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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Case No. 2018-CP-40-04637

Honorable Brian M. Gibbons, Circuit Court Judge

ORIGINAL

RICHLAND COUNTY
FILED

2026 JUN -4 AM 9:35

JEANETTE W. MCBRIDE
C.C.R., G.S., & F.C.

HOLLY JO THOMPSON,

PETITIONER

V.

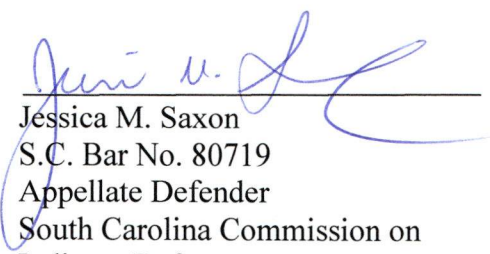
STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Holly Jo Thompson appeals the Order denying her application for post-conviction relief signed by Judge Brian M. Gibbons and entered by the Richland County Clerk of Court on May 15, 2025. This order followed a remand from this Court on August 20, 2025, to determine on the existing record whether Petitioner was prejudiced by trial counsel's failure to request an immunity hearing under the Protection of Persons and Property Act.

This 4th day of June, 2026.



Jessica M. Saxon
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cc: Brian Hollis Gibbs, Esquire
The Honorable Jeanette McBride, Richland County Clerk of Court

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Holly Jo Thompson, #299956,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-463

**ORDER OF DISMISSAL
 WITH PREJUDICE
 ON REMAND**

JEANETTE W. MCBRIDE
 S.C.P., G.S.S. & F.C.

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RICHLAND COUNTY
 FILED

This matter comes before the Court on remand from the Supreme Court of South Carolina to consider whether trial counsel's performance resulted in prejudice to Applicant Holly Jo Thompson. The Supreme Court determined trial counsel provided deficient performance because trial counsel could not articulate a valid strategic reason for his failure to pursue pretrial immunity under the Protection of Persons and Property Act (the Act¹). The Supreme Court limited this Court's consideration on remand to the existing record. On remand, Appellate Defender Jessica M. Saxon represented Applicant, and Assistant Attorney General Brian H. Gibbs represented the State.

Following a thorough review of the existing record in its entirety—including the trial proceedings, the post-conviction relief (PCR) proceedings, and all appellate proceedings—this Court finds Applicant failed to meet her requisite burden of proof to show that but for trial counsel's deficient performance, a reasonable likelihood existed that the result of her trial would have been different. Therefore, this Court denies relief and dismisses Applicant's application with prejudice.

[continued on following page]

¹ S.C. Code Ann. §§ 16-11-410 to -450.

PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections. In April 2014, a Richland County grand jury indicted Applicant for the murder of James Solomon. (Indictment No. 2014-GS-40-2072; App. 861-62).² On February 16-19, 2016, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. (App. 1). Public Defenders Robert Bank, Alicia Goode, and Rhodes Bailey represented Applicant. (App. 1). Assistant Solicitors Luck Campbell, Meghan Walker, and Laura Gregg prosecuted the case. (App. 1). Applicant was convicted as indicted, and the trial court sentenced her to forty-five years' imprisonment. (App. 860).

Applicant filed a direct appeal that was perfected by Senior Appellate Defender Kathrine Haggard Hudgins. On appeal, Applicant argued the trial court erred by (1) not instructing the jury on involuntary manslaughter, (2) not requiring the State to provide defense counsel with rap sheets of jurors with convictions, and (3) refusing to allow defense counsel to recross the forensic pathologist but allowing the prosecution to recross Applicant. On June 13, 2018, the Court of Appeals issued an opinion affirming Applicant's conviction and sentence. *See State v. Thompson*, 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). The Court of Appeals issued its remittitur on June 29, 2018.

On August 29, 2018, Applicant filed this PCR application. (App. 776). On October 29, 2019, an evidentiary hearing convened before the Honorable Brian M. Gibbons. (App. 791). Jonathan Waller represented Applicant, and Assistant Attorney General Samuel Key represented the State. (App. 791). On July 28, 2021, this Court issued an order denying relief. (App. 791).

² Unless otherwise indicated, all citations to the record are citations to the Appendix from Applicant's PCR appeal. When Applicant appealed the decision of the Court of Appeals, the Supreme Court utilized the same Appendix.



