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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

2024-CP-42-03224

Jaden I . Gary..... Appellant,
v.
The State, ... Respondent.

NOTICE OF APPEAL

Jaden I . Gary appeals the Honorable William C. McMaster, III's Order of Dismissal with Prejudice filed March 10, 2026, Order Granting in Part and Denying in Part filed April 9, 2026, and Amended Order of Dismissal with Prejudice filed April 16, 2026.

This twenty-third day of April, 2026.

s/Susannah Ross
Susannah Ross, Attorney at Law
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Other Counsel of Record:
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State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

William C. McMaster, III
Judge

Greenville County Courthouse
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April 7, 2026

Amy W. Cox
Spartanburg County Clerk of Court
PO Box 3483
Spartanburg, SC 29304

Re: 2024CP4203224 – Jaden I. Gary v. State of South Carolina

Ms. Cox,

Please find enclosed an Amended Order of Dismissal with Prejudice for the above-referenced case as signed by Judge McMaster. Please confirm via email when the Order has been filed.

Thanks,

Devyn Fischer
Judicial Law Clerk
The Honorable William C. McMaster, III

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Jaden I. Gary, #385880, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024-CP-42-03224 **AMENDED ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. William C. McMaster, III
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	MacKinnon Westraad, Esq.
Trial Counsel:	E. Joshua Schultz, Esq.
Date of Hearing:	June 16, 2025
Court Reporter:	Hollie M. Jenkins

This matter comes before the Court by way of Jaden I. Gary's (Applicant) application for post-conviction relief (PCR) filed on August 13, 2024. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on October 22, 2024, requesting an evidentiary hearing on the claims of ineffective assistance of counsel. On February 20, 2025, Applicant filed an amended application for PCR.

On June 16, 2025, an evidentiary hearing convened at the Spartanburg County Courthouse before the Honorable William C. McMaster. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General MacKinnon Westraad, Esquire, represented Respondent. Applicant testified on his behalf at the evidentiary hearing, and Respondent presented the testimony of E. Joshua Schultz, 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 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. Applicant was indicted during the September 2019 term of the Spartanburg County Grand Jury for grand larceny (2019-GS-42-05573), burglary in the first degree (2019-GS-42-05574), and possession of a weapon during the commission of a violent crime (2019-GS-42-05574A). Applicant was represented by Trial Counsel. Seventh Circuit Assistant Solicitor Spenser Smith prosecuted the case.

Applicant first proceeded to trial on August 10, 2021, before the Honorable J. Mark Hayes, II. That case ended in a mistrial after jurors were dismissed for medical and family reasons.

Applicant proceeded to trial for the second time on August 31, 2021, before the Honorable R. Keith Kelly. Applicant was found guilty as indicted. Judge Kelly sentenced Applicant to a term of twenty (20) years' imprisonment for burglary in the first degree, five years' imprisonment for possession of a weapon during the commission of a violent crime, and three years' imprisonment for grand larceny, to be served concurrently.

Applicant filed a timely Notice of Appeal. Appellate Defender Elizabeth Franklin Best perfected Applicant's appeal. After briefing, the South Carolina Court of Appeals dismissed the appeal by unpublished opinion. State v. Jaden Imarion Gary, Op. No. 2023-UP-364 (S.C. Ct. App. filed November 8, 2023). The Remittitur was returned to the lower court on November 28, 2023.

CURRENT ACTION BEFORE THIS COURT

On August 13, 2024, Applicant timely filed his original application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance Counsel:
   a. "Unable to specify without attorney"

On February 20, 2025, Applicant filed an amended application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel for:
   a. failure to object to the solicitor's arguments regarding sentencing;
   b. failure to argue that the sentence punished the Applicant for exercising his right to jury trial; See ROA p. 279
   c. failure to move to reconsider sentence, especially after the two co-defendants who were older than the seventeen your old Applicant were allowed to plead to burglary second degree and received fifteen-year sentences;
   d. failure to object to Investigator Trevor Shue's identification of the Applicant from the video for bolstering and failing to argue the identification was a factual question for the jury; See ROA p. 152, l. 7, p. 156, l. 15-20
   e. misadvising the Applicant on the law by telling him that the judge could charge burglary second when the Applicant admitted in his confession that he went in the dwelling with a gun;
   f. failure to advise the Applicant to plead guilty after his first trial with Judge Hayes;
2. Denied due process and fundamental fairness guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States & Art. I, Sec.3 of the South Carolina Constitution
   a. Applicant was punished with a higher sentence for exercising his right to a jury trial

Applicant requests relief in the form of a new trial.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[1] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
(2) That the court was without jurisdiction to impose sentence;
(3) That the sentence exceeds the maximum authorized by law;

[1] S.C. Code Ann. §§ 17-27-10 to -160.

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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), SCRCP; 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.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary

proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court also heard the testimony presented at the evidentiary hearing and observed the witnesses, allowing the 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. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate

assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 1(a):	**Failure to object to the solicitor's arguments regarding sentencing;**
Allegation 1(b):	**Failure to argue that the sentence punished the Applicant for exercising his right to jury trial; See ROA p. 279**
Allegation 2(a):	**Applicant was punished with a higher sentence for exercising his right to a jury trial**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to the solicitor's statements at sentencing that the Applicant should receive a harsher sentence because he did not take responsibility by admitting wrongdoing and accepting punishment.[2] This Court finds these allegations to be without merit.

A trial judge abuses their discretion in sentencing when they consider that the applicant exercised their right to a jury trial rather than pleading guilty. Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999) (citing State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995)). Courts will look to the record for indications of whether the judge improperly considered that the Applicant was exercising his right to a jury trial. See Davis v. State at 331, 333 (finding the judge's responses to defense counsel's argument for a sentence reduction, which expressed his preference for guilty pleas, were improper).

"An ineffective assistance claim based on a failure to object is tied to the admissibility of

[2] Trial Tr. pp. 276-278.

the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[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.

Sentencing Hearing

At Applicant's sentencing hearing, Solicitor Smith made the following comments:

> Your Honor, Mr. Williams had to go back to work and obviously this is the second time we've tried this case. He did state he wanted Your Honor and Mr. Gary to know that he believes he's lucky that he wasn't home cause he thinks Mr. Gary might be getting a life sentence but in a, in a different way and possibly all three of the young men that were involved. He asks Your Honor to impose the maximum sentence because Mr. Gary had a chance to do the right thing and to plead, and instead he chose to keep doing the wrong thing.

(Trial Tr. p. 276).

> I don't think that the minimum sentence is appropriate because he did not admit responsibility. Although he did it to the investigator, made the State and Mr. Williams go through basically the last trial, we were one witness away from finishing, two different trials on a case where he confessed and is caught on video. So, he's not accepted responsibility. He could not just admit what he had done and take punishment. So, we do not think that the minimum sentence is appropriate.

(Trial Tr. pp. 277-278).

When Judge Kelly sentenced Applicant, he stated:

> Mr. Gary, you are indeed a very blessed and lucky man. You broke into the house of a man who is a combat veteran with three tours. . . Had he been there, he would of killed you and your two friends that day. Your mother would be minus a son right now. No doubts in my mind. None. You would be a dead person. That shotgun you took out, that's the one he had loaded to stop people like you and the citizens of this county and this state are tired of people like you breaking into their houses. You didn't make a mistake. A mistake is where you put two much salt on your food. You made a bad judgment. That's what you did.

