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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Deadra Jefferson, PCR Action Judge
2023-CP-02-01791

BRANDON LEE, #366541,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Brandon J Leeappeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Deadra Jefferson, circuit court judge, on December 15, 2025, and was denied by written order issued filed on May 4, 2026. Applicant received notice of the judgement on May 6, 2026.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Brandon Jewel Lee, # 366541, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2023-CP-02-01791 **ORDER OF DISMISSAL**

FILED 5-4 20 26
C.C.P. & G.S.
Deputy Clerk

Presiding Judge:	Deadra L. Jefferson
Applicant's Attorney:	Chelsey F. Marto, Esq.
Respondent's Attorney:	T. Cruise Mitchell, Esq.
Date of Hearing:	December 15, 2025
Court Reporter	Penny Johnson

This matter came before the Court on December 15, 2025, on an application for post-conviction relief (PCR) filed by Brandon Jewel Lee on August 9, 2023, and amended on December 15, 2025. On December 15, 2025, an evidentiary hearing convened before this Court. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. At the evidentiary hearing testimony was taken from Applicant and trial counsel, Barry L. Thompson, II, Esquire. After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant failed to meet his burden of proof. Accordingly, relief is Denied, and the application is Dismissed with Prejudice.

PROCEDURAL HISTORY

On August 3, 2017, the Aiken County Grand Jury indicted Applicant for First Degree Burglary (Indictment No. 2017-GS-02-01448) and Unlawful Possession of a Prescription Drug Without a Prescription (Indictment No. 2017-GS-02-01447).

On July 24-26, 2018, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was represented by Barry L. Thompson, II, Esq. The case was prosecuted by Assistant Solicitors Ashley A. Hammack, Esq. and John L. Furse, Esq.

On July 26, 2018, Applicant was found guilty as indicted. On July 26, 2018, Judge Early sentenced Applicant to the South Carolina Department of Corrections for a period of twenty-two (22) years' imprisonment for First Degree Burglary[1] and two years (2) for Possession of a Prescription Drug Without a Prescription.[2] The Applicant was given credit for pre-detention time served pursuant to S.C. Code Ann. § 24-13-40 to be calculated and applied by SCDC.

Applicant filed a timely notice of appeal. The appeal was perfected by Appellate Defender Katherine H. Hudgins of the South Carolina Commission on Indigent Defense – Appellate Division. On August 18, 2021, The South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion. The State v. Brandon J. Lee, Op. No. 2021-UP-302 (S.C. Ct. App. filed August 18, 2021). On October 1, 2021, the South Carolina Court of Appeals denied Applicant's petition for rehearing.

On November 1, 2021, Applicant filed a petition for writ of certiorari to the Court of Appeals in the South Carolina Supreme Court. By written order, filed on September 13, 2022, the South Carolina Supreme Court denied the petition. On September 15, 2022, the Remittitur was returned to the Circuit court.

CURRENT APPLICATION

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

[1] The offense of first degree burglary is a violent, most serious offense, punishable by imprisonment of fifteen years to life in prison. SC Code Ann. § 16-11-311.

[2] The offense of possession of a prescription drug without a prescription is punishable by imprisonment of no more than two years, a fine not more than five hundred dollars, or both SC Code Ann. § 40-43-0086 (EE).

2022

1. Ineffective Assistance of Counsel
    a. "The failure to object to the definition of night time given or request an alternate definition. The parties stipulated that twilight was at 8:13. The judge noted that twilight may be a relevant factor. Tr. 0139, Lines 1-4. Also Mr. Thompson should have subpoenaed the 911 records to have established the precise time the call was placed. Also Mr. Thompson should have subpoenaed the clerk at the gas station. Tr. P. 222 Lines 24-25."
    b. "Counsel was ineffective referencing previous juries about previously true-billing the indictment such testimony is improper (Tr. P. 49) and would also hinge on judicial misconduct (S.C.A.C.rules, Rule 501, Cannon 5) 'A judge shall perform judicial duties without bias or prejudice. A judge shall not in the performance of his judicial duties, by words, or conduct, manifest possible bias or prejudice. This is an abuse of discretion."
    c. "Counsel was ineffective for not objecting to misidentification (Tr. P. 91, Lines 11-17). Ms. Gardener described the assailant as not to had any facial hair. (Tr. P. 180, Lines 10-13) Officer Kris Evenson state on the following morning when he arrested me I had a beard. 'A criminal defendant may be deprived of Due Process of law by an identification procedure which is unnecessarily suggestive or conducive to irreparable mistaken identification.' And again on (Tr. P. 98, Lines 11-15) Ms. Gardener described me as under 6 foot tall and 190 lbs. Me I was 6'3 tall and maybe 150 lbs. Mr. Thompson should have requested my mug shot I've always worn a full beard."
    d. "Counsel was ineffective for failing to object to improper colloquy between Judge and potential juror during voir dire. (Tr. P. 22, Lines 16-24) Judge Early and potential juror repeatedly vouched that the alleged crime did in fact happen. What this did was lessen the states [sic] burden of proof beyond a reasonable doubt. This colloquy was in the precense [sic] of the entire jury venire, and you never know what kind of inference a reasonable juror would have drawn from such a remark. And would infect the trial with prejudice to the extent of denying ones [sic] right to a fair trial. This would also hinge on Judicial misconduct."

