

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM JASPER COUNTY  
Court of Common Pleas  
The Honorable Eugene P. Warr, PCR Action Judge  
2021-CP-27-00444

**RECEIVED**

**Dec 17 2025**

**S.C. SUPREME COURT**

ANTONIO SCOTT, #320475,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**NOTICE OF APPEAL**

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Antonio Scott appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Eugene Warr, circuit court judge, on September 24, 2025, and was denied by written order issued filed on November 7, 2025. Applicant received notice of the judgement on November 21, 2025.

/s Chelsey F. Marto  
Chelsey F. Marto, Esquire  
Attorney for the Applicant  
The Law Office of Chelsey F. Marto, LLC  
P.O. Box 8795  
Columbia, SC, 29201  
(864)-404-5583

Other Counsel of Record:  
Kylee Kanealey, Esquire  
Office of the Attorney General, State of SC  
P.O. Box 11549  
Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA  
COUNTY OF JASPER

Antonio D. Scott, SCDC #320475,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-27-00444

**ORDER OF DISMISSAL**

FILED - CP  
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JASPER COUNTY, SC  
CLERK OF COURT  
R. W. J. FERGUSON

This matter comes before the Court by way of Antonio D. Scott's application for post-conviction relief (PCR) filed on October 12, 2021. On September 24, 2025, an evidentiary hearing was held at the Beaufort County Courthouse before the Honorable Eugene P. Warr, Jr. Applicant was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Kylee Kanealcy represented Respondent. Applicant proceeded forward on the allegations in his amended application. In support of these claims Applicant testified on his own behalf. Respondent presented the testimony of Robert Hughes, Esquire.

Following a thorough review of the record, along with the testimony and evidence presented at the 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**

Applicant is presently confined in the South Carolina Department of Corrections serving an active thirty-year sentence. In April 2011, the Jasper County Grand Jury indicted Applicant for murder (2011-GS-27-00192). Robert Hughes, Esquire, represented Applicant. Robert Ferguson of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to a jury trial



before the Honorable Carmen T. Mullen from December 5 to December 7, 2011, and was found guilty as indicted. Judge Mullen sentenced Applicant to thirty years' imprisonment.

Applicant filed a timely notice of appeal, which was perfected by Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one issue:

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was as evidence in the record indicating the knife wound to the deceased's neck was unintentionally caused by [Applicant's] defensive martial arts maneuver while he was acting in self-defense?

On February 19, 2014, the Court of Appeals affirmed Applicant's conviction and sentence on the merits. State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). On March 6, 2014, Applicant filed a petition for rehearing<sup>1</sup>, which was denied by the Court of Appeals on May 2, 2014.

Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari and was represented by Benjamin Tripp, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On September 11, 2014, the Supreme Court granted the Petition for Certiorari.

In Applicant's Brief of Petitioner, Applicant raised the following issue:

Whether the trial court reversibly erred by failing to instruct the jury on involuntary manslaughter where [Applicant] defended himself from an attack by an older, heavysset, and sickly woman wielding a small, knife-like weapon; where Petitioner told police he deflected her thrust towards him by manipulating her arm using a martial arts maneuver; where the woman died from a single, pocket-knife sized puncture wound to the side of her neck; and where eyewitness testimony showed he was surprised by the woman's wound and quickly attempted to treat it.

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<sup>1</sup> The remittitur was issued on March 7, 2014. The Court of Appeals issued an Order Recalling Remittitur on March 10, 2014.

On September 9, 2015, the Supreme Court affirmed Applicant's conviction and sentence. State v. Scott, 414 S.C. 482, 779 S.E.2d 529 (2015). On September 18, 2015, filed a petition for rehearing, which was denied by the Supreme Court on December 16, 2015. The case was remitted on December 16, 2015.

#### CURRENT APPLICATION

On October 12, 2021, Applicant filed this PCR application alleging:

1. Ineffective assistance of counsel;
  - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses";
  - b. "Counsel was ineffective during the amendment of the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death";
  - c. "Counsel was ineffective by failing to object or file motion to the fact the court failed to charge the jury on the element of criminal intent in violation of the Due Process Clause of the 14<sup>th</sup> Amendment of the United States Constitution";
  - d. "Counsel was ineffective for failing to hire an expert to rebut Dr. Lee M. Tormos testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self-inflicted as the [Applicant] stated";
  - e. "Counsel was ineffective for his failure to prepare [Applicant] to testify and demonstrate in this case instead of [Counsel] trying to do it himself";
  - f. "Counsel was ineffective for failing to inform [Applicant] of the plea offer for ten years";
  - g. "Counsel was ineffective for failing to object to the vouching by the Solicitor during the closing argument";
2. Brady violation;
  - a. "The Solicitor withheld evidence that was material";
3. Violation of due process.