(Trial Tr. pp. 279).

Judge Kelly then delivered the sentence and said to Applicant, "You can overcome this, Mr. Gary. You're gonna be close to 40 years old, but you still got time to overcome this and become the man that you want to be. Very best of luck to you, sir." (Trial Tr. p. 280).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not object to any of the statements the solicitor made about how Applicant was not remorseful, was smoking marijuana, and was the leader amongst the co-defendants. (PCR Tr. p. 13). Applicant testified that he was sentenced to twenty years instead of the fifteen years for non-violent offenses that his co-defendants received, but Trial Counsel never moved to reconsider the sentence that Applicant was aware of. (PCR Tr. p. 13). Applicant testified he was not the ringleader. (PCR Tr. p. 14).

On cross-examination, Applicant testified that the only reason he believed he was punished for exercising his right to a jury trial was the comments the solicitor made during sentencing. (PCR Tr. p. 15). Applicant testified that Judge Kelly did not make any comments to that effect. (PCR Tr. p. 15). Applicant agreed that the video evidence showed him leading his co-defendants through the home. (PCR Tr. p. 15). Applicant testified that he identified himself from the video in his interview with the police. (PCR Tr. p. 15).

On direct examination, Trial Counsel testified that he met with Applicant and his family several times in his office, and they discussed the charges and what the State was required to prove.

(PCR Tr. p. 17). Trial Counsel testified the evidence included statements by Applicant, video of the break-in that was "obviously, very persuasive," and incident reports. (PCR Tr. p. 17). Trial Counsel testified the solicitor did not make any arguments at sentencing that he believed were objectionable. (PCR Tr. pp. 17-18). Trial Counsel testified Judge Kelly made a comment about how folks are tired of having their homes broken into, but there was no indication that he sentenced Applicant the way he did to punish him for taking the case to trial. (PCR Tr. p. 18). Trial Counsel testified he did not think he could succeed on an argument about Judge Kelly punishing Applicant. (PCR Tr. p. 18).

Findings

This Court finds the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds Trial Counsel's testimony **credible** that he did not think he could succeed on an argument that Judge Kelly punished Applicant. This Court also does not see any indication in the record that Judge Kelly sentenced Applicant the way he did because he was punishing him for taking the case to trial. On the contrary, all of Judge Kelly's comments during sentencing make it clear that Applicant's sentence was based on the severity of the crime. Further, the solicitor conveyed the victim's wishes that Applicant get the maximum sentence of life because of Applicant's failure to take responsibility, but Judge Kelly sentenced Applicant to twenty years—only five years beyond the minimum. Thus, it is clear that Judge Kelly did not embrace the solicitor's comments or request. See State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976) (Holding the trial court has broad discretion in imposing criminal sentences.)

Additionally, Applicant cannot show prejudice from Trial Counsel's failure to object to the solicitor's comments. As Trial Counsel testified, he did not view the comments during sentencing as objectionable. The statements were the solicitor's request for life in prison, to which Trial Counsel attempted to respond with mitigation.[3] Further, since Judge Kelly did not take the solicitor's request into account, it would not have impacted Applicant's sentence for Trial Counsel to object. See State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979) (Absent a showing of partiality, prejudice, oppression, or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits.).

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED WITH PREJUDICE**

Allegation 1(c): **Failure to move to reconsider sentence, especially after the two co-defendants who were older than the seventeen your old Applicant were allowed to plead to burglary second degree and received fifteen-year sentences;**

[3] Trial Tr. p. 279.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to move to reconsider the sentence after the co-defendants received lower sentences. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not object to any of the statements the solicitor made about how Applicant was not remorseful, was smoking marijuana, and was the leader amongst the co-defendants. (PCR Tr. p. 13). Applicant testified he was sentenced to twenty years instead of the fifteen for non-violent that his co-defendants got, but Trial Counsel never moved to reconsider the sentence that Applicant was aware of. (PCR Tr. p. 13). Applicant testified he did not know the context of his co-defendants getting a reduced charge, and his co-defendants did not help the State by testifying against him. (PCR Tr. p. 13). Applicant testified the solicitor did not tell the judge that he intended to give the co-defendants a deal for burglary second. (PCR Tr. p. 13). Applicant testified the co-defendants were his best friends from middle school, and Applicant was the youngest of them. (PCR Tr. p. 14). Applicant testified he was not the ringleader. (PCR Tr. p. 14).

On cross-examination, Applicant agreed that the video evidence showed him leading his co-defendants through the home. (PCR Tr. p. 15). Applicant testified he identified himself from the video in his interview with police. (PCR Tr. p. 15).

On direct examination, Trial Counsel testified one of the co-defendants pleaded guilty sometime around the same week of Applicant's sentencing, but he did not know specifically when the other co-defendants were sentenced. (PCR Tr. p. 18). Trial Counsel testified he maybe could have moved for the judge to reconsider the sentence based on the co-defendants' pleas, but he thought that ultimately would not have been successful. (PCR Tr. pp. 18-19). Trial Counsel

testified Judge Kelly sentenced Applicant within the sentencing guidelines, and knowing Judge Kelly and practicing in front of him for many years, Trial Counsel did not think that motion would succeed. (PCR Tr. p. 19).

On cross-examination, Trial Counsel testified both co-defendants' SCDC records seemed to show that they each got fifteen-year sentences for burglary second, violent. (PCR Tr. pp. 28-29). Trial Counsel testified that because of the distinction between burglary second and burglary first, the co-defendants would not have to serve 85% and would get out much sooner than Applicant. (PCR Tr. pp. 29-30). Trial Counsel testified that he could not remember specifically if Judge Hayes made comments about the burglary first charge, but he thought Judge Hayes was concerned with the disparity, although he did not want to speak on Judge Hayes' behalf. (PCR Tr. p. 31).

On redirect examination, Trial Counsel testified the State interpreted the case as Applicant being the ringleader. (PCR Tr. p. 37). Trial Counsel testified he could understand why the State was interpreting it that way, he just felt differently because all the individuals were young. (PCR Tr. p. 37).

Findings

As an initial matter, this Court finds through the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Trial Counsel **credibly** testified that based on his extensive professional experience with Judge Kelly, Trial Counsel did not think that a motion to reconsider would be successful.

Applicant was sentenced well within the required sentencing range. Applicant testified he was shown on video leading his co-defendants through the home, and the record reflects he entered the house with a firearm.[4] Trial Counsel testified that the State's position was that Applicant was the ringleader of the co-defendants, and Trial Counsel understood why the State interpreted it that way. He also testified the plea offer for Applicant was fifteen years for burglary first. The co-defendants both pleaded guilty to fifteen years for burglary second, violent. (PCR Tr. pp. 28-29). Thus, the distinction in the offers was parole eligibility, which the State seemingly did not want to offer to Applicant because of his position as the ringleader. Therefore, Trial Counsel was not deficient for recognizing the difference in Applicant's case. Additionally, Applicant was not prejudiced, as he did not show that Judge Kelly likely would have reduced his sentence based only on his co-defendants' sentences, which were sentences for burglary second and not burglary first like Applicant's. See Cogdell, *supra*.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

Allegation 1(d): **Failure to object to Investigator Trevor Shue's identification of the Applicant from the video for**

[4] Trial Tr. pp. 156, 179.

bolstering and failing to argue the identification was a factual question for the jury; See ROA p. 152, I. 7, p. 156, 1. 15-20

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to the investigator's identification of Applicant at trial. This Court finds this allegation to be without merit.

