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**Jan 05 2026**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The South Carolina Supreme Court

\_\_\_\_\_  
Appeal from Greenville County  
Greenville County Court of Common Pleas  
Hon. Judge B. Alex Hyman, Circuit Court Judge, Presiding

\_\_\_\_\_  
2021-CP-23-03356  
\_\_\_\_\_

David R. Dozier.....Petitioner,

Versus

State of South Carolina .....Respondent.

\_\_\_\_\_  
**NOTICE OF APPEAL**  
\_\_\_\_\_

David R. Dozier APPEALS the order entered in the above titled Post-Conviction Relief matter, which signed order was clocked with the Greenville County Clerk of Court on December 4, 2025, and is attached to this Notice of Appeal. The Petitioner received written notice of the entry of the Order and Judgment in this matter on December 4, 2025.

s/Scarlet B. Moore

\_\_\_\_\_  
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January 5, 2026.  
Greenville, S.C.

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

David R. Dozier, #373169,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE THIRTEENTH JUDICIAL CIRCUIT

) Case No.: 2021-CP-23-03356

) **ORDER OF DISMISSAL**  
) *(with prejudice)*

) **ENTERED COMPUTER**

FILED: 25DEC6AM 11:36  
COC 3RD JUDGE JIM GULFSG

This matter comes before the Court by way of an application for post-conviction relief filed on July 16, 2021, by Applicant David R. Dozier. Respondent made its return and partial motion to dismiss requesting an evidentiary hearing on or about October 6, 2022.

An evidentiary hearing was held on May 15, 2024, at the Greenville County Courthouse with the Honorable B. Alex Hyman presiding. Applicant and his appointed counsel, Scarlet B. Moore, Esq., were present. Assistant Attorney General Tommy Evans, Jr. of the South Carolina Office of the Attorney General represented the State. Applicant testified on his own behalf and called plea counsel and his mother to testify at the hearing.

After consideration of the testimony given at the hearing, and after reviewing and considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant has failed to carry his burden of proof. Consequently, this Court **DENIES** relief for the specific reasons set out in this order.

**PROCEDURAL HISTORY**

Applicant is currently imprisoned by the South Carolina Department of Corrections in the Greenville County Detention Center. During its June of 2016 term, the Greenville County grand jury indicted Applicant for armed robbery (2016-GS-23-002038), first-degree assault and battery (2016-GS-23-002036), kidnapping (2016-GS-23-002037), and possession of a weapon during the

commission of a violent crime (2016-GS-23-002038).

On July 17, 2017, Applicant appeared before the Honorable J. Derham Cole and pleaded guilty as indicted without the benefit of a sentencing recommendation from the State. Applicant was represented by Lauren Taylor Esq. ("plea counsel"), and Assistant Solicitor Jennifer A. R. Tessitore ("the solicitor") of the Thirteenth Circuit Solicitor's Office prosecuted the case. The solicitor presented following facts to the Court:

On January 18th of 2016, at approximately 6:00 in the morning, this Defendant and a co-defendant entered the Millennium Gas Station store on Laurens Road in Greenville County with bandanas as masks, latex gloves on their hands, and hoodies turned inside out and hoods on.

This Defendant then pushed a gun into the clerk's chest. The co-defendant took cash drawers from under the counter and put them in a dark backpack. And this Defendant then came around the counter, grabbed the victim, struck him in the head with a gun, broke his glasses, forced him down onto the floor, and continued to hit him.

Both were -- both the Defendant and co-defendant were grabbing as many cigarette packs as they could stuff into the bag and told the clerk to open the register or they would shoot him as he pointed -- as this Defendant pointed the gun into the victim's back. The victim opened the register under duress. This Defendant grabbed the whole cash drawer. And they took off with approximately a thousand dollars, and multiple packs of cigarettes, and the victim's cell phone.

They drove off in a vehicle, which was registered to this Defendant's grandmother, but struck a dairy truck shortly after they fled the scene, and then jumped out and fled on foot. The truck driver the dairy truck driver was able to give information to the officers as far as their direction of travel.

But based on the fact that they were, also, in possession of the victim's cell phone, detectives were able to use the Google Maps application to be able to track the location of that cell phone. This Defendant had used the cell phone at one point. And they were able to get that number and locate that number as this Defendant's mother. He was calling his mother for a ride.