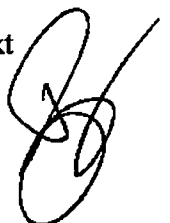
Applicant filed a timely notice of appeal. On June 13, 2022, Applicant filed a writ of certiorari. On September 23, 2022, Respondent filed a return. On October 16, 2022, the case was transferred to the Court of Appeals, which granted certiorari on August 18, 2023. On December 3, 2024, the Court of Appeals heard oral arguments in this case, and on January 23, 2025, the Court of Appeals issued an opinion affirming the PCR court's order denying relief. *See Thompson v. State*, 2025-UP-017 (S.C. Ct. App. filed Jan. 23, 2025). On February 5, 2025, Applicant filed a petition for rehearing, which the Court of Appeals denied on March 6, 2025.

On April 7, 2025, Applicant filed a timely petition for writ of certiorari with the Supreme Court of South Carolina. On August 20, 2025, the Supreme Court granted Applicant's petition, dispensed with further briefing, reversed the opinion of the Court of Appeals, and remanded to this Court "to determine whether, on the existing record, [Applicant] was prejudiced by trial counsel's failure to pursue immunity under the Act." *Thompson v. State*, Op. No. 2025-MO-039, at *4 (S.C. Sup. Ct. filed August 20, 2025).

TRIAL TESTIMONY

At trial, Victim's friend, Odell Middleton, testified he stopped by Victim's home one afternoon to visit. (App. 96-101). He testified the front door was locked but the back door was open. (App. 101-02). Middleton noticed an odor and went inside, where he found Victim's deceased body on the living room floor. (App. 103-04). He called 911. (App. 104).

Amy Durso, a pathologist, testified Victim had multiple blunt-force trauma injuries, including three lacerations on the right side of his head, six lacerations on the top of his head, two lacerations on the back of his head, three lacerations "kind of going towards the neck," two lacerations on his forehead, a laceration over his nose, and a fractured nasal bone. (App. 309-13). Additionally, Victim had two sharp-force injuries on the back of his neck, a sharp-force injury next



to his chin, two sharp-force injuries on his lower chest, five sharp-force injuries on his left thigh, seven sharp force injuries on his right hand, three sharp-force injuries on his right arm, three sharp force injuries on his right shoulder, and nine sharp-force injuries to his left-arm. (App. 321-22). Dr. Durso opined Victim died of exsanguination³ approximately two to three days before his body was discovered. (App. 322, 324).

Law enforcement testified about the bloody scene that spanned Victim's home from the bedroom, down the hall, and into the living room. (App. 115-16, 148-51, 167-70, 263, 490). Law enforcement collected a knife from the bedroom floor containing Victim's blood (App. 122, 165, 172, 200, 267, 396) and glass fragments from the hallway near a back door. (App. 116-17, 168). One of the glass fragments contained Applicant's palmprint. (App. 358-60).

Stan Richards, an expert in bloodstain pattern analysis, opined the incident began in the bedroom and ended in the living room. (App. 288). He based this opinion on the fact the bedroom contained a smaller amount of blood, signaling the beginning of the blood-letting event. (App. 288-89). Richards testified the volume of blood increased as it moved down the hall away from the bedroom. (App. 289). He testified the area around the glass shards in the hallway contained an increased amount of blood, which was consistent with Victim being "stationary for a little while." (App. 289, 292). Richards opined that spherical blood spatter located on an HVAC in the hall indicated an impact occurred at the same level as the HVAC, which was below waist level. (App. 294-95).

Applicant testified in her defense. She stated she was a prostitute, and Victim often gave her crack cocaine in exchange for sex. (App. 522-23). According to Applicant, she had been at Victim's home that evening smoking crack cocaine with him. (App. 526-27). When they tried to

³ Extreme blood loss.



engage in sex, Victim could not obtain an erection and became angry. (App. 528-30). Applicant stated she attempted to leave but Victim accused her of stealing from him. (App. 529-30). She testified Victim started swinging a knife at her and "caught" her right hand, cutting her. (App. 530, 535). Applicant stated that they were in the living room and that she grabbed a glass vase to protect herself. (App. 530-31). She testified, "I swung the vase at him, and he swung at me again. The next thing I know, we're fighting with a vase and a knife." (App. 531).