To prove trial counsel's performance was deficient, a PCR applicant alleging that counsel failed to object to bolstering testimony must show that counsel's representation fell below an objective standard of reasonableness. Chappell v. State, 429 S.C. 68, 75, 837 S.E.2d 496, 500 (Ct. App. 2019). Generally, the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain "the assessment of witness credibility ... within the exclusive province of the jury." State v. Taylor, 404 S.C. 506, 514–15, 745 S.E.2d 124, 128 (Ct. App. 2013) (citing State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012)). "In an ineffective assistance case, 'trial counsel's failure to object to [improper bolstering] testimony does not remove a[] [PCR] applicant's burden to prove prejudice." Chappell, 429 S.C. at 80, 837 S.E.2d at 502 (quoting Thompson v. State, 423 S.C. 235, 246, 814 S.E.2d 487, 492 (2018). Failure to object to bolstering comments may be prejudicial where the case hinges on the credibility of the bolstered testimony. State v. Chavis, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015); Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010).

"If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." Rule 701, SCRE.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Investigator Trevor Shue ("Investigator Shue") told Applicant that he took the video to an acquaintance of his and she identified Applicant. (PCR Tr. p. 10). Applicant testified that his "data" said that Investigator Shue identified Applicant from an incident that happened in 2018, but he had not been involved in any of that and had no prior record. (PCR Tr. pp. 10-11). Applicant testified Investigator Shue said he recognized Applicant from when he investigated or interviewed Applicant, or something like that. (PCR Tr. p. 11). Applicant testified that never occurred, but Trial Counsel did not object to it. (PCR Tr. p. 11). Applicant testified Investigator Shue was part of the gang unit at the time, and there was some suggestion that that's how Applicant was identified, but he was not involved with gangs before. (PCR Tr. p. 11). Applicant testified Trial Counsel did not object when Investigator Shue was testifying that he recognized Applicant from the video. (PCR Tr. p. 12).

On direct examination, Trial Counsel testified he believed he objected to Investigator Shue's identification of Applicant. (PCR Tr. p. 19). Trial Counsel testified he supposed he could have made a bolstering objection, but he did not. (PCR Tr. pp. 19-20). Trial Counsel testified it possibly could have changed the outcome of the trial to get the identification testimony excluded, but he made the motions to exclude that testimony in both trials. (PCR Tr. p. 20). Trial Counsel testified the evidence was strong, and it was hard to know if something would have changed the outcome of the trial, but it probably would not have changed the outcome. (PCR Tr. p. 24).

On cross-examination, Trial Counsel testified he thought Investigator Shue had prior knowledge of Applicant, but he was never given any incident report or anything like that. (PCR Tr. p. 33).

Findings

As an initial matter, this Court finds through the combination of the record and testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. The record reflects that Investigator Shue's testimony laid the foundation for Applicant's status as a suspect in this investigation, which was rationally based on his prior personal experience with Applicant.[5] However, Applicant identified himself as the individual on video during his interview with law enforcement, which was presented to the jury.[6] Therefore, Applicant cannot establish prejudice on an allegation that there was bolstering of a witness identifying him when the jury was shown a separate identification by Applicant himself.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

Allegation 1(e): **Misadvising the Applicant on the law by telling him that the judge could charge burglary second when the Applicant admitted in his confession that he went in the dwelling with a gun;**

[5] Trial Tr. pp. 155-160.
[6] Trial Tr. p. 179.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for misadvising him on the law when he told Applicant that the judge could charge burglary second. This Court finds this allegation to be without merit.

> A person is guilty of burglary in the first degree if the person enters a **dwelling** without consent and with intent to commit a crime in the dwelling, and either:
> (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
> (a) is armed with a deadly weapon or explosive; or
> (b) causes physical injury to a person who is not a participant in the crime; or
> (c) uses or threatens the use of a dangerous instrument; or
> (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
> (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
> (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. §§ 16-11-311 (emphasis added).

> (A) A person is guilty of burglary in the second degree if the person enters a dwelling without consent and with intent to commit a crime therein.
> (B) A person is guilty of burglary in the second degree if the person enters a **building** without consent and with intent to commit a crime therein, and either:
> (1) when, in effecting entry or while in the building or in immediate flight, he or another participant in the crime:
> (a) is armed with a deadly weapon or explosive; or
> (b) causes physical injury to a person who is not a participant in the crime; or
> (c) uses or threatens the use of a dangerous instrument; or
> (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
> (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
> (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. §§ 16-11-312 (emphasis added).

> For purposes of Sections 16-11-311 through 16-11-313:
> (1) "Building" means any structure, vehicle, watercraft, or aircraft:
> (a) Where any person lodges or lives; or
> (b) Where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is deemed both a separate building in itself and a part of the main building.

(2) "Dwelling" means its definition found in Section 16-11-10 and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person.

S.C. Code Ann. §§ 16-11-310.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169-70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145.

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he felt Trial Counsel was ineffective because Trial Counsel led him to believe he was eligible for second-degree burglary when he wasn't, which resulted in him getting more time when he could have gotten less. (PCR Tr. p. 9). Applicant testified he did not take the plea offer of fifteen years for burglary in the first degree because his attorney told him he could get burglary in the second degree. (PCR Tr. pp. 9-10). Applicant testified Trial Counsel asked for an instruction on burglary second during the trial, but the instruction was not given. (PCR Tr. p. 12). Applicant testified he thought he wouldn't be found guilty of first-degree, but of second-degree. (PCR Tr. p. 12). Applicant testified he was never told he had no chance for second-degree burglary because the video showed him with a gun. (PCR Tr. p. 12).

On direct examination, Trial Counsel testified that he advised Applicant that the judge could charge burglary in the second degree, and he remembered discussing in chambers the possibility of Judge Kelly giving a burglary second-degree charge to the jury, either violent or non-violent. (PCR Tr. p. 20). Trial Counsel testified the burglary second statute is "quite confusing" when compared to the burglary first statute because of the difference between a "building" and a "dwelling." (PCR Tr. pp. 20-21). Trial Counsel testified that he believed any practicing attorney or judge would agree it was confusing. (PCR Tr. p. 21). Trial Counsel testified his strategy going into trial was that if the jury was charged on burglary second, and Applicant was acquitted of burglary first, then his parole eligibility could have changed. (PCR Tr. p. 21). Trial Counsel testified he could not specifically remember advising Applicant one way or the other when it came to the fifteen-year plea offer. (PCR Tr. p. 22).

