STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
	)	Case No.: 2022-CP-04-02554
Kristi R. Powell, #388603 Applicant, v. State of South Carolina, Respondent.	)	**ORDER OF DISMISSAL WITH PREJUDICE**

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Anderson, SC COC, CP/GS

Presiding Judge:	Jane H. Merrill
Court Reporter:	Lisa Scott
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	AAG Ryan T. Kowalski
Plea Counsel:	Bruce A. Byrholdt, Esq.
Date of Hearing:	September 8, 2025

This matter comes before the Court by way of the post-conviction relief (PCR) action filed by Kristi R. Powell (Applicant) on December 9, 2022. Respondent, the State of South Carolina, made its Return and Partial Motion to Dismiss on March 18, 2024, requesting an evidentiary hearing to resolve the claims as set forth in the application. Applicant filed an amended application on September 5, 2025. An evidentiary hearing convened on September 8, 2025, at the Anderson County Courthouse before the Honorable Jane H. Merrill. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Ryan T. Kowalski represented Respondent.

At the hearing, Applicant proceeded forward on the claims set forth in her application. In support of these claims, Applicant testified on her own behalf, and presented testimony from Applicant's sister, Janet Craft. Respondent presented testimony from Bruce A. Byrholdt, Esquire. (Plea Counsel). 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 her to relief and, accordingly, denies and dismissed this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. During its July 2021 term, the Anderson County Grand Jury indicted Applicant for Trafficking Methamphetamine, 200 grams or more, and Possession of a Weapon During the Commission of a Violent Crime (2021-GS-04-01229).

On July 13, 2022, Applicant appeared before the Honorable R. Lawton McIntosh and pled guilty to the lesser charge of Trafficking Methamphetamine, 28-100 grams. Bryce A. Byrholdt, Esquire (Plea Counsel), represented Applicant. Tenth Circuit Assistant Solicitor Mary Grace Holahan (Solicitor Holahan) prosecuted the case. The State recommended seven (7) years active time. Judge McIntosh sentenced Applicant to seven (7) years imprisonment for Trafficking Methamphetamine. Applicant did not appeal her sentence or conviction.

SUMMARY OF THE FACTS PRESENTED AT THE PLEA HEARING

The facts giving rise to Applicant's conviction were articulated by the Solicitor Holahan, as follows:

> Your Honor, this occurred on January 27th of 2021. Detectives with the Anderson County Sheriff's Office conducted a search warrant at 411 Ellen Street here in Anderson County. That is Ms. Powell's residence. She was found to be in possession of several hundred grams of methamphetamine. It came to a little over 200 grams. The State has reduced the charge based on her lack of a prior record. All she has is a possession of Ice from 2003.

(Plea Tr. pp. 8, ll. 25 – 9, ll. 1-8).

CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is entitled to relief based on the following grounds:[1]

1. Ineffective Assistance of Counsel
   a. Applicant only had three short visits with Plea Counsel.
   b. Trial Counsel requested Applicant get doctors note to postpone plea because Applicant was going to have trachea resizing surgery on July 27, 2022. Applicant brought doctors note to plea hearing July 13, 2022, but Trial Counsel failed to present the doctors note to the plea court.
   c. Trial Counsel did not know this was Applicant's first offense.
   d. No proper contact with Trial Counsel.
   e. Applicant never received discovery.
2. Involuntary Guilty Plea
   a. Applicant felt coerced by Trial Counsel not to speak at plea hearing and mention her upcoming surgery.
   b. Applicant tried to address plea judge, but Trial Counsel told her not to speak until questions were completed by the plea judge.
   c. Trial Counsel tapped Applicant on back three times when she tried to bring up her upcoming surgery.
   d. Applicant did not know she was pleading guilty on July 13, 2022.
   e. Applicant under the influence of methamphetamine at time of plea.
   f. Applicant did not understand plea process.
3. *White v. State*[2]
   a. "Did not receive paperwork for appeal until after 10 day deadline due to being incarcerated."
4. Improper Contact with SCDC
   a. Applicant unable to contact plea judge because SCDC had her listed as locked up for probation violation, and Applicant's sentence was not recorded correctly until August 4, 2022.
5. Medical Issues

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[1] Allegations summarized for the sake of brevity.

[2] Respondent interprets Applicant's response to Question 9 as a request for a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

a. Applicant has not had an appointment for trachea resizing since being incarcerated.