Applicant testified Victim had threatened to shoot her⁴ and she was "scared for her life." (App. 530, 534). She stated she was only wearing jeans and shoes; her shirt, bra, and jacket were at the end of the couch. (App. 534). Applicant testified she attempted to get her clothes and her crack pipe, which she "never left . . . anywhere"; as she bent over to pick up her pipe, Victim swung and hit Applicant's left hand, bruising it. (App. 535). Applicant testified she then swung the vase at Victim, hitting him in the face and head. (App. 535). She clarified Victim was "coming around the end of the coffee table" when she picked up the vase. (App. 534).

Applicant was unsure how many times she hit Victim but thought it was five or six times. (App. 535). She stated Victim fell and she fell on top of him; she stopped hitting him when they fell and the vase broke. (App. 537). After they fell, she "got up real quick, grabbed [her] clothes, [and] went out the front door," which was in the living room. (App. 536). Applicant testified Victim was still yelling and threatening to kill her as she left. (App. 536). She maintained none of the fighting occurred in the bedroom. (App. 538). On cross-examination, when asked what prevented her from running out the front door when she crossed the living room to grab the vase, she replied, "It was cold outside and I really didn't want to run out there with no clothes on like

⁴ Investigators did not testify to finding a gun in the home.



that." (App. 559-61, 563). She testified she did not continue hitting Victim after he fell. (App. 566). Likewise, she claimed he was facing her at the time. (App. 567).

At Applicant's request, the trial court charged self-defense. (App. 749-52). The jury convicted Applicant of murder. (App. 758). The trial court sentenced her to forty-five years' imprisonment. (App. 773).

PCR TESTIMONY

At the PCR hearing, Applicant maintained she had been acting in self-defense. (App. 799). However, she stated counsel never discussed a pretrial immunity hearing. (App. 807). Applicant acknowledged the evidence indicated Victim's back door had been left open, which contradicted her trial testimony that she ran out the front door; however, Applicant stated she would not have left out the back door because Victim kept a large dog in his back yard that she was afraid of. (App. 801). Applicant averred "[s]omeone else had to have been in that house because . . . the back door was open." (App. 811). She also asserted the knife that police found in the bedroom was in the living room when she left, and a screwdriver that police found by the back door was not on the floor while she was there. (App. 803).

Robert Bank (trial counsel) testified Applicant told him that Victim had accused her of stealing crack cocaine and attacked her with a weapon and that Applicant defended herself by "grabbing a glass vase and hitting him multiple times." (App. 813). Trial counsel also stated Applicant told him that Victim was still alive when she left. (App. 813). Trial counsel did not recall whether he discussed the Protection of Persons and Property Act with Applicant. (App. 816). He stated his initial concern would have been whether she was in a place that she had a right to be, although he averred evidence showing Applicant "was invited [to Victim's home] not only this night but regularly" could show she was in a place she had a right to be. (App. 816). Trial



counsel could not recall why he did not pursue a pretrial immunity hearing. (App. 823). He elaborated, "Sitting here today, I don't specifically remember anything regarding her case other than kind of typical pros and cons you do in any case. But, no, I don't remember anything specific in this case in terms of why we didn't do that." (App. 823).

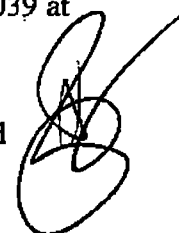
This Court found Applicant failed to prove counsel was deficient for not seeking a pretrial immunity hearing because counsel articulated a valid strategy of focusing on a theory of self-defense, and counsel chose not to pursue an immunity hearing through a pro/con process performed in any case. (App. 856-58). Based on the deficiency finding, this Court did not evaluate prejudice. (App. 856-58).

COURT OF APPEALS OPINION

The Court of Appeals affirmed the PCR court's dismissal, holding that trial counsel's performance was not deficient because "at the time of trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home." *Thompson v. State*, 2025-UP-017 at 4-5. The Court of Appeals stated that trial counsel could not be deficient for "failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law." *Id.* at 5. Like the PCR court, the Court of Appeals did not reach prejudice due to its holding that trial counsel's performance was not deficient. *Id.*

SUPREME COURT OPINION

The Supreme Court reversed the Court of Appeals opinion, holding that this Court's determination that trial counsel articulated a valid trial strategy was not supported by evidence in the record because trial counsel did not articulate any strategy, instead testifying only that he could not remember why he did not move for pretrial immunity. *Thompson v. State*, 2025-MO-039 at

A handwritten signature in black ink, appearing to be 'HJ Thompson', is written over the bottom right corner of the page, partially overlapping the footer text.