On cross-examination, Trial Counsel testified he believed he had a chance for a burglary second jury instruction because of the ambiguity, but Judge Kelly ultimately decided he would not charge it. (PCR Tr. p. 34).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible**. This Court further finds through the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* Trial Counsel **credibly** testified that his strategy was to get the judge to charge burglary second to the jury because of the ambiguity in the statute, with "dwelling" and "building" having seemingly indistinguishable meanings. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (where counsel articulates a valid reason for employing a strategy, such conduct is not ineffective assistance of counsel). The reason this strategy failed was not that Applicant had a gun, as suggested by Applicant, but because the judge ruled he should not charge the lesser-included offense when there was no evidence that Applicant committed the lesser-included offense *rather than* the greater offense. See State v. Smith, 315 S.C. 547, 549, 446 S.E.2d 411, 413 (1994). However, the strategy was reasonable considering Applicant was unhappy with his options, and this strategy may have provided his best chance of a lower sentence. Trial Counsel **credibly** testified that Applicant wanted to take the case to trial after extensive discussion of his options. Therefore, this Court finds Trial Counsel is not deficient.

Moreover, Applicant failed to show that he would have accepted the plea offer rather than going to trial, or that it would have been accepted by the judge, if Trial Counsel had not advised him of the possibility of a second-degree burglary charge. Given the judge's comments during sentencing, where he expressed frustration with Applicant's actions, it is unlikely he would have accepted a guilty plea to the minimum sentence. Therefore, Applicant cannot establish prejudice.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

Allegation 1(f): Failure to advise the Applicant to plead guilty after his first trial with Judge Hayes

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to advise him to plead guilty after his first trial. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that his case had been tried once before by Judge Hayes, but it resulted in a mistrial. (PCR Tr. p. 10). Applicant testified that Judge Hayes did not mention anything about his sentence. (PCR Tr. p. 10).

On direct examination, Trial Counsel testified Applicant's case was difficult, and the State's negotiation was particularly harsh for a person like Applicant who was young and had no record. (PCR Tr. p. 21). Trial Counsel testified he expressed those thoughts to the prosecuting attorney on the case. (PCR Tr. p. 21). Trial Counsel testified the plea offer the entire time was fifteen years under burglary first, and under the statute, Applicant would have to serve 85% before becoming eligible for parole. (PCR Tr. pp. 22, 23). Trial Counsel testified he thought that was very harsh

under Applicant's circumstances, and the twenty-year sentence Applicant ultimately got was even harsher. (PCR Tr. p. 22). Trial Counsel testified that because of those circumstances, they were stuck between a rock and a hard place, and he thought Applicant would admit to that as well. (PCR Tr. p. 22).

Trial Counsel testified he couldn't remember specifically advising Applicant that he should take the fifteen-year plea, but he remembered a conversation he had with Applicant about how the State wouldn't go down from fifteen years, and Applicant was "quite upset" with that. (PCR Tr. p. 22). Trial Counsel testified he distinctly remembered Applicant seemingly realizing the impact of the time he was facing and that it was a very sad moment. (PCR Tr. pp. 22-23). Trial Counsel testified that he recalled asking the solicitor to at least give them a chance at burglary second and still have a fifteen-year sentence, so Applicant could at least be parole-eligible. (PCR Tr. p. 23). Trial Counsel testified he actually thought the solicitor was open to this, but was overruled by his supervisors. (PCR Tr. pp. 23-24). Trial Counsel testified that ultimately, Applicant still indicated to Trial Counsel that he wanted to take the case to trial, so that is what they did. (PCR Tr. p. 24). Trial Counsel testified that he could not remember specifically if Judge Hayes made comments about the burglary first charge, but he thought Judge Hayes was concerned with the disparity, although he did not want to speak on Judge Hayes's behalf. (PCR Tr. p. 31).

Findings

As an initial matter, this Court finds through the combination of the record and testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting

prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel **credibly** testified he discussed the options with Applicant, and that Applicant was upset that the State would not go down from a fifteen-year plea offer. Applicant testified that Judge Hayes did not mention anything about a sentence. Trial Counsel testified that he thought Judge Hayes may have been concerned with the disparity. However, that would not have helped Applicant, as the State's plea offer did not change. Trial Counsel testified that Applicant wanted to go to trial, so that is what they did. Therefore, Trial Counsel is not deficient for discussing Applicant's options with him and following Applicant's wishes.

Moreover, Applicant cannot establish prejudice where Applicant did not provide evidence that anything occurred during the first trial that should have prompted Trial Counsel to advise him to plead guilty.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

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), 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. 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7th **day of** April **, 2026.**

WILLIAM C. MCMASTER, III.
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Civil Action No.: 2024-CP-42-03224
Jaden I. Gary,	)	
	)	
Applicant,	)	
vs.	)	**ORDER GRANTING IN PART AND DENYING IN PART APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Applicant's Motion to Alter or Amend Judgment was served on this Court via email on March 16, 2026. After careful consideration of the materials submitted, Applicant's Motion is GRANTED IN PART, insofar as the State shall amend the Order of Dismissal With Prejudice to include the complete burglary statute, S.C. Code Section § 16-11-312. Specifically, the State should include subsection (A) of § 16-11-312 along with subsection (B), as well as edit § 16-11-312 (B) (1) to state "building" rather than "dwelling".

The remaining arguments and requests contained in Applicant's Motion are DENIED. With regard to these arguments and requests, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded, and further finds no error of law or fact not appropriately considered.

Therefore, Applicant's Motion to Alter or Amend Judgment is GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

Judge's signature on the following page.

The Honorable William C. McMaster, III

Seventh Judicial Circuit

4/3, 2026

Spartanburg, South Carolina

(5) 2 of 2 4/3/2026

State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

William C. McMaster, III
Judge

Greenville County Courthouse
305 E. North Street, Suite 314
Greenville, SC 29601
Phone: (864) 467-8740
Fax: (864) 467-8325
wmcmasterj@sccourts.org

April 3, 2026

Amy W. Cox
Spartanburg County Clerk of Court
PO Box 3483
Spartanburg, SC 29304

Re: 2024CP4203224 – Jaden I. Gary v. State of South Carolina

Ms. Cox,

Please find enclosed an Order Granting in Part and Denying in Part Applicant's Motion to Alter or Amend for the above-referenced case as signed by Judge McMaster. Please confirm via email when the Order has been filed.

Thanks,

Devyn Fischer
Judicial Law Clerk
The Honorable William C. McMaster, III

ROSS & ENDERLIN, PA
ATTORNEYS AT LAW

March 16, 2026

Ms. Amy Cox
Spartanburg Clerk of Court
PO Box 3483
Spartanburg, SC 29304

To Whom It May Concern:

Please find for filing the enclosed Motions to Alter or Amend. Please return a clocked copy to me by e-mail or post. If you have any questions or concerns, please let me know.