The detective then called the victim's phone after they had located this Defendant and the co-defendant at the Waffle House on Laurens Road just up the -- the street from where the crime had occurred -- the crimes had occurred. When the -- let me back up.

In the -- in the gas station store, there was video surveillance of the -- the whole crime. And, you know, this -- as I said, this Defendant could be seen holding the gun the entire time. And as the victim would testify at trial, he was the one giving him the orders, and telling him what to do, and placing the gun at his back and then in his face as he fled the scene there.

When they got to the Waffle House, there was, also, video there that picked up just probably about 30 minutes after the commission of these crimes. They were in the Waffle House. They turned their clothing inside out, back into the -- where it had the labels and distinctive markings. And this Defendant turned his -- his pants inside out with some distinctive marijuana leaves on those pants.

The waitress there was able to determine that they appeared to be hiding things and acting suspicious. They went into the bathroom at separate times and, basically, stashed the backpack with the cash, with the cigarettes, with the Defendant's ID, and this Defendant's wallet. Everything was in a trash bag in the bathroom.

And when the detective called the victim's cell phone as he walked into the Waffle House, he saw this Defendant exiting the bathroom where they stashed the items, the evidence. And the phone rang in his hand as he handed it to the co-defendant, who was seated at the booth. They were both at that point, also, on video captured there, arrested, and taken into custody.

This Defendant had the bandana, the mask, the latex gloves in his hood. The latex glove -- another pair of latex gloves and cash drawers were found in the wood line nearby on the trail that the -- the phone captured through Google. And, again, all of this is on video.

And the co-defendant has pled guilty as of March 15th of 2017, and received a 10-year sentence.

(Plea Tr. at 19-22).

Judge Cole accepted Applicant's plea and sentenced Applicant as follows: for armed

robbery, to imprisonment for fifteen years; for possession of a weapon during the commission of a violent crime, to imprisonment for five years; for kidnapping, to imprisonment for ten years; and for first-degree assault and battery, to imprisonment for ten years; and with all sentences running concurrently, with credit for time served, and with a finding that Applicant was not required to register as a sex offender.

Applicant did not appeal his convictions and sentences.

### **CURRENT ALLEGATIONS**

In his application for post-conviction relief, filed on April 19, 2022, Applicant asks this Court to “reverse, remand, or vacate” his convictions and raises the following issues:

1. Applicant did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences;
2. Plea counsel was constitutionally ineffective for not requesting a competency hearing;
3. Applicant’s guilty pleas were involuntarily and unknowingly entered because plea counsel did not conduct an adequate investigation, adequately prepare a defense, and adequately explain the law and available defenses to Applicant;
4. Plea counsel was constitutionally ineffective for failing to request that Applicant be sentenced under the Youthful Offender Act;
5. Plea counsel was constitutionally ineffective for failing to inform Judge Cole of certain mitigating factors;
6. Plea counsel was constitutionally ineffective for failing to use expert testimony to inform the courts of Applicant’s mental health condition.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

#### INVOLUNTARY WAIVER OF DIRECT APPELLATE REVIEW

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *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 alleges that he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences. Applicant pled guilty to the charges against him, and at the evidentiary hearing, Applicant did not allege that he requested that plea counsel file a direct appeal, that he had viable issue for a direct appeal, or that there were other extraordinary circumstances which would require him to be advised of his right to a direct appeal from his guilty plea. The allegation in his application only states that counsel did not inform him about appealing and that he did not know he was eligible for an appeal. The only testimony at the hearing from Applicant was that he had no recollection of being advised of the right to appeal, nor did he ask plea counsel to file an appeal.

Plea counsel testified that she believed the plea court did a very good job of ensuring Applicant was aware of his rights at the proceeding and testified that Applicant did not request her to appeal. The record shows that the Court did not explicitly advise Applicant of the right to appeal,

however, considering the thorough manner which the plea court questioned Applicant's understanding of the proceeding and considered the circumstances of Applicant's crime, no extraordinary circumstances objectively warranted counsel to inform Applicant about appealing his conviction. *See Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) (holding that counsel has a constitutional duty to inform a defendant of his right to appeal a guilty plea if there is reason to think that a rational defendant would want to appeal or that the defendant demonstrated an interest in appealing).