Respondent filed its Return on June 10, 2024. On December 15, 2025, Applicant filed an amended application raising the following additional allegations:

1. Ineffective Assistance of Counsel:
    a. Failure to object to colloquy between Judge and juror during voir dire.
    b. Failure to establish a proper defense.
        i. Failure to argue that he was invited into the home.
    c. Failure to object to the definition of nighttime and stress in argument that it was not nighttime.
    d. Failure to inform Applicant of his right to a bench trial.
    e. Failure to contact and investigate witnesses, Brian Dorman and Ms. Dorman.

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f. Failure to discuss and prepare Applicant for testifying.
g. Failure to effectively challenge the identification of applicant as the defendant and object to misidentification.
h. Failure to involve Applicant in jury selection.
i. Failure to ensure that the Court properly charged the jury with first- and second-degree burglary.
j. Failure to request a bond hearing.
k. Failure to investigate other people in the house.
l. Failure to move to reconsider the sentence.
m. Failure to object to the Court being familiar with a juror and to strike the juror who has a relationship with the Judge.
n. Failure to ensure Applicant was properly indicted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the Aiken County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records of the current PCR action, and the exhibits admitted into evidence at the evidentiary hearing.

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2017).

Ineffective Assistance of Counsel, Generally

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the

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adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 687; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting Strickland,

466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696–97.

Counsel's Alleged Ineffectiveness during Jury Selection

Applicant alleges Counsel was ineffective for failing to object to the colloquy between Judge and juror during voir dire. Applicant further alleges Counsel failed to involve him in jury selection. This Court finds this allegation is without merit. In applicant's *pro se* application, Applicant cites to the following interaction:

> The Court: ...My question to you is, does any member of the jury panel know anything about the facts as alleged in this indictment? You read about it? Heard about it? Anyone discuss it with you? Seen anything on TV? Newspaper? Social media? Or any other means? Know anything at all about this case or form any opinions concerning these allegations? If so, please stand.
>
> (A juror stood.)
>
> The Court: My lady from New Jersey again. Ma'am?
>
> The Juror: I live in this sub development.
>
> The Court: All right. All right. Hold on one second. I'm going to let you walk up here and tell me what you know.

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(Tr. 22).

At the evidentiary hearing, Applicant testified that this exchange demonstrated bias of the juror and that the juror could have coached the other jurors and prevented the proceeding from being fair. Applicant explained Counsel did not involve him in the jury selection process. Counsel testified Applicant was correct in that Applicant was not intricately involved in the jury selection process. Counsel explained he believed he employed a sound strategy in jury selection. Regarding the above colloquy, Counsel testified that this is a normal procedure for the trial judge to call a potential juror to a side bar conversation if he believes there is an issue. Counsel further testified he did not believe this particular juror was ultimately selected.

This Court finds that Counsel had no meritorious basis for objecting to the above colloquy during voir dire. The trial court was merely questioning the jurors regarding any prior knowledge of the facts of this case. Although the potential juror indicated she lived in the subdevelopment where the crime occurred, she discussed nothing else regarding the facts of the case in the presence of the venire. The rest of the conversation between the potential juror and the Court occurred in a bench conference outside the presence of the jury avoiding the potential for tainting the venire. The trial court made absolutely no comment on the facts of this case that would bias the jury pool. This Court finds Counsel had no reason to object to this entirely appropriate colloquy between the Court and the potential juror.