As requested relief, Applicant states she is seeking the following as relief:

"At this time I am pleading to the court for a reconsideration of my sentence. No I am not asking to just walk free as I realize there are consequences to be served. What I am asking for is the court to consider possibly a home detention or to consider a change in my violent status to non-violent where I may be eligible for parole so that I can get the constant medical attention needed for my failing health and trach."[3]

STANDARD OF REVIEW

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

[3] The relief Applicant seeks is not available because the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. *See Clark v. State,* 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (per curiam) (holding that an inmate cannot seek a "time cut" in his sentence via post-conviction relief if the sentence was within the statutorily defined limits); John H. Blume, An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina, 45 S.C. L. Rev. 235, 268 (1994) (noting that "[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences")). If this Court were to find a defect in the original proceedings, the appropriate relief would be a new trial on the original indictment. *See generally Singleton v. State*, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59–60 (1993) (discussing section 17-27-20(B) and the appropriate relief in PCR cases); *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial.").

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. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986);

cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

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

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

must be *substantial*, not just conceivable." *Richter*, 562 U.S.at 112.

Guilty Pleas Based on Ineffective Assistance of Counsel

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

An applicant alleging their guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the

circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

FINDINGS OF FACT & CONCLUSIONS OF LAW

Before this Court are the records of the Anderson County Clerk of Court regarding the underlying general sessions proceedings, the transcripts from Applicant's plea proceeding, Applicant's records from the South Carolina Department of Corrections, and Applicant's records from this PCR action. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed this Court to evaluate and scrutinize their credibility. 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 her application for post-conviction relief.

SUMMARY DISMISSAL DUE TO NON-COGNIZABLE CLAIMS

Allegation: Improper Contact with SCDC
Allegation: Medical Issues

Applicant alleged that she had been unable to contact the plea judge due to SCDC incorrectly listing her sentence, and that he has not been able to schedule an appointment for trachea resizing due to being incarcerated. Respondent submitted that these claims should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act. 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).

Even if the facts alleged by Applicant are true, 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). Therefore, the allegations of Improper Contact with SCDC and Medical Issues are summarily dismissed for failure to state a cognizable claim.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Allegation: Plea Counsel only had three short visits with Applicant.
Allegation: No proper contact with Plea Counsel.

Applicant alleged that Plea Counsel was ineffective for meeting with her only three times. This Court finds that Applicant has failed to meet her burden in proving that Plea Counsel was deficient and that there was any resulting prejudice from this alleged deficiency.

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*) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel's deficient performance was prejudicial. *See Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). "[B]revity 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). To prevail on this allegation, Applicant show evidence of 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) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show their counsel's lack of preparation prejudiced them).

At the evidentiary hearing, Plea Counsel testified that he met with Applicant six or seven times in his office, including for her to sign the plea paperwork the Friday before Applicant entered her guilty plea the following week. This Court finds it **credible** that the Applicant and Plea Counsel had enough meetings, whether it was three or seven, such that Applicant understood the charges against her and the nature of her plea. Thus, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Plea Counsel did not know this was Applicant's first offense

During the plea hearing, Solicitor Holahan stated that Applicant had a prior conviction from 2003. Plea Counsel accurately told the plea court that this was Applicant's first strike, which required knowing Applicant's criminal history. (Plea Tr. p. 8). Thus, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Plea Counsel requested Applicant get doctors note to postpone plea because Applicant was going to have trachea resizing surgery on July 27, 2022. Applicant brought doctors note to plea hearing July 13, 2022, but Plea Counsel failed to present the doctor's note to the plea court.

Plea Counsel testified it was unnecessary to present the medical record(s) because it was obvious Applicant had a Tracheostomy in place and had difficulty speaking loudly. This Court finds both Applicant and Plea Counsel **credible** as to this testimony. However, it was not deficient for Plea Counsel to decide it was unnecessary to present the medical records for the reasons cited. Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Applicant never received discovery.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to provide her with a copy of discovery. This Court finds that Applicant has failed to meet her burden of proof. An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. *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)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing, Plea Counsel **credibly** testified that he reviewed discovery with Applicant. Based on testimony from Plea Counsel, it appears credible that Applicant did not get a copy of discovery, but providing a copy of discovery is not required and Plea Counsel reviewed and discussed the discovery with Applicant. Furthermore, Applicant has not shown what new evidence or defenses would have resulted in a different outcome had she received a copy of the discovery.

