

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM OCONEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Jane H. Merrill, Circuit Court Judge

2022-CP-37-00329

Clifton E. Smith..... Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Clifton E. Smith, appeals the Honorable Jane H. Merrill's Order of Dismissal filed November 24, 2025, and Order on Petitioner's Motion to Alter or Amend (Rule 59 (e)) filed January 5, 2026.

This 7th day of January, 2026

s/Susannah Ross
Susannah Ross, Attorney at Law
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State of South Carolina, County of Oconee
In the Court of Common Pleas, Tenth Judicial Circuit

Clifton E. Smith,
Applicant/Petitioner

vs.

State of South Carolina,
Respondent.

Case No. 2022-CP-37-00329

Order on Petitioner's Motion to
Alter or Amend Judgment (Rule 59(e))

Applicant/Petitioner's Attorney

Susannah C. Ross

Respondent's Attorney

Ryan T. Kowalski

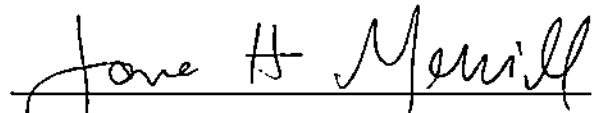
FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
2026 JAN -5 P 1:10

An order of dismissal was filed on November 24, 2025. Petitioner's counsel received the filed order on December 8, 2025. On December 10, 2025, Petitioner, through counsel, filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP. On December 11, 2025, Petitioner served the filed motion on the opposing party and the court.¹

Having duly considered Petitioner's motion to alter or amend, this Court determines that its November 24, 2025 Order is supported by the law and evidence. Therefore, the motion to alter or amend the order is respectfully DENIED.

It is so ordered.

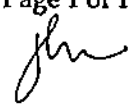
December 31, 2025
Greenwood, SC


Jane H. Merrill
Presiding Judge

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and motion. Rule 59(f), SCRCP; *Pollard v. City of Florence*, 314 S.C. 397, 401-02, 444 S.E.2d 534, 536 (Ct. App. 1994).

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE COUNTY, SC
MELISSA C. BURNETT
CLERK OF COURT
COURT OF COMMON PLEAS
CASE NO. 2022-CP-37-0329

CLIFTON E. SMITH,

2025 DEC 10 P 12:24

APPLICANT,

MOTION TO ALTER OR AMEND
THE JUDGMENT

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

COMES NOW the Applicant, by and through undersigned counsel, moving pursuant to Rule 59(e), SCRPC, to alter or amend the judgment of this Court filed on November 24, 2025. The order was received by counsel on December 8, 2025. The Applicant takes issue with the findings of fact and conclusions of law in the Court's Order of Dismissal with Prejudice regarding allegations of ineffective assistance of counsel in his arguments to impeach the victim. (Order pp. 8-11) The Applicant further argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 386 S.E.2d 624, 625 (1989).

This was a self-defense case where the Applicant was not allowed to impeach the victim about his prior, non-remote, criminal convictions. (Transcript pp. 223 & 266) Citing *State v. Robinson* and SCRE 609, the trial judge went through the COLF factors and found the probative value of the prior convictions were outweighed by their prejudicial effect. (Transcript pp. 164-74). Trial counsel failed to argue that *Robinson* and

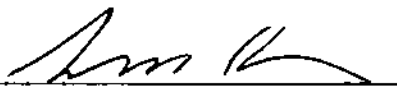
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Colf are cases about impeaching a defendant, **not** a victim or other witness. Those factors are designed to prevent a jury from being unduly prejudiced by hearing about a defendant's remote prior criminal convictions and determining the defendant had a propensity to commit the criminal act for which he stands accused. Furthermore, in a self-defense case the reasonableness and the state of mind of a defendant are factors. At the PCR hearing counsel testified he did not make the argument that convictions of the defendant and victim are different because the trial court was adamant that it was going to apply the *Colf* factors for convictions regardless of whether it was for the witness or the accused. (Order p. 9). That is not a valid trial strategy. Counsel's failure to make this argument was ineffective and likely changed the outcome of the trial.