Accordingly, this Court finds Applicant has failed to establish Counsel was deficient.

Further, this Court finds Applicant has failed to provide credible evidence to demonstrate prejudice. The juror informed the Court that the fact she lives in the subdevelopment where the crime occurred, and had heard about the incident, would not affect her ability to be a fair and impartial juror in the case. (Tr. 23–24). Ultimately, the record indicates this juror was not selected.

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The law guarantees a defendant the right to a fair and impartial jury. Warger v. Shauers, 574 U.S. 40, 50, 135 S.Ct. 521, 190 L.Ed.2d 422 (2014). The testimony reflects this juror was never empaneled and did not participate in deliberations or the verdict, her presence during voir dire could not have impacted Applicant's right to an impartial jury. Cf. Id. ("The trial court has the solemn duty to ensure "that every juror is unbiased, fair and impartial."). Moreover, the juror was affirmative in her ability to act as a fair and impartial juror in the trial of the case.

Accordingly, Applicant has failed to meet his burden of establishing prejudice.

Applicant also alleges that Counsel was ineffective for failing to strike a juror who had a relationship with the trial judge. This Court finds this allegation is without merit. The jury selection contains no indication that any member of the jury venire had a relationship or was "familiar" with the trial judge. Considering this allegation in the Applicant's favor as true it still fails to establish prejudice to the Applicant. Accordingly, Applicant has failed to meet his burden establishing ineffective assistance of counsel as to this allegation. Warger v. Shauers, 574 U.S. 40, 50, 135 S.Ct. 521, 190 L.Ed.2d 422 (2014); See Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) ("In PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense.").

Accordingly, the Court finds this allegation is Denied.

Counsel's Alleged Failure to Establish a Proper Defense

Applicant contends Counsel was ineffective for allegedly failing to establish a proper defense. Specifically, Applicant asserts Counsel failed to argue that Applicant was invited into the residence. This Court finds this allegation is without merit.

At trial, Applicant testified in his own defense that he was invited into the home earlier that day by individuals he believed to be the homeowners. (Trial Tr. 213–226). In closing argument,

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Counsel likewise argued that Applicant entered the home with the individual he believed to be the homeowner. (Trial Tr. 260). The record therefore clearly demonstrates Applicant testified and Counsel argued that Applicant was invited into the residence. Therefore, this Court finds Counsel was not deficient for failing to argue Applicant was not invited into the residence.

Additionally, Applicant has failed to demonstrate what further actions Counsel could have taken to advance this argument. Thus, Applicant has failed to establish prejudice as to this allegation.

Accordingly, the Court finds this allegation is Denied.

Counsel's Alleged Failure to Object to Definition of Nighttime and Stress in Argument it was Not Nighttime

Applicant contends Counsel was ineffective for both failing to object to the definition of nighttime and failing to properly argue it was not nighttime. This Court finds this allegation is without merit.

At Applicant's trial, the court gave the following charge on nighttime:

> Our law describes nighttime as this: it is the period of time between sunset and sunrise, during which there is not enough daylight to recognize a person's face except by artificial light or moonlight. Nighttime is the period of time between sunset, sunrise, during which there is not enough light, daylight, to recognize a person's face except by artificial light.

(Trial Tr. 282–283).

Although there is no statutory definition of nighttime, there is sufficient authority supporting this jury charge on nighttime. See Bannister v. State, 333 S.C. 298, 305, 509 S.E.2d 807, 810 (1998) (defining nighttime as the period between sunset and sunrise which there is not daylight enough by which to discern or identify a man's face, except artificial light or moonlight); § 2-13 Burglary--First Degree, Anderson, S.C. Requests to Charge - Criminal, § 2-13 ("Nighttime, for the purposes of burglary, means that period between sunset and sunrise during which there is

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not daylight enough to discern a person's face, except by artificial light or moonlight."); 3 S.C. Jur. Burglary § 18 ("[i]f there by daylight or crepusculum enough, begun or left, to discern a man's face withal, it is not burglary, but this does not extend to moonlight.") (quoting W. Blackstone, Commentaries on the Laws of England: Of Public Wrongs 225 (1745)). Because the definition of nighttime was properly charged to the jury, this Court finds Counsel was not deficient for failing to object to it.

