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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable G.D. Morgan, PCR Action Judge
2020-CP-07-02260

JUSTIN PERKINS, #364126,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Justin Perkins appeals the denial of his post-conviction relief application. The post-conviction relief action was heard by the Honorable G.D. Morgan, circuit court judge, on November 15, 2022, and a belated direct appeal was granted and all other allegations denied by written order issued filed on December 8, 2025. Applicant received notice of the judgement on December 8, 2025.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Justin Perkins, SCDC #364126, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2020-CP-07-02260 **ORDER GRANTING BELATED APPEAL AND DISMISSING ALL OTHER ALLEGATIONS**

This matter comes before the Court by way of Justin Perkins' application for post-conviction relief (PCR) filed on November 17, 2020. Respondent filed its Return requesting an evidentiary hearing. On November 15, 2022, an evidentiary hearing was held at the Beaufort County Courthouse before the Honorable Judge G.D. Morgan Jr. Applicant was present and represented by James Falk, Esquire. Assistant Attorney General Samantha J. Weidauer represented Respondent. Applicant proceeded forward on all of the allegations in his application. In support of these claims Applicant testified on his own behalf. Respondent presented the testimony of Plea Counsel Robbie Ferguson, Esquire, and Appellate Counsel Tristan Shaffer, Esquire.

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant is entitled to a late appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) This Court further finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses the remaining allegations with prejudice.

PROCEDURAL HISTORY

During its September 2013 term, the Beaufort County Grand Jury indicted Applicant for criminal sexual conduct with a minor – first degree (2013-GS-07-01406). On May 18, 2015,

Applicant appeared before the Honorable Thomas W. Cooper and pleaded guilty as indicted, pursuant to *North Carolina v. Alford.*[1] The State recommended the mandatory minimum sentence for this charge – twenty-five years. Robbie Ferguson, Esquire, represented Applicant. Assistant Solicitor Ted Lupton prosecuted the case. Pursuant to the State's recommendation, Judge Cooper sentenced Applicant to twenty-five years' imprisonment for criminal sexual conduct with a minor.

Applicant filed a timely notice of appeal and was represented by Tristan M. Shaffer, Esquire. Through a filing captioned, "Explanation of Appeal Pursuant to Rule 203(d)(B)(iv), SCACR," Appellate Counsel stated the appeal was based on the following grounds:

> 1. The only evidence submitted at the hearing on the motion to withdraw supports a finding that [Applicant] was under the influence of narcotics at the time of the plea. Therefore, [Applicant] submits that the circuit court abused its discretion in denying the motion to withdraw the guilty plea and
> 2. Although during the plea [Applicant] was questioned, [Applicant's] guilty plea was entered into knowingly, voluntarily and intelligently. *Cf. McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 1171 (1969) ("[I]f a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."). [Applicant] submits the court's failure to affirmatively find the plea was knowingly, voluntarily, and intelligently is a fatal to allowing the plea to stand.

On February 21, 2020, Appellate Counsel submitted a "Petition for Extension of Time to Request Transcript." The South Carolina Court of Appeals granted the requested extension and extended the time to request the relevant transcript until March 23, 2020. On June 4, 2020, the

[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

South Carolina Court of Appeals issued an Order finding Appellate Counsel failed to order the transcript and therefore dismissed the matter. The Remittitur was issued on July 13, 2020.

CURRENT ACTION

Applicant timely commenced this PCR action on November 17, 2020. In his application for relief, Applicant asserts he is being held in custody unlawfully, alleging:

1) Ineffective Assistance of Counsel
    a. "Attorney did not correctly advise on previous plea offer";
    b. "Attorney failed to investigate alibi and alibi witness";
    c. "Attorney failed to enter alibi";
    d. "Failed to ensure entering plea sober";
    e. "Failed to adhere to mental health status";
    f. "Failed to ensure proper knowledge of previous plea offer";
    g. "14th amendment due process violation to entering guilty plea without Judge finding plea voluntary either mentally, physically, or emotionally";[2]
    h. "Attorney failed to give proper advi[c]e pertaining to case and lack of all biological and physical evidence";
    i. "6th Amendment violation of right to fast [and] speedy trial and competent attorney"; [3]
    j. "Attorney failed to present a complete copy of Rule 5- Brady motion";
2) Ineffective Assistance of Appellate Counsel
    a. "Counsel failed to order transcript per Rule 207";
    b. "Did not waive right to direct appeal"; and
    c. "White v. State".

Applicant requests relief as follows:

"new trial, new sentencing, and or resentencing."

[2] Applicant did not proceed forward on this allegation at the PCR hearing.
[3] Applicant did not proceed forward on this allegation at the PCR hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the plea 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).

Belated Appeal[4]

Based upon its review of the records, this Court finds Applicant is entitled to a belated appeal. "Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)). Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39-40 (1974).