The Order reasons that the Court of Appeals would likely affirm as it did for the other convictions. The defendant's rights to a fair trial must be preserved by the "crucible of cross-examination". *Crawford v. Washington*. The Applicant respectfully argues that had the issue been properly argued and preserved at trial and the victim been impeached with his prior convictions, the trial would not have resulted in a conviction or would have been reversed on appeal.

Respectfully submitted,



Susannah Ross #11205
Attorney for the Applicant
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Greenville, South Carolina
This 10 day of December, 2025.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Clifton E. Smith, #259061,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2022-CP-37-329

) **ORDER OF DISMISSAL WITH**
) **PREJUDICE**

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
2025 NOV 24 P 4:38

Presiding Judge: Hon. Jane H. Merrill
Applicant's Attorney: Susannah C. Ross, Esq.
Respondent's Attorney: AAG Ryan T. Kowalski
Trial Counsel: Gregory Lee Cole, Esq.
Date of Hearing: September 9, 2025

This matter comes before the Court by way of the post-conviction relief (PCR) action filed by Clifton E. Smith (Applicant) on May 5, 2022. Respondent, the State of South Carolina, made its Return and Partial Motion to Dismiss on February 15, 2024, requesting an evidentiary hearing to resolve the claims as set forth in the application. Applicant filed an amended PCR application on September 3, 2025. An evidentiary hearing was held on September 9, 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 his application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Gregory Lee Cole, Esquire (Trial Counsel). Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court

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finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses all allegations with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. During the May 2018 term, the Oconee County Grand Jury indicted Applicant for Assault and Battery of a High and Aggravated Nature (2018-GS-37-00667). On November 18-19, 2019, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. Gregory Cole Jr. and Daniel Day Jr., Esquires, represented Applicant. Assistant Solicitor Jason Christopher Alderman prosecuted the case. On November 19, 2019, the jury convicted Applicant as indicted. Judge McIntosh sentenced Applicant to fifteen (15) years' imprisonment for Assault and Battery of a High and Aggravated Nature.

DIRECT APPEAL

Applicant filed a timely notice of appeal. Appellate Defender Lara Mary Caudy perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

- I. Whether the trial court abused its discretion in not allowing him to impeach the testimony of the victim by introducing evidence of the victim's prior convictions

Following briefing, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Clifton Eugene Smith*, 2022-UP-167 (Ct. App. filed April 6, 2022). The Remittitur was returned on April 29, 2022.

FIRST PCR ACTION: 2020-CP-37-00247

On April 8, 2020, Applicant filed his first PCR application alleging various allegations of ineffective assistance of counsel. On June 23, 2021, Respondent made its Return and Motion to Dismiss without Prejudice based on Applicant's pending direct appeal. On July 12, 2021, the



Honorable J. Cordell Maddox, Jr., signed an Order dismissing Applicant's application without prejudice.

SUMMARY OF FACTS ADDUCED AT TRIAL

Varia Galbreath (Galbreath) let Applicant stay at her house over the weekend during Christmas so he could go to his probation meeting on Monday. Her thirty-year-old son, Reid, was also staying at home then. Galbreath gave Applicant a couple of pocketknives as a Christmas present. Galbreath testified Applicant grabbed one of the two pocketknives when they were leaving for her daughter's. (Trial Tr. pp. 150-52).