As such, there was no evidence presented at the evidentiary hearing that Applicant was entitled to be advised of his right to a direct appeal from his guilty plea and was not advised of that right, nor was there evidence Applicant requested counsel file an appeal. As such, Applicant cannot show counsel acted outside the range of reasonable professional assistance causing him to be prejudiced. Therefore, this allegation is denied and dismissed with prejudice.

#### *INEFFECTIVE ASSISTANCE OF COUNSEL*

To show a violation of the Sixth Amendment, an Applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, 466 U.S. at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Id.* at 689. It is the applicant's burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCF. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("The burden of proof is on the applicant to prove the allegations in his application.").

In *Hill v. Lockhart*, The United States Supreme Court held that the aforementioned two-part *Strickland* test additionally applies to allegations of ineffective assistance of plea counsel. 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The first half of the test remains as intended in *Strickland*; however, the prejudice requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. *Hill*, 474 U.S. at 57-59. "In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.*

As such, A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000).

*Ineffective Assistance: Failure to Request a  
Competency Hearing*

As to Applicant's allegation that plea counsel was constitutionally ineffective for failing to request a competency hearing, this Court finds that Applicant has failed to show that that plea counsel acted outside the range of reasonable professional assistance in criminal proceedings.

In a PCR action, the Applicant must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea. *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992)); Rule 71.1(e), SCRPC. "The accused must have sufficient capability to consult

with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” *Jeter*, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992)) (citing *Carnes v. State*, 275 S.C. 353, 271 S.E.2d 121 (1980). Counsel may reasonably rely on his own perceptions in deciding whether a client is competent. *Jeter*, 308 S.C. 230, 232, 417 S.E.2d 594, 595–596 (1992))

The evidence addressed at the evidentiary hearing is insufficient to show deficient performance on the part of plea counsel. Plea counsel testified that she reviewed the discovery with Applicant and the evidence against him. She discussed with him that the solicitor intended to call Applicant’s co-defendant at trial, and that she believed the testimony would be damaging. Plea counsel testified that there were no discussions of a competency hearing between her and Applicant, nor did she see any indication that Applicant needed a competency hearing.

Applicant testified that plea counsel should have requested a competency hearing because he did not understand and was not comfortable making decisions for himself. He testified that he had an ADHD diagnosis prior to his conviction, and was also diagnosed with paranoia, antisocial disorder and anxiety while in SCDC, subsequent to his conviction, however he did not relay this information to plea counsel during the course of her representation. Applicant testified that he recalled appearing before Judge Cole and answering questions confirming that he understood the charges and the decision to plead guilty. Applicant testified that he understood what a straight up plea meant, that he was worried about his codefendant’s testimony, and that he did not want to go to trial.

Applicant’s mother also testified on Applicant’s behalf that Applicant had been diagnosed with ADHD at the time of his plea. She further testified that Applicant had not been taking his medication that helped him think. On cross examination, Respondent asked Applicant’s mother if

Applicant had his medical records to give to plea counsel, which she responded that Applicant was in possession those records, yet Applicant testified he never gave them to plea counsel. She was also asked if Applicant knew right from wrong, to which she responded that he did.

The record further shows that Applicant confirmed that he had time to discuss the charges and the decision to plead guilty with plea counsel, that he understood the charges against him, the potential sentence he could receive, and the evidence the State has against him. (Plea Tr. at 4-7). Thus, satisfying the legal competency requirements. Further, Applicant has not presented this Court with any medical records or provided any indication that plea counsel had a reason to request a competency hearing. Applicant admits that he did not inform counsel about his ADHD diagnosis. However, Applicant informed the plea court about his diagnosis and that he had not been taking medication. The plea court ensured that not taking the medication did not affect his understanding of the proceeding. Applicant confirmed that it did not. (Plea Tr. at 14 -15). In fact, according to plea counsel, Applicant contacted plea counsel to enter a plea after rejecting an initial plea offer from the State. Plea counsel testified that she was prepared to go to trial, and that Applicant expressed reservations. As such, there is no indication that Applicant did not have rational understanding of the charges and the evidence against him and was able to make a rational decision regarding the plea. There is no further evidence presented that Applicant was insane at the time the crime was committed. The record strongly disputes such a claim. Accordingly, plea counsel's failure to request a competency evaluation was not outside the range of reasonable professional assistance.