Further, this Court finds the record from Applicant's trial demonstrates that Counsel effectively argued it was not nighttime when the burglary occurred. Counsel testified and the Court finds credible that it was his strategy to establish that the events happened in the "daytime." During opening statement, Counsel stressed that their primary argument is that the burglary did not occur at night. (Trial Tr. 53). Counsel explained the elements of burglary and informed the jury the only aggravating factor enhancing the charge to first degree was that the act occurred at night. (Trial Tr. 53–54). Counsel informed the jury he was going to argue the burglary did not occur at night. (Trial Tr. 54). Counsel cross-examined Deputy Rober Sullivan and Deputy Christian Stutts regarding the time they responded to the incident location. (Trial Tr. 98, 132). Counsel was able to elicit testimony from Deputy Sullivan that the time of the incident was at 8:10 p.m. (Trial Tr. 98). Additionally, Counsel successfully persuaded the trial judge to instruct the jury, by stipulation, that the time of twilight was at 8:13 p.m. (Trial Tr. 236–237). Counsel used this evidence to argue extensively in closing that the burglary did not occur in the nighttime. (Trial Tr. 263–267). Counsel testified he thoroughly examined the officers and adamantly made his argument on this issue in closing and ultimately the jury decided against them. Moreover, Counsel testified despite his strenuous arguments the Court did not "buy" his "scientific" argument and theory regarding the definition/calculation of nighttime. Additionally, Counsel called an investigator from the Public

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Defender's office as a witness attempting to establish their theory; however, counsel sought to have the investigator read a report from the U.S. Navy website. However, the trial court excluded the attempt based on hearsay. At the conclusion of this colloquy, Counsel states: "If the Court is willing to take judicial notice [of sunset and twilight], I have no further questions." Applicant has failed to establish that Counsel was deficient for failing to effectively argue the burglary did not occur at the nighttime. Additionally, Applicant has failed to demonstrate how Counsel could have more effectively argued the burglary did not occur at night. Therefore, this Court finds Applicant has failed to prove he was prejudiced by the alleged deficiency.

Accordingly, this Court finds this allegation is Denied.

Counsel's Failure to Inform Applicant of his Right to a Bench Trial

Applicant contends Counsel was ineffective for failing to inform him of his right to a bench trial. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified that, had he been informed he could have proceeded to a bench trial, he would have chosen to do so. Counsel testified a defendant does not have a right to a bench trial.[3] Nonetheless, Counsel credibly explained that it is preferable to have a jury trial where the State must convince twelve (12) people the defendant is guilty rather than just one judge. Counsel testified he did not believe a bench trial would have been a good idea, and that Judge Early would not have bought his daytime vs. nighttime argument.

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)

[3] Pursuant to Rule 14(b), SCRCrimP, a defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge. State v. Senter, 396 S.C. 547, 555, 722 S.E.2d 233, 237 (Ct. App. 2011); see also State v. Shuck, 278 S.C. 441, 442, 298 S.E.2d 95, 96 (1982).

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(citing Strickland). "[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). This Court finds Counsel reasonably explained that it is generally preferable for criminal defendants to proceed to a jury trial, where the State must convince twelve jurors rather than a single judge of the defendant's guilt. Furthermore, a defendant does not have a right to a bench trial, and Applicant has presented no evidence the State would have agreed to one. Additionally, it is purely speculative that a different fact finder would have reached a not guilty verdict based on the same evidence and testimony. Therefore, this Court finds Applicant has failed to meet his burden establishing deficiency or prejudice as to this allegation.

Accordingly, this Court finds this allegation is Denied.

Counsel's Failure to Investigate Witnesses

Applicant contends Counsel was ineffective for failing to contact and investigate witnesses, Brian Dorman and Ms. Dorman. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified that he was at the Dorman's house the night of the burglary. Applicant testified he does not understand why Counsel did not call them. Counsel credibly testified he did not call the Dormans to testify because their testimony would not have been helpful.

This Court finds Counsel's testimony credible that he investigated these witnesses and did not believe their testimony would have been helpful to Applicant's defense at trial. Therefore, this Court finds Counsel was not deficient, as he articulated a valid reason for not calling these witnesses. Additionally, Applicant failed to offer the testimony of Brian Dorman and Ms. Dorman at the evidentiary hearing. Our Courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of

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evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Because Applicant has failed to present testimony of these witnesses, or credible evidence of their testimony, at the evidentiary hearing, he has failed to meet his burden establishing prejudice as to this allegation.