Soon Applicant started acting up, becoming loud and boisterous. Reid became upset by Applicant's behavior and went outside to wait in the car. Galbreath herself cursed out loud in the presence of the children and decided the three should leave after her daughter's remonstrations. (Trial Tr. pp. 151-52). On the drive home, Reid sat in the back seat and Applicant in the passenger seat while Galbreath drove. Reid complained to Applicant about Applicant mooching, not working, and not handling his liquor. Applicant retorted, "Well, you do drugs." In response, Reid struck him and told him to shut his mouth. (Trial Tr. pp. 178-80). Galbreath stopped the vehicle and told them to "stop, just stop." Galbreath testified the altercation stopped, and she continued driving. Applicant suddenly "whirl[ed]" around in his seat. She thought he was hitting Reid, and she stopped the car again. As Reid exited the car, he said, "You cut me." Reid paced and then said to call somebody. She called her daughter, then she called 911. Reid laid down on the road. (Trial Tr. pp. 152-55).

Applicant put the knife on the trunk of the car when law enforcement came. Galbreath testified it was the same knife she gave him as a Christmas present. (Trial Tr. p. 156). This



testimony would contradict Applicant's claim with the police that Reid had the knife and Applicant took it from him. (Trial Tr. pp. 210-11).

Reid lost use of his hand for about four months. Reid had to have surgery to repair nerves and tendons. (Trial Tr. pp. 180-86). Reid explained he was not fighting or antagonizing Applicant when Applicant turned around and cut him. He explained there was a definite break in time between the time he slapped Applicant and when Applicant turned around and cut him. (Trial Tr. p. 188; p. 196).

Sergeant Clay Sheriff of the Oconee County Sheriff's Office responded to the scene. Applicant was already in custody and Reid was attended to by emergency personnel. Applicant was agitated, intoxicated, boisterous, and smelled of alcohol. Applicant admitted he "did it" and exclaimed he would do it again. He later claimed Reid had the knife and he took it from Reid and stabbed him. Applicant said Reid ought to die. He later asked Sergeant Sheriff, "Did I get him good?" Applicant had lacerations on his fingers, but Sergeant Sheriff did not see lacerations anywhere else. (Trial Tr. pp. 208-12).

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):¹

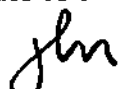
1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective because he did not impeach the victim regarding past drug use. On cross examination, Counsel did not question the victim about past drug use.
2. Abuse of Discretion on the part of the Trial Judge
 - a. The trial judge abused his discretion by not allowing the defendant to impeach the victim concerning prior convictions.

¹ Unless quoted, Applicant's allegations have been summarized for brevity and clarity.



Applicant requests relief in the form of a reversal of his sentence and a new trial. On September 3, 2025, Applicant filed an amended application alleging the following:

1. Ineffective Assistance of Counsel
 - a. Failure to object to reference to Applicant being on probation, especially when the judge ruled that witness M. Reid could not be impeached on his prior drug conviction for possession of methamphetamine, first and second offense, failure to stop for a blue light, use of communication facility in commission of a felony involving controlled substance, and fleeing or attempting to elude a police officer. p. 150. pp. 163-73
 - b. Failure to preserve the record as to whether Reid's conviction for fleeing or attempting to elude a police officer was admissible pursuant to Rule 609(a)(1) SCRE, and the *Colf* factors. See *State v. Colf*, 337 S.C. 622,627,525 S.E.2d 246, 248 (2003). -
 - c. Failing to cite Rule 9 SCCrimP in the motion for a continuance and argue the continuance was for good cause as counsel could not be effective because he was unable to adequately prepare for trial without speaking to his client and advising him to reconsider his plea offer because the A & B 1st charge was now ABHAN.1 Applicant was released on bond for the charge of A & B 1st Degree in February 2018. Applicant appeared for a probation violation hearing in December 2018 and was sentenced to thirteen (13) months during which time he did not meet with his lawyer. Upon Applicant's release he did not receive notification of November 18, 2019, court date or that his charge was proceeding as ABHAN. p. 49, p. 53.
 - d. Failing meet with Applicant to advise, instruct and prepare for trial.
 - e. Failure to inform Applicant of plea offer as counsel's duties include the duty to fully communicate with the client and correctly advise them so that the client can make an informed decision regarding any plea proposals by the State. See *Davie v. State*, 675 S.E.2d 416,381 S.C. 601 (S.C. 2009).
 - f. Failing to request credit for time served pursuant to Sec.24-13-40.
2. Due Process violations in the indictment procedure.



