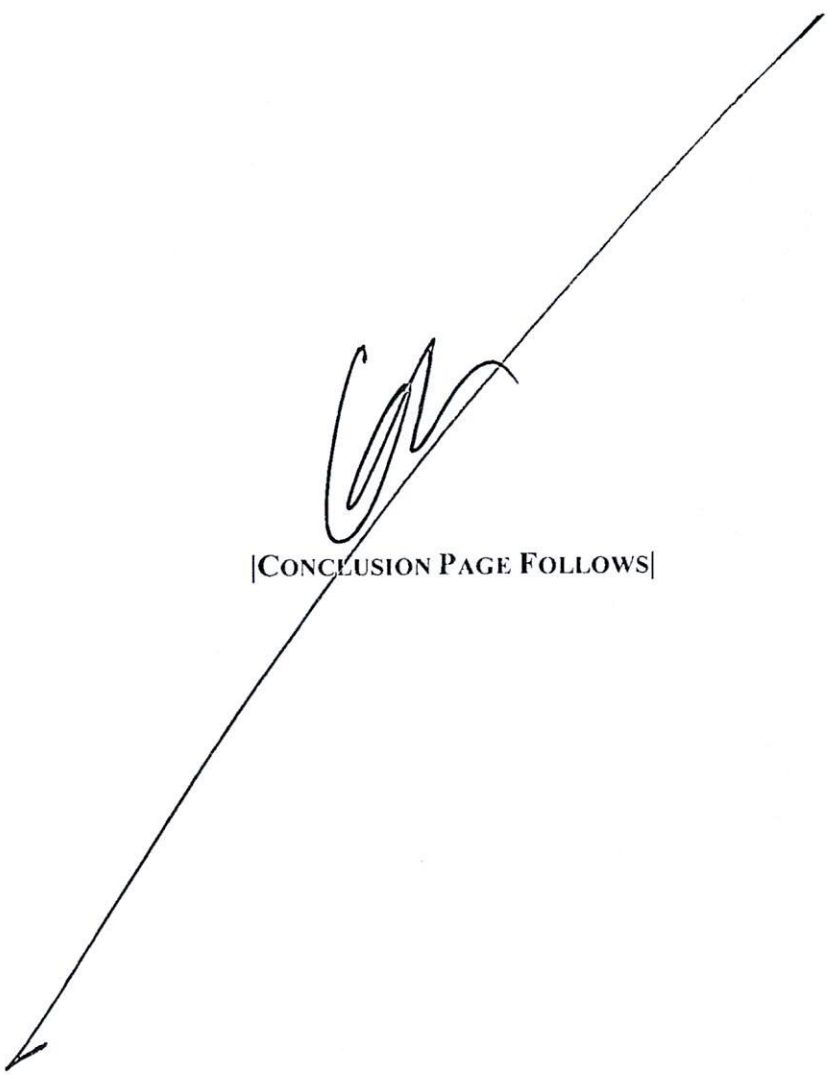
[2] After a review of the PCR transcript, Applicant's credibility is further diminished by the multiple inconsistencies within his testimony. For example, on direct examination, Applicant testified Trial Counsel did not engage in any plea negotiations, and there was no plea offer. (PCR Tr. p. 9; ll. 12-13). However, on cross-examination, Applicant testified Trial Counsel did present him with a plea offer. (PCR Tr. pp. 24-25). Another example, on direct examination, Applicant testified Trial Counsel did not have a trial strategy besides Applicant instructing Trial Counsel to pursue a stand your ground defense. (PCR Tr. p. 13). However, on cross-examination, Applicant testified Trial Counsel had a trial strategy, and it was self-defense. (PCR Tr. p. 25). Also, on rebuttal, Applicant further testified to his knowledge about Trial Counsel's specific trial strategy and his discussions with Trial Counsel about trial strategy. (PCR Tr. p. 41). Another example, on direct examination, Applicant testified, "There was no conversations about medical experts or nothing." (PCR Tr. p. 14, ll. 4-5). However, on cross-examination, Applicant testified he recalled discussions with Trial Counsel about hiring a medical expert and Trial Counsel informing him hiring an expert would cost money. (PCR Tr. p. 21).

Accordingly, for the reasons set forth *supra*, this Court vacates and reverses its prior ruling on this issue and finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**



|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be **DENIED and DISMISSED WITH PREJUDICE**; and

2. The Order granting relief filed September 12, 2023, is hereby **RESCINDED AND VACATED**.

3. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this ____ **day of** _____, **2025.**

GEORGE M. McFADDIN, JR.
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Adrian V. Simmons, #369292, Applicant,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a filed copy of the Amended Order Granting Respondent's Motion to Reconsider Pursuant to Rule 59(e), SCRCP, and Denying Post-Conviction Relief has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Hervery B.O. Young, Esquire
S.C. Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211-1433

This 5th day of November, 2025.

Vickie Hall
Vickie Hall, Legal Assistant
for Respondent

SWORN to before me this 5th day of November, 2025.

Leigh A. Stone
Notary Public for South Carolina.
My Commission Expires: May 16, 2029