*3. The Supreme Court noted that for Applicant to show prejudice from trial counsel's deficiency, she "must show there is a reasonable probability that the circuit court would have found her immune from prosecution under the Act had trial counsel requested a hearing." *Id.* at *4; *see also Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (holding there is prejudice when but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different). Stating that neither this Court nor the Court of Appeals ruled on prejudice, the Supreme Court remanded this matter to this Court "to determine whether, on the existing record, [Applicant] was prejudiced by trial counsel's failure to pursue immunity under the Act." *Thompson v. State*, 2025-MO-039, at *4.

CURRENT ACTION BEFORE THE COURT

In her PCR application, Applicant alleged she is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. Attorney refused to call character witnesses;
 - b. Attorney did not honor Applicant's request for a mental health evaluation.

At the evidentiary hearing, Applicant's PCR counsel proceeded on allegations made in the original application. Additionally, at the close of the hearing, PCR counsel moved to amend the pleadings to conform to the evidence and include an allegation of ineffective assistance of counsel for failure to seek immunity. This Court granted PCR counsel's motion. (App. 836).

However, because the only allegation raised on appeal and ruled upon by both the Supreme Court and the Court of Appeals was Applicant's issue regarding failure to seek immunity, that is the only issue before this Court. Applicant's other issues were ruled upon in the first Order of Dismissal, were not appealed, and are now law of the case. *See Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from



relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.").

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁵ provides that any person who has been convicted of a crime may seek post-conviction relief based upon 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;
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 [was] 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.

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, 685 (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 an applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of

⁵S.C. Code Ann. §§ 17-27-10 to -160.



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 PCR 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. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* 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 because 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 modified)).

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); *see also Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances 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" considering then-existing circumstances. *Strickland*, 466 U.S. at 689. 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 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 that 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.

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversarial 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 considering 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"); *see also 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

As noted above, the only claim presently before this Court on remand from the Supreme Court is Applicant's allegation of ineffective assistance of counsel for failure to request a pretrial immunity hearing. In analyzing this claim, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. Before this Court are the appendix from the PCR appeal and the accompanying appellate documents, including the petitions for writ of certiorari, returns to those petitions, and the opinions of the Supreme Court and Court of

Appeals. The PCR appeal appendix includes records from the Richland County Clerk of Court from the underlying trial, the trial transcript, the PCR evidentiary hearing transcript, the PCR application, the State's return to the PCR application, and this Court's first Order of Dismissal. Further, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. *See, e.g., State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); *Clemons v. Mississippi*, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant her PCR application. *See* Rule 71.1(e), SCRPC (stating that in a PCR action, "[t]he applicant has the burden of establishing [her] 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.").

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

INITIAL FINDINGS

This Court notes the strong presumption that at all stages of 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 also Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Ineffective Assistance of Counsel

Allegation: Trial counsel provided ineffective assistance by failing to request a pretrial immunity hearing pursuant to the Act.

Applicant asserts trial counsel provided ineffective assistance for failing to seek immunity pursuant to the Act and instead only seeking a jury instruction on self-defense at trial. This Court disagrees and finds that Applicant has failed to meet her burden of showing trial counsel's performance prejudiced her.

A. Deficiency

The Supreme Court of South Carolina has determined that Applicant has shown trial counsel's failure to request a pretrial immunity hearing and inability to articulate a valid trial strategy for doing so constituted deficiency. *See Thompson v. State*, 2025-MO-039 at *3.

B. Prejudice

Applicant cannot show prejudice because her testimony at trial was inconsistent with the forensic evidence, which makes it not reasonably probable that a circuit court would have found



Applicant immune from prosecution under the Act. *See generally Green v. State*, 351 S.C. 184, 192, 569 S.E.2d 318, 322 (2002) ("A reasonable probability is one sufficient to undermine confidence in the trial's outcome."). Further, Applicant has failed to show that a substantial likelihood existed that but for trial counsel's deficiency, a different result would have occurred. *See Richter*, 562 U.S. at 112 ("The likelihood of a different result must be *substantial*, not just conceivable.").

By way of background, the General Assembly enacted the Act to codify the common law Castle Doctrine. *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." *Id.* at 371, 752 S.E.2d at 266. "This includes all elements of self-defense, save the duty to retreat." *Id.*

"[T]he legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act." *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Thus, upon motion, the issue of immunity under the Act must be decided prior to trial. *Id.* A party seeking immunity under the Act must show entitlement to immunity by a preponderance of the evidence. *Id.* at 411, 709 S.E.2d at 665. Common law self-defense has four elements:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of



avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Glenn, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019).