Accordingly, the Court finds this allegation is Denied.

Counsel's Failure to Discuss and Prepare Applicant for Testifying

Applicant contends Counsel was ineffective for failing to discuss and prepare Applicant for testifying. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified he briefly discussed with Counsel his decision to testify. Applicant testified he did not feel prepared to testify, but he acknowledged his testimony would not have been different even if more time had been spent preparing. Counsel testified he discussed with Applicant the decision whether to testify, explaining the advantages and disadvantages of doing so, and neither encouraged nor discouraged him from testifying. Counsel testified he informed Applicant it was ultimately his decision whether he wished to testify or not.

This Court finds Counsel properly discussed and prepared Applicant for testifying. Counsel testified that he talked with the Applicant about testifying on at least four (4) different times. Counsel credibly explained that he reviewed the advantages and disadvantages of Applicant testifying, and that the decision to testify was ultimately his. Counsel further testified that he neither encouraged or discouraged the Applicant from testifying. Applicant similarly testified that he discussed his decision to testify with Counsel, and that there was little additional preparation that could have been undertaken. Moreover, the trial Court fully advised the Applicant of his right

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to testify. (Trial Tr. 202-203). Therefore, Applicant has failed to establish that Counsel was deficient for failing to discuss and prepare Applicant to testify.

Further, Applicant has failed to prove he was prejudiced by Counsel's alleged deficiency in preparing him to testify. Applicant acknowledged at the evidentiary hearing that his testimony would not have been different had more time been spent preparing. Thus, Applicant has failed to demonstrate a reasonable probability the outcome at trial would have different had Applicant been more prepared to testify.

Accordingly, the Court finds this allegation is Denied.

Counsel's Failure to Effectively Challenge the Identification of Applicant as the Defendant and Object to Misidentification

Applicant contends Counsel was ineffective for failing to effectively challenge the identification of Applicant as the defendant and object to misidentification. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified he believed Counsel did "ok" on challenging the identification of Applicant by victim. Applicant explained that the victim described the suspect as someone who looked completely different from him. He further testified that Counsel elicited testimony from the arresting officer confirming that Applicant's appearance differed from the person the victim's described. Counsel testified he recalled cross-examining witnesses regarding Applicant's appearance. Counsel explained that Applicant's biggest problem was that his wallet had been found where the culprit fled from the scene and that, after apprehension, Applicant was found with the victim's pills in his pocket.

At Applicant's trial, the victim testified to the following during direct examination:

Q. Were you able to tell the law enforcement what that person looked like?

A. Yes. I- - - even thought I didn't see the bottom half, I didn't - - couldn't tell what kind of pants he was wearing, but I could see his shirt. He had a t-shirt on. Very, very short hair. I briefly saw his face, so I knew he did not have any facial hair. I knew he was white and had black hair, very short. I would have guessed like late 20's or so.

(Trial Tr. 91)

During cross-examination of the victim, Counsel elicited the following:

Q. And you gave a description to the police of this person.

A. Uh-huh.

Q. And the description and correct me if this is wrong, the description of this person is less than six feet tall, 190 pounds and brown hair. Correct?

A. Uh-huh.

Q. And, let's see, you don't ever do a photo lineup - -

A. No.

Q. - - with Mr. Brandon Lee's picture in it?

A. Huh-huh.

Q. Never give a description - - and never do any kind of identification of Mr. - -

A. No.

(Trial Tr. 92–93).

During the cross-examination of Deputy Robert Sullivan, Counsel elicited the following testimony:

Q. And you were given a description of the man that Mr. Gardner saw in the house?

A. Yes.

Q. Of someone with under six feet, 190 pounds, brown hair.

A. Yeah, that was her best guess.

Q. Okay. And you would agree with me that Mr. Lee has black hair.

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A. From here it could - - I mean, it's hard to tell from here. Black or dark brown.

Q. Okay. No further questions.

(Trial Tr. 98).

During the cross-examination of Investigator Kris Evenson, Counsel elicited the following testimony:

Q. You've identified him today in the courtroom, and you said it's the guy over here that has a beard, right? Did he have a beard the day you arrested him?

A. Yes, sir.

(Trial Tr. 180).