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 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), SCRPC; *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.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Before this Court are the Oconee County Clerk of Court records of the subject conviction, Applicant’s records from the South Carolina Department of Corrections, and the trial transcript. 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 his application for post-conviction relief.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation: Trial Counsel's failure to impeach the victim was ineffective assistance of counsel. Applicant alleged that even though the trial judge ruled against the impeachment of the victim, the victim opened the door for impeachment by repeating Applicant's statements.

Allegation: Trial Counsel failed to object to the court's misapplication of Rule 609, SCRE.

Applicant alleged Trial Counsel should have argued that the language of Rule 609 makes a distinction between a witness and the accused. Applicant contends the trial court considered the weight of admission of the victim's prior convictions as if the victim were the accused. Trial Counsel testified he did not make arguments regarding factors relating to the accused rather than witnesses because the trial court was adamant it was going to apply the factors for convictions of the witness or the accused. Applicant also alleged Trial Counsel was deficient for failing to preserve an issue for appeal, specifically whether a conviction for fleeing police could be used for to impeach a witness.

“For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.”

Rule 609, SCRE.

The Court of Appeals affirmed Applicant's conviction and addressed this issue as part of its unpublished opinion. 2022-UP-167. Footnote 1 stated, “As to whether the victim's prior conviction for fleeing or attempting to elude a police officer is admissible pursuant to Rule 609(a)(1), SCRE, and the *Colf* factors, this issue is not preserved for appellate review.” The trial court would not allow the same witness to be questioned about a Failure to Stop for Blue Light, which is a similar offense to fleeing or attempting to elude a police officer. Applicant asserts that Trial Counsel failed to argue that Rule 609 and *Colf* make a distinction between a witness and the defendant. However, the trial judge makes that distinction on the record:



The State has the burden to establish its inadmissibility, and then the *Colf*, C-o-1-f, factors have to be considered as well, and that is the impeachment value of the prior crime, the point in time of the conviction, and the witness' subsequent history, similarity between the past crime and the crime charged -- that's more for the defendant -- import of the defendant's testimony -- again that's for the defendant -- or the accused and centrality of credibility is an issue. I assume you're speaking of the victim in this case?

(Trial Transcript, p. 165)

Therefore, Trial Counsel was not deficient for failing to argue that the trial court failed to make a distinction between the witness and the accused when it clearly did in its analysis of *Colf*.

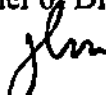
Had this issue been preserved, it is likely the Court of Appeals would have affirmed its exclusion as impeachment evidence since it affirmed the Trial Court's ruling for a Failure to Stop for Blue Light. *See Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018) (holding a PCR court must view the trial court's ruling on an issue through the same lens applied on appeal, giving appropriate deference to the trial court's findings.). In its opinion, the Court of Appeals found the following:

“The trial court did not abuse its discretion in refusing to allow Smith to impeach the victim's testimony with the introduction of the victim's prior convictions for possession of methamphetamine, first and second offense; the use of a communication facility in commission of a felony involving a controlled substance; and failure to stop for a blue light.”

Smith, 2022-UP-167.²

Although Trial Counsel failed to preserve the record regarding one conviction, this Court finds such error does not rise to the level of deficient performance. If, however, the failure to preserve that one issue is considered deficient, this Court finds Applicant was not prejudiced

² Notably, the Court of Appeals cited *State v. Colf* in its analysis of the admissibility of Victim's prior convictions.



because of the reasonable likelihood the Court of Appeals would affirm the trial court as it did for the other convictions that the trial court ruled could not be used as impeachment. Further, Victim's priors convictions offered limited impeachment, and Victim's testimony was corroborated and cumulative to Galbreath's testimony. Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Applicant only had one visit with Trial Counsel before trial.