Further, the Act sets forth two statutory presumptions:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful or forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling . . . ; or

...

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person

S.C. Code Ann. § 16-11-440.

Applicant did not show prejudice from trial counsel's failure to request a pretrial immunity hearing because it is not reasonably likely a court would have granted immunity. The *Strickland*

standard of prejudice requires a Court to find that but for an alleged deficiency, there is a *reasonable probability the result of the proceeding would be different*. *Strickland*, 466 U.S. at 694. In other words, the proper question is, "If counsel had requested a pretrial immunity hearing, is there a reasonable probability the circuit court would have granted immunity?" *Strickland*, 466 U.S. at 693 ("It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." (citation modified)); *see also Thompson v. State*, 2025-MO-039 at *4.

At trial, Applicant admitted she was at Victim's home smoking crack and attempting to engage in prostitution. (App. 522-35). She claimed Victim became angry when he could not get an erection; she went into the living room to get her clothes, and Victim followed her and began swinging a crack knife at her. (App. 530-35). According to Applicant, they were in the living room when this occurred. She denied that any fighting occurred in the bedroom. (App. 522-38).

In contrast, Stan Richards, an expert in bloodstain pattern analysis, opined the incident began in the bedroom and ended in the living room. (App. 288). He based this opinion on the fact the bedroom contained a smaller amount of blood, signaling the beginning of the blood-letting event. (App. 288-89). Richards testified the volume of blood increased as it moved down the hall away from the bedroom. (App. 289). He testified the area around the glass shards in the hallway contained an increased amount of blood, which was consistent with Victim being "stationary for a little while." (App. 289, 292).

Based on Richards' testimony, the forensic evidence showed (1) a blood-letting event began in the bedroom and (2) the volume of blood increased as it moved down the hall. This starkly



contrasts Applicant's version of events. Applicant denied any fighting occurred in the bedroom; rather, she claimed the fighting all occurred in the living room, where Victim's body was ultimately discovered. (App. 530-38).

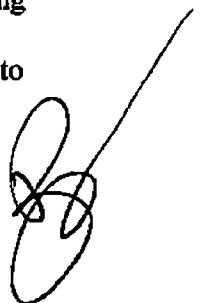
The State's theory was that Applicant attacked Victim in the bedroom. This theory was supported by the bent knife investigators found in the bedroom that contained Victim's blood. Applicant's description of the fight is inconsistent with the forensic evidence, making it unlikely a trial court would have found her testimony credible at a pretrial immunity hearing. Likewise, it is not reasonably likely a circuit court judge would have found that Applicant's testimony established by a preponderance of the evidence that she was entirely without fault in bringing on the difficulty.

Additionally, Applicant's testimony that she ran out the front door was contradicted by testimony that the front door was locked but the back door was open when Victim's body was discovered. (App. 101-02). Further, blood spatter evidence showing an impact occurred *below* waist level along with the relative size of Victim and Applicant (who admitted she was shorter than Victim) shows Applicant continued to beat Victim *while he was on the ground*. (App. 294-95). *Cf. State v. Chhith-Berry*, 437 S.C. 527, 544, 878 S.E.2d 352, 361 (Ct. App. 2022) (affirming trial court's denial of immunity when defendant "testified that he stabbed Galloway once in the shoulder and that caused Galloway to fall off of Berry and stop fighting. Despite Chhith-Berry's testimony that Galloway stopped fighting after the first stab wound, Galloway sustained another twenty-four unaccounted-for stab wounds."). Due to a lack of credibility (based on the forensic evidence) in Applicant's overall testimony, it is not reasonably likely a court would have found Applicant proved by a preponderance of evidence that she had no other reasonable means of escape than to brutally beat Victim.



The brutality of the beating itself further illustrates why it is not reasonably likely a court would have found by a preponderance of evidence that Applicant had no other reasonable means of escape or that Applicant reasonably believed her actions were necessary to prevent great bodily injury. Specifically, Victim had multiple blunt-force injuries on his head, including three on the right side, six on the upper back, two more lower down on the back of the head, and three toward the neck (App. 311-12); two sharp-force injuries on the back of the neck (App. 312); three blunt-force injuries and one sharp-force injury on his face (App. 313); two sharp-force injuries on his right lower chest (App. 318); a cluster of five sharp-force injuries on his left thigh (App. 318-19); seven sharp-force injuries on his right hand (App. 319); three sharp-force injuries on his right lower arm (App. 320); two sharp-force injuries on his right shoulder (App. 320); and nine sharp-force injuries on his left lower arm (App. 320). Thus, it is not reasonably likely a circuit court would have granted immunity, and Applicant cannot show prejudice.