Sincerely,

Susannah Ross
Attorney at Law

enclosures

330 E. COFFEE ST.; GREENVILLE SC 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS CASE NO. 2024-CP-42-03224
JADEN I. GARY, APPLICANT,	)	
VS.	)	MOTION TO ALTER OR AMEND THE JUDGMENT
STATE OF SOUTH CAROLINA, RESPONDENT.	)	

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRCP, to alter or amend the judgment of this Court filed on March 10, 2026. The Applicant takes issue with the findings of fact and conclusions of law in the Order denying post-conviction relief in his case. Most notably, the Applicant alleges error in the reasoning behind dismissing the allegation that trial counsel misadvised the Applicant on the law by telling him that the judge could charge burglary second when the Applicant admitted in his confession that he went in the dwelling with a gun. The Order presents the burglary statutes in a misleading manner. (Order p. 19) It leaves out part (A) of § 16-11-312 which creates the distinction of entering a dwelling without aggravators versus (B) entering a building with aggravators. It further misstates the statute at § 16-11-312 (B) (1) to say "dwelling" when the statute reads "building". This mischaracterization of law is used to support the erroneous finding that the Applicant's testimony was not credible while counsel's testimony was credible and reflected a valid legal strategy. (Order p. 22)

At the PCR hearing, the Applicant testified that he turned down a fifteen-year offer for burglary first because counsel told him that he had a chance for the jury to come back with burglary second degree if he proceeded to trial. He said his lawyer never told

him that he had no change for the reduced charge because: (1) he confessed to entering the home through the kitchen, and (2) there was a surveillance video of him doing it while holding a gun. There was no basis to find the Applicant's testimony not credible. Especially because, trial counsel whose testimony was found to be credible, admitted that he told the Applicant that the judge could charge burglary second at trial. Counsel said he believed that any practicing attorney or judge would find the burglary second statute to be "quite confusing" with "dwelling" and "building" having seemingly indistinguishable meanings. Counsel further testified that his strategy going into trial was to get the judge to charge burglary second due to the ambiguity in the law. This was not a valid strategy because it was based on an error of law.

During the Applicant's trial, Judge Keith Kelly clearly articulates counsel's error of law when he denies trial counsel's request for an instruction on burglary second.

> I'm sorry. The defense's motion for the lesser included offense is denied. I refer you to State versus Goldenbaum that can be found at 294 S.C. 455, that's a 1988 case out of our Supreme Court which says the statutory law of burglary was substantially rewritten by act number 159 in 1985 and codified that first degree burglary is now defined as entry of a dwelling without consent and with intent to commit a crime therein and the existence of an aggravated circumstance.
>
> Second degree burglary consists of entry of a dwelling without consent and with the intent to commit a crime therein but absent any aggravated circumstances or entry of a building without consent and with the intent to commit a crime and existence of aggravating circumstances and then it also defines third degree burglary.
>
> Also State versus Berntsen, 295 S.C. 52, as discussed in State versus White which can be found at, looks like I only have a Westlaw cite, being 25346. That's a 2002 case where Judge Jim Williams was affirmed, Justice Waller writing for the court. And also Abney versus the State of South Carolina, also an appellate case, Gary Hill, my good friend, was a Circuit Court judge in that, it's 2010-164906 where the trial court should refuse to charge on a lesser included offense when there's no evidence the defendant committed the lesser rather than the greater offense. That's State versus Smith at 315 S.C. 547, a 1994 case. (Trial Transcript pp.216-17)

It is worth noting that both the Applicant's confession and the video were found to be admissible in a prior trial which resulted in a mistrial. Therefore, counsel knew of admissible evidence showing clearly that the elements of burglary first degree were met when he misadvised the Applicant that there was a chance for the jury to come back with a verdict for burglary second degree. Given the confession and video evidence, there was no chance for a jury instruction on burglary second degree because the Applicant clearly entered a dwelling with a gun and stole guns while therein.

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).

For the foregoing reasons, the Applicant requests the presiding Judge, William C. McMaster, alter or amend the Order of Dismissal filed on March 10, 2026.

Respectfully submitted,

Susannah Ross #11205
Attorney for the Applicant
333 E. Coffee Street,
Greenville, SC 29601
susannah@rossenderlin.com
(864) 242-0029

Greenville, South Carolina
This 16 day of March, 2026.

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Jaden I. Gary, #385880, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–42–03224 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. William C. McMaster, III
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	MacKinnon Westraad, Esq.
Trial Counsel:	E. Joshua Schultz, Esq.
Date of Hearing:	June 16, 2025
Court Reporter:	Hollie M. Jenkins

This matter comes before the Court by way of Jaden I. Gary's (Applicant) application for post-conviction relief (PCR) filed on August 13, 2024. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on October 22, 2024, requesting an evidentiary hearing on the claims of ineffective assistance of counsel. On February 20, 2025, Applicant filed an amended application for PCR.

On June 16, 2025, an evidentiary hearing convened at the Spartanburg County Courthouse before the Honorable William C. McMaster. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General MacKinnon Westraad, Esquire, represented Respondent. Applicant testified on his behalf at the evidentiary hearing, and Respondent presented the testimony of E. Joshua Schultz, 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 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. Applicant was indicted during the September 2019 term of the Spartanburg County Grand Jury for grand larceny (2019-GS-42-05573), burglary in the first degree (2019-GS-42-05574), and possession of a weapon during the commission of a violent crime (2019-GS-42-05574A). Applicant was represented by Trial Counsel. Seventh Circuit Assistant Solicitor Spenser Smith prosecuted the case.

Applicant first proceeded to trial on August 10, 2021, before the Honorable J. Mark Hayes, II. That case ended in a mistrial after jurors were dismissed for medical and family reasons.

Applicant proceeded to trial for the second time on August 31, 2021, before the Honorable R. Keith Kelly. Applicant was found guilty as indicted. Judge Kelly sentenced Applicant to a term of twenty (20) years' imprisonment for burglary in the first degree, five years' imprisonment for possession of a weapon during the commission of a violent crime, and three years' imprisonment for grand larceny, to be served concurrently.

Applicant filed a timely Notice of Appeal. Appellate Defender Elizabeth Franklin Best perfected Applicant's appeal. After briefing, the South Carolina Court of Appeals dismissed the appeal by unpublished opinion. State v. Jaden Imarion Gary, Op. No. 2023-UP-364 (S.C. Ct. App. filed November 8, 2023). The Remittitur was returned to the lower court on November 28, 2023.

CURRENT ACTION BEFORE THIS COURT

On August 13, 2024, Applicant timely filed his original application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance Counsel:
   a. "Unable to specify without attorney"

On February 20, 2025, Applicant filed an amended application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel for:
   a. failure to object to the solicitor's arguments regarding sentencing;
   b. failure to argue that the sentence punished the Applicant for exercising his right to jury trial; See ROA p. 279
   c. failure to move to reconsider sentence, especially after the two co-defendants who were older than the seventeen your old Applicant were allowed to plead to burglary second degree and received fifteen-year sentences;
   d. failure to object to Investigator Trevor Shue's identification of the Applicant from the video for bolstering and failing to argue the identification was a factual question for the jury; See ROA p. 152, I. 7, p. 156, 1. 15-20
   e. misadvising the Applicant on the law by telling him that the judge could charge burglary second when the Applicant admitted in his confession that he went in the dwelling with a gun;
   f. failure to advise the Applicant to plead guilty after his first trial with Judge Hayes;
2. Denied due process and fundamental fairness guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States & Art. I, Sec.3 of the South Carolina Constitution
   a. Applicant was punished with a higher sentence for exercising his right to a jury trial

Applicant requests relief in the form of a new trial.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[1] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
(2) That the court was without jurisdiction to impose sentence;
(3) That the sentence exceeds the maximum authorized by law;

[1] S.C. Code Ann. §§ 17-27-10 to -160.