During closing argument, Counsel made the following argument:

> Ms. Gardner doesn't say she saw Brandon or ID'd him. She said the guy she saw was clean shaven and the arresting officer told you that the next day he arrested Brandon, he had a beard. This means she didn't see Brandon, which is what Brandon said. He said he left about three o'clock.

(Trial Tr. 254).

Applicant's trial record clearly establishes that Counsel effectively raised and argued the issue of misidentification. At the evidentiary hearing, Applicant admitted that Counsel raised this argument at trial. Thus, this Court finds Counsel was not deficient.

Accordingly, the Court finds this allegation is Denied.

Counsel's Failure to Ensure that the Court Properly Charged the Jury with First- and Second- Degree Burglary

Applicant contends Counsel was ineffective for failing to ensure that the Court properly charged the jury with first- and second-degree burglary. The Court finds this argument lacks merit.

At the evidentiary hearing, Applicant testified his primary concern with the instructions was that first-degree burglary should not have been an option at all. Counsel testified there were no steps he could have undertook prior to trial to keep first degree burglary out—Applicant was

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indicted for first degree burglary and that was what he was on trial for. Counsel testified he made a motion for a directed verdict on the first-degree burglary charge, which was denied by the trial court. Counsel testified he was able to convince the trial court to instruct the jury on second-degree burglary.

This Court finds Counsel was not deficient for failing to ensure Applicant was properly charged with first- and second-degree burglary. The trial court properly instructed the jury on both first- and second-degree burglary. (Trial Tr. 281–283). Therefore, Counsel had no meritorious grounds to object. Additionally, at Applicant's trial, Counsel moved for directed verdict following the presentation of the State's case arguing that the State has failed to present sufficient evidence to prove the indictment. (Trial Tr. 200). Counsel was also able to successfully convince the trial judge to instruct the lesser included offense of second-degree burglary. As Counsel credibly explained, Applicant was properly indicted for first-degree burglary, and a successful directed verdict motion would have been the only avenue to avoid the first-degree burglary charge going to the jury. Counsel made the motion and it was considered and denied by the trial court. Thus, Applicant has failed to establish that Counsel was deficient in this regard.

Accordingly, the Court finds this allegation is Denied.

Counsel's Failure to Request a Bond Hearing

Applicant contends Counsel was ineffective for failing to request a bond hearing. The Court finds this allegation is without merit.

Applicant has failed to establish Counsel was deficient for failing to request a bond hearing. The records before the court demonstrate Applicant had two (2) bond hearings prior to trial: one

on April 4, 2017,[4] and the other on April 14, 2017.[5] Further, Applicant has wholly failed to demonstrate how the absence of a bond hearing affected the fairness or outcome of his trial. Therefore, Applicant has failed to prove he was prejudiced.

Accordingly, the Court finds this allegation is Denied.

Counsel's Failure to Investigate Other People in the House

Applicant contends Counsel was ineffective for failing to investigate other people in the house. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified that the other IDs found on the premises should have been investigated. Counsel testified there were multiple IDs left in the yard and that he did investigate these individuals, but after speaking with them, he determined their testimony would not be beneficial to Applicant's defense.

This Court finds Counsel's testimony credible that he investigated multiple other individuals who may have been in the house and determined that their testimony would not have been beneficial to Applicant's defense. Therefore, the Court finds Counsel was not deficient for failing to investigate other people in the house.

Further, Applicant has produced no credible evidence that further investigation into these individuals would have changed the outcome at trial. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding, where nothing in the record indicated that interviewing the victims would have produced a different outcome, counsel's failure to conduct an independent investigation did not constitute ineffective assistance of counsel, as the allegation is supported only by mere speculation as to the result).

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[4] On the charge of Unlawful Possession of a Prescription Drug Without a Prescription, Judge Melanie J. Dubbose set bail at $5,000.00 surety bond.

[5] On the charge of First Degree Burglary, Judge Melanie J. Dubbose denied bond.

Accordingly, the Court finds this allegation is Denied.

Counsel's Failure to Move to Reconsider the Sentence

Applicant contends Counsel was ineffective for failing to move to reconsider the sentence. The Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified that nobody informed him of a motion to reconsider. Applicant explained that he would hope the judge could see that if he was guilty of anything it was not violent and 85%. Counsel testified that he discussed a motion to reconsider with Applicant, but he saw no valid basis for reconsideration. Counsel testified that Applicant wanted a motion to reconsider and an appeal and he informed Applicant that he was not going to file the motion without a basis which would just delay the appeal. Applicant could not give him a basis for the motion, so Counsel went ahead and filed the notice of appeal. Counsel testified that with no valid basis for a motion for reconsideration "perfecting" the appeal was the more important objective.