Here, where Applicant's testimony about what occurred is so blatantly refuted by the forensic evidence, and where a jury found the State *disproved* self-defense *beyond a reasonable doubt*, this Court concludes that it is not reasonably likely a circuit court judge would have found Applicant proved self-defense by a preponderance of the evidence. Although "preponderance of evidence" is a less-stringent standard than "beyond a reasonable doubt," it is critical to remember *who* has the burden of proof. At a pretrial immunity hearing, a *defendant* has the burden of proving immunity by a preponderance of evidence. In contrast, at trial when a defendant raises self-defense, the *State* has the burden of *disproving* self-defense beyond a reasonable doubt. It is more difficult to disprove a fact beyond a reasonable doubt than it is to prove a fact by a preponderance of the evidence. Here, the State met the more-stringent burden of disproving self-defense beyond a reasonable doubt. Where the State met that burden, it strains credibility to

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suggest that if the burden—albeit a lower one—shifted to Applicant (as it would in a pretrial immunity hearing), it is reasonably likely a judge would grant immunity.

Finally, the presumptions of the immunity statute do not apply. First, the presumption of subsection 16-11-440(A) does not apply because this incident occurred at Victim's home. *See* S.C. Code Ann. § 16-11-440(B)(1) (providing the presumption of section 16-11-440(A) does not apply when the force is used against a lawful resident of the dwelling). Second, the presumption of subsection 16-11-440(C) does not apply because Applicant was a guest in Victim's home. *See Curry*, 406 S.C. at 374, 752 S.E.2d at 267 ("Under the Castle Doctrine, the absence of a duty to retreat does not extend to a visitor or social guest in the home of another unless "the attacker is an intruder."). Likewise, neither presumption applies because the uncontradicted evidence showed Applicant was engaged in unlawful activity at the time of the incident that *by her own testimony* proximately caused the fatal beating. Applicant admitted to at least two unlawful activities she was engaging in at the time of this incident: prostitution and drug use. (App. 522-35). Further, Applicant testified that she went back for her crack pipe, which constitutes the crime of possession of drug paraphernalia. (App. 535). Because Applicant was engaged in unlawful activity, the presumptions of subsections 16-11-440(A) and (C) would not apply. *See* § 16-11-440(B)(3) (providing the presumption of subsection 16-11-440(A) does not apply if the person using deadly force was engaged in unlawful activity); § 16-11-440(C) (providing "[a] person who is not engaged in unlawful activity" has no duty to retreat in certain circumstances (emphasis added)).

Accordingly, this Court finds Applicant has failed to establish that she suffered any prejudice due to trial counsel's failure to request a pretrial immunity hearing as she cannot show a reasonable probability that she would have been granted immunity but for trial counsel's deficiency. Therefore, this allegation is **DENIED** and **DISMISSED**.



CONCLUSION

Based on the foregoing, this Court finds that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her PCR application. Therefore, Applicant's PCR application is **DENIED** and **DISMISSED WITH PREJUDICE**.

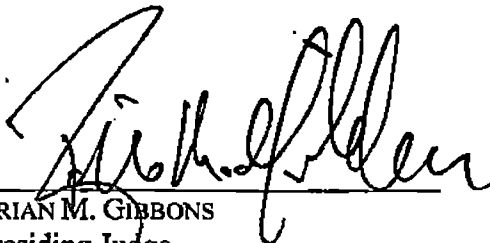
This Court notifies Applicant that she must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Further, Rule 71.1(g) of the South Carolina Rules of Civil Procedure provides that PCR counsel must serve and file an Notice of appeal on Applicant's behalf if Applicant wishes to seek appellate review. *See also* Rule 243, SCACR.(setting forth procedure for PCR appeals).

IT IS THEREFORE ORDERED:

1. Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of the South Carolina Department of Corrections pending the completion of her lawful sentence.

IT IS SO ORDERED this _____ day of 5/5/2018.

_____, South Carolina



BRIAN M. GIBBONS
Presiding Judge
Fifth Judicial Circuit