Even if deficient performance were present, the Petitioner cannot show prejudice from counsel's failure to further investigate his mental capacity. Under this second prong of Strickland, "the [petitioner] need only show a 'reasonable probability' that he was either insane at the time

[the crime was committed] or incompetent at the time of the plea.” *Matthews v. State*, 358 S.C. 456, 459, 596 S.E.2d 49, 51 (2004) (quoting *Jeter*, 308 S.C. at 233, 417 S.E.2d at 596). Again, the record shows that Applicant understood the charges, the weight of the evidence, and the proceedings against him, and there was no further indication at the evidentiary hearing that he was incompetent at the time of plea or insane at the time the crime was committed.

As such, the testimony presented at the evidentiary hearing and the record reviewed by this Court support the Petitioner’s competence. Thus, plea counsel was not deficient for failing to request a competency hearing, and Applicant has not demonstrated any resulting prejudice. Therefore, this allegation is denied and dismissed with prejudice.

*Ineffective Assistance: Failure to Investigate, Prepare a Defense,  
and Explain the Law and Defenses to Applicant*

As to Applicant’s allegation that Applicant’s guilty pleas were involuntarily and unknowingly entered because plea counsel did not conduct an adequate investigation, adequately prepare a defense, and adequately explain the law and available defenses to Applicant, this Court finds that Applicant has failed to establish any deficiency in counsel’s performance in accordance with *Strickland* standards.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). “A defendant’s knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel, or both.” *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Harris v. Leeke*, 282 S.C. 131, 318

S.E.2d 360 (1984).

The record shows that the plea court ensured that Applicant had time to discuss the charges with plea counsel, was aware of the evidence against him, and confirmed that it was his decision to plead guilty. (Plea Tr. at 4). The Court ensured that Applicant was aware of each charge and the potential sentence he could receive. (Plea Tr. at 4-8). Applicant further explained the difference between consecutive and concurrent sentences, showing that he understood the potential sentencing consequences. (Plea Tr. at 6). Applicant confirmed that he wished to enter a guilty plea after indicating he understood this information. (Plea Tr. at 8).

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. *Id.*

As to Applicant's allegation that plea counsel failed to prepare a defense, the record disputes the claim. The following colloquy took place between Applicant and the Court:

The Court: Did you and she discuss whether or not you have some defense to any one or more of the charges to which you're now offering to plead guilty?

Defendant Dozier: Yes, sir.

The Court: Do you know of any defense that you have?

Defendant Dozier: No sir.

The Court: Do you understand that if you do have a defense - - when you have a defense that when you plead guilty, you give up your right to assert that defense?

Defendant Dozier: Yes, sir.

The Court: Ms. Taylor [plea counsel] has explained that to you?

Defendant Dozier: Yes, sir.

(Plea Tr. at 9-10). At the evidentiary hearing, Applicant does not specify what defenses, if any, he would have presented to mitigate his plea, or a defense he would have presented at trial. Further, plea counsel testified that she was prepared to move forward with trial and did not intend to call any witnesses on Applicant's behalf after considering the evidence, and that Applicant's co-defendant would testify against him. Plea counsel testified that her strategy was to have the last word with the jury. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008).

As to the allegation that plea counsel failed to adequately explain the law and available defenses to Applicant, the record also disputes the claim. Even if Applicant was confused or misunderstood plea counsel's explanations, the plea court reviewed each indictment and the state's evidence against Applicant and ensured that he understood the consequences of his plea. The plea court ensured that Applicant understood he was waiving constitutional rights, to which the Court also asked if plea counsel had explained those rights to him. He confirmed that plea counsel had. (Plea Tr. at 10-12). He also confirmed that plea counsel had explained to him the elements of each charge, the importance of designated violent offenses including most serious offenses and no parole offenses. (Plea Tr. at 26-29).