Here, Applicant timely filed a notice of appeal, but it was dismissed due to his failure to order the transcript. Applicant had the right to counsel on appeal and was represented by counsel

[4] This section addresses allegations 2(a), 2(b), and 2(c).

on appeal. Based on counsel's failure to order the transcript, this Court finds Applicant was unconstitutionally deprived his statutory right to a direct appeal and is thus entitled to a belated appeal pursuant to White.

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 v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." "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 receive 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. When reviewing a guilty plea, the Strickland deficiency prong remains unchanged – Applicant must show that counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58-59. To show prejudice, Applicant must show a reasonable probability "that, but for counsel's [alleged] errors, he would not have pled guilty and would have insisted on going to trial." Id. at 59. To be knowing and voluntary, the defendant must be advised of the constitutional rights he is waiving, including the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243.

Failure to Convey Plea Offers[5]

Applicant alleged Counsel was ineffective for failing to properly advise on the prior plea offer and failing "to ensure proper knowledge of previous plea offer." This Court finds Applicant has failed to prove this ground. Applicant testified that he was made aware of the fifteen-year recommended plea deal and denied it because he was granted a speedy trial. Applicant testified that when he denied it, the State offered a fifteen-year negotiated plea, which he also denied because he wanted to go to trial and felt like he could win his case in trial. Counsel ***credibly*** testified that he explained what the plea offer was and that it was expiring. Counsel testified that his conversations were to make sure Applicant understood the benefit of the bargain and to make sure he knew what he was giving up if the plea offer is not accepted. Both Counsel's credible testimony and the record reflect Counsel was not deficient in communicating plea offers to Applicant.

Further, Applicant did not prove prejudice. "To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel". Missouri v. Frye, 566 U.S. 134, 147, 132 S. Ct. 1399, 1409, 182 L. Ed. 2d 379 (2012). Here, Applicant testified he was made aware of and denied the previous plea offer "regardless" because he wanted to go to trial and thought he could win his case. This testimony directly negates that Applicant would have accepted the earlier plea offers and thus, Applicant failed to prove prejudice. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice and this claim is denied.

[5] This section addresses allegations 1(a) and 1(f) as set forth above.

Failure to Investigate Alibi Witnesses and Establish Alibi Defense[6]

Applicant alleged Counsel was ineffective for failing to investigate an alibi witness and establish an alibi defense. This Court finds Applicant has failed to prove this ground. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)).

Counsel ***credibly*** testified that he had talked to Applicant's boss at his restaurant and had subpoenaed his employment record, and he talked to Meghan Wiley, who said she picked up Applicant from work the night of July 5. Counsel testified that he explained to Applicant that the indictment stated this occurred during the month of July 2013, and it was difficult to present an alibi for an entire month. Counsel testified that he drafted subpoenas for Applicant's boss and for Wiley in the event they proceeded to trial, and they did not want to come. Counsel testified to the details of his trial notebook of Wiley's story of being with Applicant on July 5th and 6th and discussed with Applicant that this would not be a total alibi defense, but he certainly planned to put this information in front of the jury. This Court finds Counsel was not deficient in his investigation into the alibi witness. Further, Applicant pled guilty and told the plea court he understood he was giving up the right to call witnesses and giving up any defenses that he might have. (Plea Tr. 6, 7). Therefore, this Court finds Applicant has failed to prove deficiency and prejudice and this claim is denied.

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[6] This section addresses allegations 1(b) and 1(c) as set forth above.

Failure to Ensure Applicant was Sober at Plea[7]

Applicant alleged Counsel was ineffective for failing to ensure Applicant was sober at the plea hearing. This Court finds Applicant has failed to prove this ground. Applicant testified he took a 30-day supply of Oxycodone in three days after back surgery. Applicant testified that he did not have a conversation with his lawyer about his back surgery. Applicant testified that he did not feel inclined to tell counsel that he was drunk and generally off the day of his plea.

The only evidence to support Applicant's allegation that he was not sober at the time of the plea is his own self-serving testimony. See Garren v. State, 423 S.C. 1, 813 S.E.2d 704 (2018) (Absent any evidence to support the allegation, Applicant's own self-serving testimony that he was under the influence of drugs is insufficient to establish the guilty plea was entered into involuntarily). This Court finds Applicant's testimony that he was not sober at the time of his plea ***not credible***. Nothing in the guilty plea transcript suggests Applicant was under the influence of drugs at the time the guilty plea was entered. Further, Counsel testified he never got the impression that Applicant had slurred speech or was unable to understand the conversations. Counsel testified Applicant's family was there and they never mentioned surgery concerns or anything about how Applicant was acting that day. Counsel testified that had he had concerns of Applicant's sobriety he would have raised those concerns to the court. This Court finds Counsel's testimony ***credible***. This Court finds Counsel reasonably relied on his own perception of Applicant's competency. See Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (finding counsel's failure to seek a psychiatric evaluation was not outside the range of reasonable assistance of counsel where counsel reasonably relied on his own perceptions of Applicant's competency). Therefore, this Court finds Applicant has failed to prove deficiency and prejudice and this claim is denied.

[7] This section addresses allegation 1(d).