The Court finds Counsel's testimony credible that there was no valid basis for filing a motion to reconsider. Counsel weighed filing a frivolous motion against delaying Applicant's direct appeal and reasonably decided to file the notice of appeal. This Court finds this a valid reason for not filing the motion for reconsideration; therefore, Counsel was not deficient. Additionally, Applicant has failed to present a valid basis for a motion to reconsider at the evidentiary hearing. Applicant merely testified that he wanted the judge to see that he was not guilty of a violent and 85% offense. This Court finds this does not constitute a valid basis for such a motion. A jury convicted Applicant of first-degree burglary, and a motion for reconsideration cannot be used to alter a jury verdict. Moreover, it is purely speculative that a motion to reconsider

would have been successful. Therefore, Applicant has failed to demonstrate he was prejudiced as to this allegation.

Accordingly, the Court finds this allegation is Denied.

Counsel's Failure to Ensure Applicant was Properly Indicted

Applicant contends Counsel was ineffective for failing to ensure Applicant was properly indicted. The Court finds this allegation is without merit.

Applicant testified he believed the indictment was defective because the face of the indictment stated the Grand Jury did not convene until a week later. Counsel testified that his understanding of the process is that the indictments are presented to the Grand Jury who consider them over time, then later the Grand Jury is convened, and the indictments are true billed. Counsel testified he does not view that process as creating a defect and believes it to be fair and legally correct.

Despite Applicant's allegations against the indictments, the Court finds the record reflects the Aiken County Grand Jury validly indicted Applicant. These indictments contain all the necessary elements of the offenses and further cite the applicable statute. Moreover, "[a]n indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005). A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Here, Applicant cannot show any irregularity because the indictments in question are sufficient on their face.

Further, the Court finds credible Counsel's assessment that the discrepancy in the dates on the indictment does not render it defective. The Supreme Court has weighed in on this exact issue:

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> Petitioner bases his argument on two portions of the indictments. On one page of each of the indictments, in the section designated as "Action of the Grand Jury," the words "True Bill" are written, along with the date October 19, 1990, and the signature of the foreman of the grand jury. Another page of each of the indictments state that "At a Court of General Sessions, convened on October 22, 1990, the Grand Jurors of Aiken County present upon their oath ..." and then the crimes for which petitioner was charged are set forth. Petitioner misconstrues the meaning of the dates on the two pages of the indictments.
>
> The county grand jury is empaneled during the first term of general sessions of the calendar year. See S.C. Code Ann. §§ 14–7–1550 to –1570 (Supp.1993). By Administrative Order of the Chief Justice, the Chief Judge for Administrative Purposes in each judicial circuit is responsible for scheduling when the grand jury in each county within the circuit will convene to receive evidence and deliberate. Administrative Section, South Carolina Court Register, pp. CC ADMIN 3–4. This order specifically encourages the Chief Judge to convene the grand jury when the court of general sessions is not in session. After the grand jury has deliberated, it then reports its findings of "True Bill" or "No Bill" to the court of general sessions. This report may be made on the same day as the day the grand jury makes its findings, or it may be made at some later time.

Brown v. State, 316 S.C. 258, 260, 449 S.E.2d 494, 495 (1994).

The Court finds the discrepancy in the dates listed on Applicant's indictment merely shows that the Grand Jury made its findings prior to the General Sessions term, then subsequently reported its findings at the next General Sessions term. This is entirely proper, and in fact was encouraged by the then Chief Justice of the South Carolina Supreme Court. Further, if a defect existed, it is more likely than not that the State would have merely directly indicted him.

Accordingly, the Court finds this allegation is Denied.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED, JUDGED, AND DECREED that Applicant's application for PCR is Denied and Dismissed with Prejudice; and Applicant must remain in the custody of the State.

IT IS SO ORDERED.

DL Jefferson 2128

Hon. Deadra L. Jefferson
Presiding Judge
Second Judicial Circuit

April 22, 2026
Charleston, South Carolina
At Chambers

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