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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), SCRCP; 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.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary

proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court also heard the testimony presented at the evidentiary hearing and observed the witnesses, allowing the 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. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate

assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 1(a):	**Failure to object to the solicitor's arguments regarding sentencing;**
Allegation 1(b):	**Failure to argue that the sentence punished the Applicant for exercising his right to jury trial; See ROA p. 279**
Allegation 2(a):	**Applicant was punished with a higher sentence for exercising his right to a jury trial**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to the solicitor's statements at sentencing that the Applicant should receive a harsher sentence because he did not take responsibility by admitting wrongdoing and accepting punishment.[2] This Court finds these allegations to be without merit.

A trial judge abuses their discretion in sentencing when they consider that the applicant exercised their right to a jury trial rather than pleading guilty. Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999) (citing State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995)). Courts will look to the record for indications of whether the judge improperly considered that the Applicant was exercising his right to a jury trial. See Davis v. State at 331, 333 (finding the judge's responses to defense counsel's argument for a sentence reduction, which expressed his preference for guilty pleas, were improper).

"An ineffective assistance claim based on a failure to object is tied to the admissibility of

[2] Trial Tr. pp. 276-278.

the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[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.

Sentencing Hearing

At Applicant's sentencing hearing, Solicitor Smith made the following comments:

> Your Honor, Mr. Williams had to go back to work and obviously this is the second time we've tried this case. He did state he wanted Your Honor and Mr. Gary to know that he believes he's lucky that he wasn't home cause he thinks Mr. Gary might be getting a life sentence but in a, in a different way and possibly all three of the young men that were involved. He asks Your Honor to impose the maximum sentence because Mr. Gary had a chance to do the right thing and to plead, and instead he chose to keep doing the wrong thing.

(Trial Tr. p. 276).

> I don't think that the minimum sentence is appropriate because he did not admit responsibility. Although he did it to the investigator, made the State and Mr. Williams go through basically the last trial, we were one witness away from finishing, two different trials on a case where he confessed and is caught on video. So, he's not accepted responsibility. He could not just admit what he had done and take punishment. So, we do not think that the minimum sentence is appropriate.

(Trial Tr. pp. 277-278).

When Judge Kelly sentenced Applicant, he stated:

> Mr. Gary, you are indeed a very blessed and lucky man. You broke into the house of a man who is a combat veteran with three tours. . . Had he been there, he would of killed you and your two friends that day. Your mother would be minus a son right now. No doubts in my mind. None. You would be a dead person. That shotgun you took out, that's the one he had loaded to stop people like you and the citizens of this county and this state are tired of people like you breaking into their houses. You didn't make a mistake. A mistake is where you put two much salt on your food. You made a bad judgment. That's what you did.

(Trial Tr. pp. 279).

Judge Kelly then delivered the sentence and said to Applicant, "You can overcome this, Mr. Gary. You're gonna be close to 40 years old, but you still got time to overcome this and become the man that you want to be. Very best of luck to you, sir." (Trial Tr. p. 280).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not object to any of the statements the solicitor made about how Applicant was not remorseful, was smoking marijuana, and was the leader amongst the co-defendants. (PCR Tr. p. 13). Applicant testified that he was sentenced to twenty years instead of the fifteen years for non-violent offenses that his co-defendants received, but Trial Counsel never moved to reconsider the sentence that Applicant was aware of. (PCR Tr. p. 13). Applicant testified he was not the ringleader. (PCR Tr. p. 14).

On cross-examination, Applicant testified that the only reason he believed he was punished for exercising his right to a jury trial was the comments the solicitor made during sentencing. (PCR Tr. p. 15). Applicant testified that Judge Kelly did not make any comments to that effect. (PCR Tr. p. 15). Applicant agreed that the video evidence showed him leading his co-defendants through the home. (PCR Tr. p. 15). Applicant testified that he identified himself from the video in his interview with the police. (PCR Tr. p. 15).

On direct examination, Trial Counsel testified that he met with Applicant and his family several times in his office, and they discussed the charges and what the State was required to prove.

(PCR Tr. p. 17). Trial Counsel testified the evidence included statements by Applicant, video of the break-in that was "obviously, very persuasive," and incident reports. (PCR Tr. p. 17). Trial Counsel testified the solicitor did not make any arguments at sentencing that he believed were objectionable. (PCR Tr. pp. 17-18). Trial Counsel testified Judge Kelly made a comment about how folks are tired of having their homes broken into, but there was no indication that he sentenced Applicant the way he did to punish him for taking the case to trial. (PCR Tr. p. 18). Trial Counsel testified he did not think he could succeed on an argument about Judge Kelly punishing Applicant. (PCR Tr. p. 18).

Findings

This Court finds the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds Trial Counsel's testimony **credible** that he did not think he could succeed on an argument that Judge Kelly punished Applicant. This Court also does not see any indication in the record that Judge Kelly sentenced Applicant the way he did because he was punishing him for taking the case to trial. On the contrary, all of Judge Kelly's comments during sentencing make it clear that Applicant's sentence was based on the severity of the crime. Further, the solicitor conveyed the victim's wishes that Applicant get the maximum sentence of life because of Applicant's failure to take responsibility, but Judge Kelly sentenced Applicant to twenty years—only five years beyond the minimum. Thus, it is clear that Judge Kelly did not embrace the solicitor's comments or request. See State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976) (Holding the trial court has broad discretion in imposing criminal sentences.).

Additionally, Applicant cannot show prejudice from Trial Counsel's failure to object to the solicitor's comments. As Trial Counsel testified, he did not view the comments during sentencing as objectionable. The statements were the solicitor's request for life in prison, to which Trial Counsel attempted to respond with mitigation.[3] Further, since Judge Kelly did not take the solicitor's request into account, it would not have impacted Applicant's sentence for Trial Counsel to object. See State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979) (Absent a showing of partiality, prejudice, oppression, or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits.).

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED WITH PREJUDICE**

Allegation 1(c): **Failure to move to reconsider sentence, especially after the two co-defendants who were older than the seventeen your old Applicant were allowed to plead to burglary second degree and received fifteen-year sentences;**

[3] Trial Tr. p. 279.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to move to reconsider the sentence after the co-defendants received lower sentences. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not object to any of the statements the solicitor made about how Applicant was not remorseful, was smoking marijuana, and was the leader amongst the co-defendants. (PCR Tr. p. 13). Applicant testified he was sentenced to twenty years instead of the fifteen for non-violent that his co-defendants got, but Trial Counsel never moved to reconsider the sentence that Applicant was aware of. (PCR Tr. p. 13). Applicant testified he did not know the context of his co-defendants getting a reduced charge, and his co-defendants did not help the State by testifying against him. (PCR Tr. p. 13). Applicant testified the solicitor did not tell the judge that he intended to give the co-defendants a deal for burglary second. (PCR Tr. p. 13). Applicant testified the co-defendants were his best friends from middle school, and Applicant was the youngest of them. (PCR Tr. p. 14). Applicant testified he was not the ringleader. (PCR Tr. p. 14).