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*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

INVOLUNTARY GUILTY PLEA

Allegation: **Applicant felt coerced by Plea Counsel not to speak at plea hearing and mention her upcoming surgery.**

Allegation: **Applicant tried to address plea judge, but Plea Counsel told her not to speak until questions were completed by the plea judge.**

Allegation: **Plea Counsel tapped Applicant on back three times when she tried to bring up her upcoming surgery.**

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of their plea and the charges against them.

See Boykin v. Alabama, 395 U.S. 238, 243 (1969); *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). "Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* at 137–38, 654 S.E.2d at 874. Surmounting *Strickland*'s high bar is not easy, and the societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee,* 582 U.S. 368-369.

During the plea, the plea court asked if there was anything Applicant wanted to add. (Plea Tr. p. 9). Applicant did not respond, and Plea Counsel responded that she has serious health issues. *Id.* Nothing in the transcript, such as the plea court commenting on Applicant raising her hand or otherwise gesturing that she wished to speak, demonstrates that Applicant wanted to speak further and was denied the opportunity to do so. This Court finds Applicant was provided with an opportunity to address the Plea Court directly and did not respond. This Court finds Applicant has presented no valid reason why she should be able to depart from the statements made during her guilty plea. Plea Counsel also **credibly** testified that he did not tell Applicant how to answer. Applicant's guilty plea was knowingly, voluntarily, and intelligently given. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Applicant did not know she was pleading guilty on July 13, 2022.
Allegation: Applicant was under the influence of methamphetamine at time of plea.
Allegation: Applicant did not understand plea process.

This Court finds that the plea paperwork was signed the Friday before the plea, and Applicant clearly and easily answered the plea court's questions during the plea hearing. This Court finds Applicant's testimony that she was under the influence of methamphetamine **not credible**. Plea Counsel **credibly** testified Applicant did not appear to be under the influence of drugs during the plea. Additionally, Applicant, while under oath, answered the Plea Court's questions during the plea hearing, including denying that she was under the influence of any drugs. (Plea Tr. p. 4). Further, if the plea court had any concern about the Applicant being under the influence, such concerns would have been addressed during the plea. Throughout the plea, Applicant stated she understood the charge, the minimum and maximum it carries, that it is violent, that it is a serious strike on her record, and answered all other applicable questions throughout the plea. Therefore, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

BELATED APPEAL

Allegation: Applicant did not receive paperwork for appeal until after 10 day deadline due to being incarcerated.[4]

Generally, there is no constitutional deprivation in not being advised of the right to appeal from a guilty plea absent extraordinary circumstances, such as when there is a reason to think a rational defendant would want to appeal—where a non-frivolous ground exists to appeal—or defendant reasonably demonstrated an interest in appealing. *Turner v. State*, 380 S.C. 223, 225,

[4] The Court interprets Applicant's response to Question 9 as a request for a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

670 S.E.2d 373, 374 (2008) (*citing Roe v. Flores-Ortega*, 528 U.S. 470. 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)).

Applicant testified that she wanted to appeal and called her sister from the jail to request her sister call Plea Counsel because it is difficult for others to hear Applicant on the phone. Over the State's objection, Applicant's sister, Janet Craft, testified as a rebuttal witness at the PCR hearing. Ms. Craft confirmed she contacted Plea Counsel's office after Applicant was sentenced but she did not tell Plea Counsel that Applicant wanted to appeal. Additionally, the court advised Applicant she had ten days to appeal at the conclusion of her plea. (Plea Tr. p. 10). When recalled to the stand after Ms. Craft testified, Plea Counsel confirmed Ms. Craft called his office to request a copy of Applicant's file for her but did not request that he file an appeal. This Court finds that Applicant knew she could file an appeal within ten days of her guilty plea and did not timely request Plea Counsel file an appeal. Furthermore, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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 her application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE**.

This Court notifies the Applicant that she 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 shall be denied and dismissed with prejudice; and

2. The Applicant shall be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17th **day of** October**, 2025.**

Jane H Merrill

JANE H. MERRILL
Presiding Judge
Tenth Judicial Circuit

Greenwood, South Carolina

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Anderson, SC COC, CP/GS