As relief, Applicant requests: "reverse conviction and sentence and remand for a new trial, and any other relief this court deem just and proper".<sup>2</sup>

On September 22, 2025, Applicant filed an amended application alleging:

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<sup>2</sup> The State moved to dismiss this application as barred by the statute of limitations. Following a hearing on May 7, 2025, Judge Addy granted equitable tolling.



1. Ineffective assistance of counsel for:

- a. Failure to meet with Applicant enough and sufficiently communicate with Applicant enough prior to trial;
- b. Failure to communicate plea offer;
- c. Failure to review discovery with Applicant;
- d. Failure to develop a trial strategy;
- e. Failure to effectively move for a directed verdict;
- f. Failure to effectively object to hearsay statements Monique attributed to Applicant while testifying;
- g. Failure to challenge the indictments;
- h. Failure to effectively cross examine witnesses;
- i. Failure to request immunity hearing;
- j. Erroneously advising Applicant not to testify in substantiating his self-defense defense.

As relief, Applicant requests the court vacate the convictions, and remand the case to the court of general sessions for a new trial. At the hearing, Applicant proceeded forward on the allegations in his amended application.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are the Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

***Ineffective Assistance of Counsel***

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland

*EW*

v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to received relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance 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. Id. at 117-18, 386 S.E.2d at 625.

*Failure to Communicate and Review Discovery<sup>3</sup>*

Applicant alleged counsel was ineffective for failing to meet with Applicant enough and sufficiently communicate and review discovery with him prior to trial. The court finds Applicant failed to prove this allegation.

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 (4<sup>th</sup> Cir. 2006). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective," Easter v. Estelle, 609 F.2d 756, 759 (5<sup>th</sup> Cir. 1980) (holding that 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 ensure 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.).

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<sup>3</sup> This section addresses allegations 1(a) and 1(c) as set forth above.



At the PCR hearing, counsel testified that it is his general practice to meet with his clients once a month. Counsel testified that he would stay and talk to his clients as long as they wanted to talk. Counsel testified he would have reviewed discovery with Applicant and that it was his general practice to do so. This Court finds counsel's foregoing testimony *credible*. This court finds that counsel adequately met with Applicant, reviewed the discovery, and communicated with Applicant regarding his case. This Court finds Applicant has failed to prove deficiency.

Further, this Court finds Applicant failed to prove prejudice. This Court has reviewed the records and finds counsel was fully prepared, and Applicant failed to show how additional meetings with Applicant would have resulted in a different outcome at trial. Applicant has provided no evidence that any additional meeting time or further review of the discovery would had a reasonable probability on changing the outcome of the trial and thus failed to prove prejudice. Therefore, this claim is denied.

*Failed to Communicate Plea Offer*

Applicant alleged counsel was ineffective for failing to communicate a plea offer. This Court finds Applicant failed to prove this allegation. Applicant testified that there was a ten-year plea offer not communicated to him. The Court finds Applicant's testimony *not credible*. Applicant provided no evidence of this alleged ten-year plea offer. Counsel testified he does not recall a plea offer and that he would have begged for a ten-year plea offer. Counsel testified if there was a ten-year plea offer, he would have been at that jail within thirty minutes to communicate to Applicant the plea offer. This Court finds counsel's testimony *credible*. This Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

*Failure to Develop a Trial Strategy*

Applicant alleged counsel was ineffective for failing to develop a trial strategy. This Court finds Applicant failed to prove this allegation. Applicant testified that his defense was self-defense,

but counsel did not do a good job putting up the self-defense defense. Counsel testified he believed Applicant's narrative fit self-defense, and he tried to sell that to the jury. This Court finds counsel's testimony *credible*. Applicant did not provide what more counsel should have done differently in presenting self-defense. Based on a review of the trial transcript, this Court finds counsel presented a vigorous defense at trial and was not deficient. Further, Applicant did not testify to what counsel should have done differently in his defense or what strategy counsel should have pursued that would have resulted in a different outcome at trial. This Court finds Applicant failed to prove prejudice. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

*Failure to Effectively Move for a Directed Verdict*

Applicant alleged counsel was ineffective for failing to effectively move for a directed verdict. This Court finds Applicant failed to prove this allegation. The record reflects that counsel did move for a directed verdict. (Tr. 164 – 165). Applicant even testified that counsel did move for a directed verdict. Applicant did not provide what counsel was supposed to further argue in his directed verdict motion. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

*Failure to Object to Hearsay*

Applicant alleged counsel was ineffective for failing to object to hearsay statements Monique attributed to Applicant while testifying. This Court finds Applicant failed to prove this allegation. "A statement is not hearsay if the statement is offered against a party and it is the party's own statement in either an individual or representative capacity..." SCRE Rule 801.