Failure to Investigate Mental Health Status[8]

Applicant alleged Counsel was ineffective for failing to investigate Applicant's mental health status. This Court finds Applicant failed to prove this ground. Counsel ***credibly*** testified that he did not seek a mental health evaluation because Applicant was always involved in the case, drafting his own motions and contacting him at the office. Counsel ***credibly*** testified he never had any concerns that Applicant was unable to understand their conversations and they were able to communicate effectively. This Court finds Counsel reasonably relied on his own perception of Applicant's competency. See Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (finding counsel's failure to seek a psychiatric evaluation was not outside the range of reasonable assistance of counsel where counsel reasonably relied on his own perceptions of Applicant's competency). Based on counsel's credible testimony that he did not have concerns about Applicant's ability to understand their conversations, this Court finds Counsel was not deficient for not seeking a competency evaluation.

Applicant likewise failed to prove prejudice. "[W]hen competency to enter a plea is at issue, a PCR applicant need only show there was a reasonable probability he was incompetent at the time of his plea." Ramirez v. State, 419 S.C. 14, 23, 795 S.E.2d 841, 846 (2017). This Court finds Applicant did not submit any credible evidence to demonstrate a reasonable probability he would have been found incompetent to enter a guilty plea had a competency evaluation been conducted. Without any proof Applicant suffered from identifiable mental health issues that undermined his competency to plead guilty, any claim of prejudice is purely speculative. See Glover v. State, 318 SC. 496. 498-99, 458 S.E. 2d 538, 540 (1995) (finding mere speculation and

[8] This section addresses allegation 1(e).

conjecture by the applicant is insufficient to establish prejudice). Therefore, this Court finds Applicant has failed to prove deficiency and prejudice and this claim is denied.

Failure to Advise on Defenses and Lack of Physical Evidence[9]

Applicant alleged Counsel was ineffective for failing to advise Applicant on defenses and the lack of physical evidence. This Court finds Applicant has failed to prove this ground. Counsel ***credibly*** testified that he discussed the results of the medical examination and there were no physical findings or physical evidence. Counsel testified that the State's position was that it was not inconsistent with the allegations given the passage of time. Counsel testified that he discussed the existence of other evidence including statements by the victim and the two recordings of Applicant's statements. As discussed above, Counsel discussed at length Applicant's alibi defense and the difficulty of presenting an alibi for an entire month. This Court finds counsel's advice was reasonable under prevailing professional norms and Applicant has failed to prove deficiency.

Further, Applicant at the plea hearing told the court he understood that by pleading he was giving up any defenses that he might have. (Tr. 7). This Court finds Applicant's plea was freely and voluntarily made and he knowingly gave up the right to present any defenses he may have had. This Court further finds Applicant has failed to set forth what more counsel should have done or discussed with Applicant that would have changed his decision to plead. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice, and this claim is denied.

Failure to Give Copy of Rule 5[10]

Applicant alleged Counsel was ineffective for failing to give Applicant a full copy of his Rule 5 discovery. This Court finds Applicant has failed to prove this ground. Applicant testified that he was filing motions for his discovery and the discovery was being sent to the jail. Applicant

[9] This section addresses allegation 1(h).
[10] This section addresses allegation 1(j).

testified he never received the physical examination until after he pled guilty. Counsel ***credibly*** testified that his policy is that as soon as he gets the discovery, he visits his client in the detention center and takes everything he has on paper. Counsel further ***credibly*** testified that in this case he brought his laptop to the detention center so Applicant could listen to statements and see the video evidence. Counsel ***credibly*** testified they talked about the results of the medical examination a good bit because it was certainly relevant. Based on Counsel's ***credible*** testimony, this Court finds Counsel sufficiently met with and reviewed discovery with Applicant, and Counsel's advice to Applicant was reasonable under prevailing professional norms and not deficient.

Likewise, Applicant did not prove prejudice. This Court further finds Applicant has failed to set forth what more of the Rule 5 Counsel should have discussed with Applicant that would have changed his decision to plead. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice and this claim is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that with the exception of the belated appeal issue, 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), 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. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant is granted a belated appeal pursuant to White v. State;

2. Applicant's remaining allegations are denied and dismissed with prejudice; and

3. Applicant shall be remanded to and remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21st **day of** November**, 2025.**

THE HONORABLE G. D. MORGAN JR.
Presiding Judge
Fourteenth Judicial Circuit

Greenville, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP0702260

Justin Perkins		**South Carolina State Of**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

ORDER GRANTING BELATED APPEAL AND DISMISSING ALL OTHER ALLEGATIONS

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ G. D. Morgan, Jr	2773	11/21/2025
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **December 8, 2025**, and a copy mailed first class or placed in the appropriate attorney's box on **December 8, 2025**, to attorneys of record or to parties (when appearing pro se) as follows:

Justin Perkins #364126 Brci Moultrie 2114 4460 Broad River Rd Columbia, SC 29210
Chelsey Faith Marto PO Box 8795 Columbia, SC 29201

Danielle Dixon PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.