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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Case No.: 2025-CP-10-02458

Gary Nelson (#329426)..... Appellant

v.

State of South Carolina ..... Respondent

NOTICE OF APPEAL

Gary Nelson appeals the order of the Honorable Jocelyn Newman, filed February 11, 2026, and served on his counsel February 11, 2026, that dismisses the PCR action. The Defendant/Appellant requests that the order be reversed, and he be granted a new trial. Defendant/Appellant received proper notice of the entry of the written order on February 11, 2026.

March 2, 2026

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
) Gary Nelson #329426, )  
) Applicant, )  
) v. )  
) State of South Carolina, )  
) Respondent. )

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) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO. 2025-CP-10-02458

**ORDER OF DISMISSAL**  
**FILED**  
**FEB 11 2025**  
**JULIE J. ARMSTRONG**  
**CLERK, C.P. & G.S.**

This matter comes before the Court by way of Applicant Gary Nelson’s application for post-conviction relief (PCR) filed on April 28, 2025. Respondent filed its Return requesting an evidentiary hearing. On January 21, 2026, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Jocelyn Newman. Applicant was present and represented by Chris Murphy Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Applicant proceeded forward on sole allegation of failure to ask for house arrest credit. In support of this claim Applicant testified on his own behalf. Respondent presented the testimony of Helen Dovell, Esquire (Plea Counsel).

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections serving an active ten-year sentence. In August 2022, the Charleston County Grand Jury indicted Applicant for grand larceny (- 05427), two counts of kidnapping (-05429, -05430), shoplifting –

enhancement (-05431), child endangerment (-05432), failure to stop for a blue light (-05433), and leaving the scene of accident with property damage (2022-GS-10-05434). On January 29, 2025, Applicant appeared before the Honorable Judge Roger M. Young, Sr. and pled guilty as indicted. Helen R. Dovell represented Applicant. Assistant Solicitor Jordan Novell represented the State. Judge Young sentenced Applicant to ten years for shoplifting, ten years for grand larceny, and ten years for each kidnapping, three years for failure to stop for a blue light, one year for leaving the scene of accident with property damage, eighteen months for child endangerment, all to run concurrently. Applicant did not file a direct appeal.

#### **CURRENT APPLICATION**

On April 28, 2025, Applicant timely filed this PCR action alleging he is being held in custody unlawfully based on the following:

1. Ineffective assistance of counsel for failure to ask for credit for house arrest
2. Conflict of interest<sup>1</sup>

As relief, Applicant request for jail credits for time served under house arrest.<sup>2</sup>

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

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

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<sup>1</sup> Applicant waived this claim at the evidentiary hearing.

<sup>2</sup> On May 22, 2025, Applicant additionally filed a pro se motion for full house arrest time credit.

proof. Below are the Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

### *Ineffective Assistance of Counsel*

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to 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.

### *Failure to Ask for House Arrest Credit*

Applicant alleged counsel was ineffective for failing to ask for house arrest credit. This Court finds this allegation is without merit. Under South Carolina Code § 24-13-40, it is within

the sentencing judge's discretion whether to award credit for time spent on electronic monitoring. Counsel *credibly* testified that she never promised Applicant that he would get credit for the time he spent during house monitoring. Although Applicant violated the terms of his electronic monitoring, Counsel *did* request the sentencing court to give Applicant credit for this time. (Guilty Plea Transcript p. 21). Therefore, the record directly refutes Applicant's allegation. Applicant has failed to prove deficiency and prejudice, and this claim is denied.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

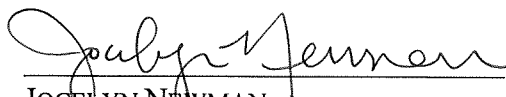
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE**.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), 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. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 6<sup>th</sup> day of February, 2026.



JOCELYN NEWMAN  
Presiding Judge  
Ninth Judicial Circuit

Columbia, South Carolina