Allegation: Trial Counsel failed to move for a continuance on the grounds that Trial Counsel was unable to adequately prepare for trial.

Applicant testified he was unable to get in contact with Trial Counsel, did not review discovery with Trial Counsel, and was not informed by Trial Counsel of the direct indictment for Assault and Battery of a High and Aggravated Nature, instead of an indictment on his original warrant for Assault and Battery, First Degree. Trial Counsel testified Applicant was charged with Assault and Battery of a High and Aggravated Nature prior to Trial Counsel's appointment. While Applicant was in detention, Trial Counsel reviewed discovery with Applicant. Trial Counsel testified that he was unable to successfully contact Applicant using the contact information in his file after Applicant was released from detention. Applicant did not testify that he contacted Trial Counsel at his office at any time after he was released from pretrial detention. Further, Trial Counsel moved for a continuance at the outset of the trial based on Applicant's initial absence. Notwithstanding Trial Counsel's inability to locate Applicant after he was released from detention, testimony establishes Trial Counsel was prepared to move forward with trial based on his review of discovery and his prior discussion with Applicant.

This Court finds it credible that Trial Counsel made attempts to contact Applicant and previously advised Applicant to keep Counsel up to date regarding Applicant's contact information



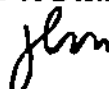
upon his release. Applicant knew who his attorney was and did not contact his attorney after his release from detention. "Brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel did not keep Applicant informed of plea offers.

Applicant testified he only met with and spoke to Trial Counsel once prior to trial and that Trial Counsel did not keep him updated on offers from the Solicitor's Office. Trial Counsel testified he advised Applicant of an offer to plead to Assault and Battery First Degree with a recommendation of probation when he met with Applicant in the jail, and Applicant rejected this offer. Trial Counsel's testimony indicates he obtained the Solicitor's consent to a Personal Recognizance Bond which released Applicant from incarceration in early 2019. Although Trial Counsel was unaware of Applicant's whereabouts following his release, after Applicant was located and before the trial started, the State offered for Applicant to plead straight up to Assault and Battery, First Degree, and neither the State nor victim would oppose probation. Trial Counsel conveyed this offer to Applicant, and he rejected it and chose to proceed to trial. Trial Counsel's testimony about pleas offers is credible, thus Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to object to statements about Applicant's probation status.

Applicant testified at the PCR hearing that Trial Counsel should have objected to witness testimony regarding Applicant being on probation at some point. Trial Counsel testified the statement was made quickly during the State's direct examination of a witness in response to a



question regarding a different matter. The question posed was, “What was your relationship with [Applicant]?” (Trial Tr. p. 150, line 5). In response, Ms. Galbreath mentions probation twice when discussing providing transportation to Applicant. (Trial Tr. p. 150, lines 8 and 10). No specific criminal offense was referenced during this testimony. Trial Counsel did not see a reason to object because the questioning of the witness and her responses proceeded quickly. It is Trial Counsel's opinion that the statement did not have any effect on the outcome of the case, and that the statement, even if error, was not significant enough to warrant a mistrial or curative instruction. This Court finds Trial Counsel was not deficient in failing to object to the witness's mention of probation. Trial Counsel strategically chose not to bring more attention to it by objecting or asking for a curative instruction. Applicant has not shown a reasonable probability that if Trial Counsel had objected, the outcome of the trial would have been different. Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to object to language within the self-defense jury charge.