On cross-examination, Applicant agreed that the video evidence showed him leading his co-defendants through the home. (PCR Tr. p. 15). Applicant testified he identified himself from the video in his interview with police. (PCR Tr. p. 15).

On direct examination, Trial Counsel testified one of the co-defendants pleaded guilty sometime around the same week of Applicant's sentencing, but he did not know specifically when the other co-defendants were sentenced. (PCR Tr. p. 18). Trial Counsel testified he maybe could have moved for the judge to reconsider the sentence based on the co-defendants' pleas, but he thought that ultimately would not have been successful. (PCR Tr. pp. 18-19). Trial Counsel

testified Judge Kelly sentenced Applicant within the sentencing guidelines, and knowing Judge Kelly and practicing in front of him for many years, Trial Counsel did not think that motion would succeed. (PCR Tr. p. 19).

On cross-examination, Trial Counsel testified both co-defendants' SCDC records seemed to show that they each got fifteen-year sentences for burglary second, violent. (PCR Tr. pp. 28-29). Trial Counsel testified that because of the distinction between burglary second and burglary first, the co-defendants would not have to serve 85% and would get out much sooner than Applicant. (PCR Tr. pp. 29-30). Trial Counsel testified that he could not remember specifically if Judge Hayes made comments about the burglary first charge, but he thought Judge Hayes was concerned with the disparity, although he did not want to speak on Judge Hayes' behalf. (PCR Tr. p. 31).

On redirect examination, Trial Counsel testified the State interpreted the case as Applicant being the ringleader. (PCR Tr. p. 37). Trial Counsel testified he could understand why the State was interpreting it that way, he just felt differently because all the individuals were young. (PCR Tr. p. 37).

Findings

As an initial matter, this Court finds through the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Trial Counsel **credibly** testified that based on his extensive professional experience with Judge Kelly, Trial Counsel did not think that a motion to reconsider would be successful.

Applicant was sentenced well within the required sentencing range. Applicant testified he was shown on video leading his co-defendants through the home, and the record reflects he entered the house with a firearm.[4] Trial Counsel testified that the State's position was that Applicant was the ringleader of the co-defendants, and Trial Counsel understood why the State interpreted it that way. He also testified the plea offer for Applicant was fifteen years for burglary first. The co-defendants both pleaded guilty to fifteen years for burglary second, violent. (PCR Tr. pp. 28-29). Thus, the distinction in the offers was parole eligibility, which the State seemingly did not want to offer to Applicant because of his position as the ringleader. Therefore, Trial Counsel was not deficient for recognizing the difference in Applicant's case. Additionally, Applicant was not prejudiced, as he did not show that Judge Kelly likely would have reduced his sentence based only on his co-defendants' sentences, which were sentences for burglary second and not burglary first like Applicant's. See Cogdell, *supra.*

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

Allegation 1(d): Failure to object to Investigator Trevor Shue's identification of the Applicant from the video for

[4] Trial Tr. pp. 156, 179.

bolstering and failing to argue the identification was a factual question for the jury; See ROA p. 152, I. 7, p. 156, 1. 15-20

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to the investigator's identification of Applicant at trial. This Court finds this allegation to be without merit.

To prove trial counsel's performance was deficient, a PCR applicant alleging that counsel failed to object to bolstering testimony must show that counsel's representation fell below an objective standard of reasonableness. Chappell v. State, 429 S.C. 68, 75, 837 S.E.2d 496, 500 (Ct. App. 2019). Generally, the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain "the assessment of witness credibility ... within the exclusive province of the jury." State v. Taylor, 404 S.C. 506, 514–15, 745 S.E.2d 124, 128 (Ct. App. 2013) (citing State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012)). "In an ineffective assistance case, 'trial counsel's failure to object to [improper bolstering] testimony does not remove a[] [PCR] applicant's burden to prove prejudice." Chappell, 429 S.C. at 80, 837 S.E.2d at 502 (quoting Thompson v. State, 423 S.C. 235, 246, 814 S.E.2d 487, 492 (2018). Failure to object to bolstering comments may be prejudicial where the case hinges on the credibility of the bolstered testimony. State v. Chavis, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015); Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010).

"If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." Rule 701, SCRE.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Investigator Trevor Shue ("Investigator Shue") told Applicant that he took the video to an acquaintance of his and she identified Applicant. (PCR Tr. p. 10). Applicant testified that his "data" said that Investigator Shue identified Applicant from an incident that happened in 2018, but he had not been involved in any of that and had no prior record. (PCR Tr. pp. 10-11). Applicant testified Investigator Shue said he recognized Applicant from when he investigated or interviewed Applicant, or something like that. (PCR Tr. p. 11). Applicant testified that never occurred, but Trial Counsel did not object to it. (PCR Tr. p. 11). Applicant testified Investigator Shue was part of the gang unit at the time, and there was some suggestion that that's how Applicant was identified, but he was not involved with gangs before. (PCR Tr. p. 11). Applicant testified Trial Counsel did not object when Investigator Shue was testifying that he recognized Applicant from the video. (PCR Tr. p. 12).

On direct examination, Trial Counsel testified he believed he objected to Investigator Shue's identification of Applicant. (PCR Tr. p. 19). Trial Counsel testified he supposed he could have made a bolstering objection, but he did not. (PCR Tr. pp. 19-20). Trial Counsel testified it possibly could have changed the outcome of the trial to get the identification testimony excluded, but he made the motions to exclude that testimony in both trials. (PCR Tr. p. 20). Trial Counsel testified the evidence was strong, and it was hard to know if something would have changed the outcome of the trial, but it probably would not have changed the outcome. (PCR Tr. p. 24).

On cross-examination, Trial Counsel testified he thought Investigator Shue had prior knowledge of Applicant, but he was never given any incident report or anything like that. (PCR Tr. p. 33).

Findings

As an initial matter, this Court finds through the combination of the record and testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. The record reflects that Investigator Shue's testimony laid the foundation for Applicant's status as a suspect in this investigation, which was rationally based on his prior personal experience with Applicant.[5] However, Applicant identified himself as the individual on video during his interview with law enforcement, which was presented to the jury.[6] Therefore, Applicant cannot establish prejudice on an allegation that there was bolstering of a witness identifying him when the jury was shown a separate identification by Applicant himself.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

Allegation 1(e): **Misadvising the Applicant on the law by telling him that the judge could charge burglary second when the Applicant admitted in his confession that he went in the dwelling with a gun;**

[5] Trial Tr. pp. 155-160.
[6] Trial Tr. p. 179.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for misadvising him on the law when he told Applicant that the judge could charge burglary second. This Court finds this allegation to be without merit.

> A person is guilty of burglary in the first degree if the person enters a **dwelling** without consent and with intent to commit a crime in the dwelling, and either:
> (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
> (a) is armed with a deadly weapon or explosive; or
> (b) causes physical injury to a person who is not a participant in the crime; or
> (c) uses or threatens the use of a dangerous instrument; or
> (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
> (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
> (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. §§ 16-11-311 (emphasis added).