The statements that Applicant alleges should have been objected to were statements made by a State's witness about what the Applicant had said and therefore were not hearsay. Counsel testified that he did not object because the statements made by Monique about what Applicant had

said were not hearsay. (Tr. 105, 106). This finds that any hearsay objection have been non-meritorious. 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). Therefore, this Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

*Failure to Challenge the Indictments*

Applicant alleged counsel was ineffective for failing to challenge the indictments. This Court finds Applicant failed to prove this allegation. Counsel testified the issue with the indictment was a scrivener's error regarding the wrong place of death. (Tr. 54, 55). Counsel testified that this did not hurt Applicant, and it was readily explained by a scrivener's error and did not need to go back to the grand jury. Counsel testified if this error was caught and corrected prior to trial, there was no reason to object. Counsel testified that he felt the indictment was sufficient to put Applicant on notice and did not impact his trial preparation in any way. Applicant did not allege any grounds at the evidentiary hearing on which the indictments could have been dismissed. This Court finds counsel was not deficient in his performance with regard to this allegation because there was no meritorious ground to challenge the indictments. This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

*Failure to Effectively Cross-Examine Witnesses*

Applicant alleged counsel was ineffective for failing to effectively cross-examine the witnesses Officer Smith and Monique Chester. This Court finds Applicant failed to prove this allegation. Initially, this Court has reviewed counsel's cross examination of Officer Smith and Monique Chester and finds it was reasonable under prevailing professional norms. Further, Applicant has not set forth what more counsel should have crossed the witnesses about that had a



reasonable probability of a different outcome at trial.

Applicant testified that counsel should have cross-examined Officer Smith about Applicant's whereabouts the night before the stabbing. Applicant testified that counsel should have cross-examined Monique Chester about how she waited to make a statement to law enforcement and how she wanted her statement to be confidential. Counsel testified regarding his cross examination of Officer Smith and explained that Applicant's prior bad act did not come in, and he did not know why Applicant would want him to cross a witness about a negative. The record reflects that counsel thoroughly cross-examined Monique Smith about waiting to make a statement and her wanting the statement to be confidential. (Tr. 109 - 112). Applicant did not allege what more counsel should have cross-examined this witness about. This Court finds cross-examination is a matter of trial strategy, and Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Trial Counsel articulated a very valid trial strategy in not asking additional questions from Officer Smith, and the record shows counsel cross-examined Monique Chester on the exact things Applicant testified he wished counsel cross-examined her on. Based on the testimony from the hearing and the record this Court finds Counsel was not deficient. Further, Applicant did not prove how further cross-examination of these witnesses had a reasonable likelihood on changing the outcome of his trial and thus, failed to prove prejudice. See Cherry at 117-18, 386 S.E.2d at 625. This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

*Failure to Request Immunity Hearing*

Applicant alleged counsel was ineffective for failing to request an immunity hearing. This Court finds Applicant failed to prove this allegation. Counsel testified that he believed Applicant's



narrative fit self-defense and he tried to sell that to the jury. Counsel testified he did not think he could have sold that to the judge at an immunity hearing with the burden on Applicant. Counsel testified he does not think they could have met that burden at an immunity hearing. Counsel testified that by having an immunity hearing he also would have alerted the solicitor to the potential selling point that could have led to a hung jury. This Court finds counsel articulated a valid strategic reason for not requesting an immunity hearing. This Court finds Applicant has failed to prove counsel was deficient. Further, Applicant failed to prove there is a reasonable probability the circuit court would have granted him immunity had counsel requested a hearing. See Cherry supra. Thus, Applicant has failed to prove prejudice and this claim is denied.

*Advising Applicant Not to Testify*

Applicant alleged counsel was ineffective for erroneously advising Applicant not to testify in substantiating his self-defense defense. This Court finds Applicant failed to prove this allegation. Counsel testified he constantly discussed testifying with Applicant. Counsel testified that if Applicant wanted to testify, he would have put him up to testify and he made sure that Applicant was fully informed of that right and that it was his choice. Counsel testified Applicant did not want to testify. This Court finds counsel's testimony *credible*. Based on the record and counsel's testimony, this Court finds counsel was not deficient. Further, Applicant has failed to show a reasonable probability that the outcome of the trial would have been different had he testified. See Cherry supra. Specifically, Applicant did not offer any testimony at the PCR hearing that was different than what the jury considered. This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.



CONCLUSION

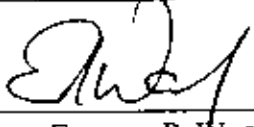
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE.**

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. 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), SCRPC, 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. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 4<sup>th</sup> day of November, 2025.

  
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THE HONORABLE EUGENE P. WARR, JR.  
Presiding Judge  
Fourteenth Judicial Circuit

Beaufort, South Carolina