Applicant asserts Trial Counsel should have objected to the language contained in the self-defense jury charge as the general charge provided was best applied when a death is involved because it included language such as “fatal blow” which would imply a death occurred. Applicant contends the circumstances of this case differed from general self-defense cases, as the injuries did not reach the level of severity involving a fatality. Applicant testified that the victim admitted to hitting Applicant first and beating him. Applicant stated he fought back in self-defense as he knew the victim to regularly carry a firearm with him, and his actions were the result of preventing the victim from reaching for a firearm. Trial Counsel submitted proposed jury instructions to the Trial



Court which it declined to charge. Trial Counsel testified he did not object to the charge because he believed the language within the jury charge did not impact the outcome of the trial.

The charge, as a whole, must not mislead the jury. *State v. Atkins*, 303 S.C. 214,221, 399 S.E.2d 760, 764 (1 990). “In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed “in its entirety and not in isolation.” *Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (citing *Battle v. State*, 382 S.C. 197, 203,675 S.E.2d 736, 739 (2009)). In *Gibbs*, the Defendant alleged an alibi defense and counsel failed to request an alibi charge. *Id.* That is not the case for Applicant, as the Trial Court charged self-defense as requested by Applicant.

This Court finds that limited language in the jury charge, such as describing a “fatal blow” was incorrect; however, when read as a whole, the jury instruction was proper. Reading the charge in its entirety, and not the select language in isolation, demonstrates a proper jury instruction about self-defense. The victim testified before the jury, and they knew there was no fatal blow. (Trial Tr. pp. 176-196). This Court finds Trial Counsel was not deficient by not objecting to the jury instruction, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to offer DNA evidence as to photographs shown of blood on Applicant's body.

No DNA evidence was produced at trial. Applicant testified about his injuries stating he had a busted nose, bleeding ears, bleeding mouth, and that his fingers required sutures at the hospital. However, the Solicitor argued in closing that that the blood shown on Applicant in photographs could have been the victim's blood rather than Applicant's own blood. Trial Counsel testified he did not believe DNA evidence was necessary. He understood the Solicitor's statement to be an argument and/or opinion, not a statement of fact. The transcript shows an officer testified



the Applicant did not have a cut on his head and so the solicitor argued that could mean the blood on Applicant's head is the victim's blood. (Trial Tr. p. 243). The court finds Trial Counsel's testimony is credible. The solicitor made this statement as part of the State's argument, and it was not evidence for the jury to consider. Applicant has not shown a reasonable probability that Trial Counsel introducing DNA evidence would have changed the outcome of the trial. Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to request that Applicant receive credit for time served for his pretrial detention to apply towards his 15-year sentence.

Applicant alleged Trial Counsel failed to request time served at sentencing. Applicant stated he was incarcerated for 23 months and only received credit for 13 months. Applicant did not clearly testify the dates of detention for which he thinks he earned 10 months of credit. Trial Counsel admitted he should have requested credit for time served but was focused on mitigating factors during the sentencing right after trial. Additionally, Trial Counsel testified he contacted Applicant following sentencing informing Applicant he would investigate the time served issue, but Applicant did not want Trial Counsel to do anything further as new counsel was working on the appeal. By operation of law, S.C. Code Ann. Section 24-13-40, the Applicant is entitled to credit for time served. Moreover, Applicant received credit for time served pursuant to the statute. Trials are dynamic and stressful, and any error in Trial Counsel's failure to request time served is remedied by statute. This Court finds Trial Counsel was not deficient.

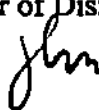
Abuse of Discretion

Allegation: Trial Judge abused his discretion by refusing to allow Applicant to use evidence of the victim's prior convictions to impeach the victim.



This allegation constitutes a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). This was litigated in the appellate court and is outside the scope of this PCR Application other than the narrow preservation issue addressed above. This issue is not appropriate for this Court to decide, thus, this allegation must be **DENIED** and **DISMISSED**.

[Conclusion and Signature Page following]



CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, 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 24th day of November, 2025.

Jane H. Merrill
JANE H. MERRILL
Presiding Judge
Tenth Judicial Circuit

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
2025 NOV 24 4:38

Greenwood, South Carolina