As to the allegation that plea counsel did not conduct an adequate investigation, Applicant has not provided any evidence to support the claim. Plea counsel testified that she and Applicant reviewed the discovery together, and she was prepared to go to trial after Applicant rejected the

plea offer from the State. When asked at the evidentiary hearing what other investigation plea counsel could have pursued, Applicant testified “just the YOA consideration.” Plea counsel testified that she looked into the sentencing requirements under the Youthful Offender Act and discussed the option with the solicitor. She testified that the solicitor was adamantly against sentencing pursuant to the Act considering the crime and that Applicant had cut his monitor off. Further, Applicant testified that plea counsel told him he was ineligible for sentencing consideration under the Youthful Offender Act, which considering Applicant was charged with kidnapping, is an accurate statement on behalf of plea counsel.

After considering Applicant’s testimony at the evidentiary hearing, Applicant has not presented any meritorious allegation as to counsel’s deficient performance, but simply exhibits discontent with his sentence. As such, plea counsel did not act deficiently, and Applicant cannot prove any prejudice as a result. Therefore, this allegation is denied and dismissed with prejudice.

*Ineffective Assistance: Failing to Request Sentencing  
pursuant to the Youthful Offender Act*

As to Applicant’s allegation that plea counsel was constitutionally ineffective for failing to request that Applicant be sentenced under the Youthful Offender Act, this Court finds that Applicant has failed to establish that plea counsel acted outside the range of reasonable professional assistance. Thus, he cannot establish resulting prejudice.

Any person who appears before the court in general sessions between the ages of seventeen and twenty-five is considered a youthful offender and must be sentenced by the trial court under the provisions of the act, considering the charge, despite counsel’s request to do so. S.C. Code Ann. § 24-19-10; *See Creel v. State*, 262 S.C. 558, 564, 206 S.E.2d 825, 828 (1974). The court’s specific factual findings as to whether or not Applicant is well suited for sentencing under the Youthful Offender Act is not required to be placed on the record. *Ballard v. State*, 258 S.C. 91,

187 S.E.2d 224. If the court shall find that the youthful offender will not derive benefit from treatment, then the court may sentence the youthful offender under any other applicable penalty provision. *Ballard v. State*, 258 S.C. 91, 187 S.E.2d 224 (1972). Such a decision is within the court's discretion. *Brown v. State*, 265 S.C. 516, 220 S.E.2d 125 (1975). Whether or not plea counsel requests sentencing consideration under the Youthful Offender Act has no effect upon the validity of Applicant's sentence because the statute requires that he automatically be considered as a youthful offender by the court. *Creel v. State*, 262 S.C. 558, 564, 206 S.E.2d 825, 828 (1974).

The record clearly shows that the court considered Applicant's circumstances and considered Applicant's age, highest level of education, relationship status, whether or not he had any children, his employment history, history of mental illness, history of drug use, criminal history, and the facts of the case in making his determination. (Plea Tr. p. 13-19). The Court inquired about and considered Applicant's co-defendant's 10-year sentence and the difference between the two. (Plea Tr. at 23). The solicitor advised the court that Applicant not only admitted drug use while he was placed on the electronic monitor, but he removed the monitor and re-offended. (Plea Tr. at 23). Further, she stated that Applicant was the primary aggressor in the crime, he brought the gun, and he secured a vehicle from his family member. (Plea Tr. at 23-24). Applicant did not disagree with any of the facts the solicitor presented other than that the gun was not his and that he did not threaten the victim as he was leaving. (Plea Tr. at 25-26).

At the evidentiary hearing, plea counsel testified that she asked the solicitor to agree to sentencing under the statute, however she declined to do so considering the circumstances of the case. Applicant testified that plea counsel lied to him about his eligibility to be sentenced under the Youthful Offender Act and that counsel did not discuss the statute with him at all.

Additionally, it should be noted that Applicant's kidnapping conviction is not available for

sentencing consideration under the Youthful Offender Act. S.C. Code Ann. § 24-19-10; S.C. Code Ann. § 16-1-60. As such, regardless of whether the solicitor agreed to recommend sentencing Applicant to an alternate section under S.C. Code Ann. § 24-19-50 for his other charges, pursuant to the plea court's discretion, Applicant would still be required to serve the 10-year sentence of imprisonment for kidnapping with the Department of Corrections.

This Court finds that Applicant has failed to show that plea counsel acted deficiently for failing to request the Court for Applicant to be sentenced under the Youthful Offender Act. Such a sentencing consideration is automatic by the court, exclusive of certain violent crimes, and plea counsel is not required to request the court to do so. Applicant has not provided any evidence to support the conclusion that plea counsel's redundant request of sentencing him pursuant to the Youthful Offender Act would have changed the outcome of the proceeding. The record shows that the court considered ample factors in sentencing Applicant, and that plea counsel did not act outside the range of reasonable professional assistance. Therefore, this allegation is denied and dismissed with prejudice.