> A person is guilty of burglary in the second degree if the person enters a **building** without consent and with intent to commit a crime therein, and either:
> (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
> (a) is armed with a deadly weapon or explosive; or
> (b) causes physical injury to a person who is not a participant in the crime; or
> (c) uses or threatens the use of a dangerous instrument; or
> (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
> (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
> (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. §§ 16-11-312 (emphasis added).

> For purposes of Sections 16-11-311 through 16-11-313:
> (1) "Building" means any structure, vehicle, watercraft, or aircraft:
> (a) Where any person lodges or lives; or
> (b) Where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is deemed both a separate building in itself and a part of the main building.

(2) "Dwelling" means its definition found in Section 16-11-10 and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person.

S.C. Code Ann. §§ 16-11-310.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169-70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145.

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he felt Trial Counsel was ineffective because Trial Counsel led him to believe he was eligible for second-degree burglary when he wasn't, which resulted in him getting more time when he could have gotten less. (PCR Tr. p. 9). Applicant testified he did not take the plea offer of fifteen years for burglary in the first degree because his attorney told him he could get burglary in the second degree. (PCR Tr. pp. 9-10). Applicant testified Trial Counsel asked for an instruction on burglary second during the trial, but the instruction was not given. (PCR Tr. p. 12). Applicant testified he thought he wouldn't be found guilty of first-degree, but of second-degree. (PCR Tr. p. 12). Applicant testified he was never told he had no chance for second-degree burglary because the video showed him with a gun. (PCR Tr. p. 12).

On direct examination, Trial Counsel testified that he advised Applicant that the judge could charge burglary in the second degree, and he remembered discussing in chambers the possibility of Judge Kelly giving a burglary second-degree charge to the jury, either violent or non-violent. (PCR Tr. p. 20). Trial Counsel testified the burglary second statute is "quite confusing" when compared to the burglary first statute because of the difference between a "building" and a "dwelling." (PCR Tr. pp. 20-21). Trial Counsel testified that he believed any practicing attorney or judge would agree it was confusing. (PCR Tr. p. 21). Trial Counsel testified his strategy going into trial was that if the jury was charged on burglary second, and Applicant was acquitted of burglary first, then his parole eligibility could have changed. (PCR Tr. p. 21). Trial Counsel testified he could not specifically remember advising Applicant one way or the other when it came to the fifteen-year plea offer. (PCR Tr. p. 22).

On cross-examination, Trial Counsel testified he believed he had a chance for a burglary second jury instruction because of the ambiguity, but Judge Kelly ultimately decided he would not charge it. (PCR Tr. p. 34).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible**. This Court further finds through the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Trial Counsel **credibly** testified that his strategy was to get the judge to charge burglary second to the jury because of the ambiguity in the statute, with "dwelling" and "building" having seemingly indistinguishable meanings. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (where counsel articulates a valid reason for employing a strategy, such conduct is not ineffective assistance of counsel). The reason this strategy failed was not that Applicant had a gun, as suggested by Applicant, but because the judge ruled he should not charge the lesser-included offense when there was no evidence that Applicant committed the lesser-included offense *rather than* the greater offense. See State v. Smith, 315 S.C. 547, 549, 446 S.E.2d 411, 413 (1994). However, the strategy was reasonable considering Applicant was unhappy with his options, and this strategy may have provided his best chance of a lower sentence. Trial Counsel **credibly** testified that Applicant wanted to take the case to trial after extensive discussion of his options. Therefore, this Court finds Trial Counsel is not deficient.

Moreover, Applicant failed to show that he would have accepted the plea offer rather than going to trial, or that it would have been accepted by the judge, if Trial Counsel had not advised him of the possibility of a second-degree burglary charge. Given the judge's comments during sentencing, where he expressed frustration with Applicant's actions, it is unlikely he would have accepted a guilty plea to the minimum sentence. Therefore, Applicant cannot establish prejudice.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

Allegation 1(f): Failure to advise the Applicant to plead guilty after his first trial with Judge Hayes

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to advise him to plead guilty after his first trial. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that his case had been tried once before by Judge Hayes, but it resulted in a mistrial. (PCR Tr. p. 10). Applicant testified that Judge Hayes did not mention anything about his sentence. (PCR Tr. p. 10).

On direct examination, Trial Counsel testified Applicant's case was difficult, and the State's negotiation was particularly harsh for a person like Applicant who was young and had no record. (PCR Tr. p. 21). Trial Counsel testified he expressed those thoughts to the prosecuting attorney on the case. (PCR Tr. p. 21). Trial Counsel testified the plea offer the entire time was fifteen years under burglary first, and under the statute, Applicant would have to serve 85% before becoming eligible for parole. (PCR Tr. pp. 22, 23). Trial Counsel testified he thought that was very harsh

under Applicant's circumstances, and the twenty-year sentence Applicant ultimately got was even harsher. (PCR Tr. p. 22). Trial Counsel testified that because of those circumstances, they were stuck between a rock and a hard place, and he thought Applicant would admit to that as well. (PCR Tr. p. 22).

Trial Counsel testified he couldn't remember specifically advising Applicant that he should take the fifteen-year plea, but he remembered a conversation he had with Applicant about how the State wouldn't go down from fifteen years, and Applicant was "quite upset" with that. (PCR Tr. p. 22). Trial Counsel testified he distinctly remembered Applicant seemingly realizing the impact of the time he was facing and that it was a very sad moment. (PCR Tr. pp. 22-23). Trial Counsel testified that he recalled asking the solicitor to at least give them a chance at burglary second and still have a fifteen-year sentence, so Applicant could at least be parole-eligible. (PCR Tr. p. 23). Trial Counsel testified he actually thought the solicitor was open to this, but was overruled by his supervisors. (PCR Tr. pp. 23-24). Trial Counsel testified that ultimately, Applicant still indicated to Trial Counsel that he wanted to take the case to trial, so that is what they did. (PCR Tr. p. 24). Trial Counsel testified that he could not remember specifically if Judge Hayes made comments about the burglary first charge, but he thought Judge Hayes was concerned with the disparity, although he did not want to speak on Judge Hayes's behalf. (PCR Tr. p. 31).

Findings

As an initial matter, this Court finds through the combination of the record and testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting

prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel **credibly** testified he discussed the options with Applicant, and that Applicant was upset that the State would not go down from a fifteen-year plea offer. Applicant testified that Judge Hayes did not mention anything about a sentence. Trial Counsel testified that he thought Judge Hayes may have been concerned with the disparity. However, that would not have helped Applicant, as the State's plea offer did not change. Trial Counsel testified that Applicant wanted to go to trial, so that is what they did. Therefore, Trial Counsel is not deficient for discussing Applicant's options with him and following Applicant's wishes.

Moreover, Applicant cannot establish prejudice where Applicant did not provide evidence that anything occurred during the first trial that should have prompted Trial Counsel to advise him to plead guilty.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED.**

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), 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. 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5th **day of** March **, 2026.**

WILLIAM C. MCMASTER, III.
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

FILED
2026 FEB 10 AM 11:13
CLERK OF COURT
SPARTANBURG COUNTY
TIFFANY COX