*Ineffective Assistance: Failure to Inform the  
Court of Mitigating Factors*

As to Applicant's allegation that plea counsel was constitutionally ineffective for failing to inform Judge Cole of certain mitigating factors, this Court finds that Applicant has failed to satisfy his burden of proof pursuant to *Strickland*.

At the evidentiary hearing, plea counsel recalled that she presented the court with mitigating factors such that Applicant was expecting a child, had no prior convictions, and was clean. The record supports this testimony. The record reflects that plea counsel informed the Court that Applicant grew up in a home where drugs were normal and everywhere, and that his mother had been in and out of rehab for crack addiction. (Plea Tr. at 29). Plea counsel informed the Court

that Applicant was using meth at the time this crime was committed with the purpose of the crime to buy more drugs. (Plea Tr. at 29). She continued to tell the Court that Applicant was working on finishing his GED prior to violating house arrest and had been working on entering a drug treatment program. (Plea Tr. at 30). She asked the Court to sentence Applicant to the minimum of ten years so he could be part of his daughter's life. (Plea Tr. at 30).

Additionally, Applicant informed the Court that he volunteered with Greenville Rec and "Strap Em Up Boot Camp." (Plea Tr. at 30-31). He added that he was talking with an Army recruiter who told him that he needed to obtain his GED, cut his dreads and get the drugs out of his system. Applicant admitted he was still working on getting clean. (Plea Tr. at 31). Applicant also informed the Court of his ADHD diagnosis and that he was not currently taking medication. The Court ensured that not taking the medication did not affect Applicant's ability to understand the proceeding. (Plea Tr. 14-15). At the evidentiary hearing, when asked what else plea counsel could have presented to the Court to mitigate his sentence, Applicant responded, "Nothing I can think of."

As such, Applicant has failed to establish that plea counsel acted deficiently as to this allegation. Applicant has not presented any supporting evidence or additional information that could have mitigated his sentence and as a result has failed to establish prejudice. Therefore, this allegation is denied and dismissed with prejudice.

*Ineffective Assistance: Failure to use Expert Testimony*

As to Applicant's allegation that plea counsel was constitutionally ineffective for failing to use expert testimony to inform the courts of Applicant's mental health condition, this Court finds

that Applicant has failed to establish that plea counsel acted deficiently thereby affecting the outcome of the proceeding.

At the evidentiary hearing Applicant testified that an expert witness should have been called to describe the drugs and medication that he was on and how that affected his decision making. “If a PCR applicant claims [] counsel was ineffective for failing to interview or call [] witnesses, then the “applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence.” *Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279-280 (2019) (quoting *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (emphasis added)). “The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.” *Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995). Applicant did not present an expert witness at the evidentiary hearing and only speculated that an expert witness would be able to mitigate his sentence by describing his mental state. As such he failed to satisfy his burden.

Further, Applicant admitted that he did not inform counsel about his ADHD diagnosis, and counsel would have had no reason to call an expert witness on the matter. Again, plea counsel testified that she did not believe there were any issues with Applicant's competency, or with his mental state thus there was no indication that she needed to call an expert witness to explain Applicant's mental health condition and drug use.

As such, Applicant has failed to establish that plea counsel acted deficiently as to this allegation, nor has he established any resulting prejudice. Therefore, this allegation is denied and dismissed with prejudice.

#### **CONCLUSION**

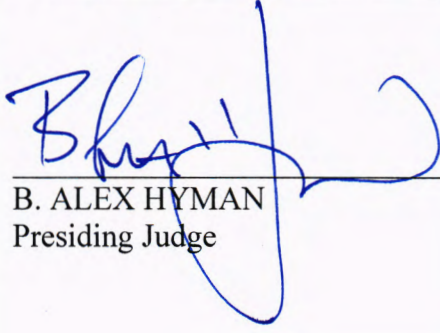
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations during his plea hearing. Plea counsel was not deficient, and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 24 day of Nov., 2024

  
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B. ALEX HYMAN  
Presiding Judge