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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Marvin Dukes, PCR Action Judge
2022-CP-10-02017

JEROME CURRY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jerome Curry appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Marvin Dukes, circuit court judge, on August 4, 2025, and was denied by written order issued filed on May 22, 2026.

Applicant received notice of the judgement on May 22, 2026.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Jerome Curry,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2022-CP-10-02017

ORDER OF DISMISSAL

FILED
2025 MAY 22 AM 11:08
JULIE J. PRINSTER
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jerome Curry (Applicant) on May 2, 2022. On January 9, 2023, Respondent made its return requesting an evidentiary hearing. On August 4, 2025,¹ an evidentiary hearing convened before the Honorable Marvin H. Dukes, III. Applicant was present and represented by Chelsey Marto, Esquire.² Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as witnesses Andrew Carson, a

¹ Prior hearings were scheduled but continued for various reasons in April 2023, June 2023, March 2024, September 2024; December 2024; and May 2025.

² Christopher L. Murphy, Esquire, was appointed to represent Applicant on September 9, 2022, but was relieved at Applicant’s request on April 19, 2023. Applicant thereafter was permitted to proceed pro se. However, on November 8, 2023, the Court appointed a Guardian ad Litem (GAL) due to concerns about Applicant’s competency. On March 15, 2024, the Court issued an order requiring a competency evaluation. Following a status conference in December 2024, the matter was held in abeyance pending Applicant’s restoration to competency. Thereafter, the GAL moved to be relieved on the basis Applicant had filed a civil lawsuit against him. On May 29, 2025, a hearing was held on the GAL’s motion; at that time, Applicant requested appointment of counsel. On May 29, 2025, the Court issued an order relieving the GAL and appointing Chelsey Marto, Esquire, as counsel. On July 30, 2025, the matter was restored to the docket with the consent of the parties because there was no indication Applicant’s competency would be restored soon, and Applicant had clearly indicated his wish to proceed with the merits of his PCR action. See Council v. Catoe, 359 S.C. 120, 129, 597 S.E.2d 782, 787 (2004) (“[A] petitioner’s mental incompetency does not impede his ability to assert his meritorious PCR claims. Therefore, we hold that a petitioner cannot delay his collateral review proceedings due to his incompetency. If, at a future date, the petitioner regains his competency and discovers that at his original PCR hearing, his incompetency prevented his ability to assist his counsel on a fact-based claim of ineffective assistance of counsel, he may then raise that claim in a subsequent proceeding.”).

records custodian from South Carolina Department of Corrections; and plea counsel Benjamin Carter Lewis, Esquire. Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is NOT presently confined in the South Carolina Department of Corrections.³ On October 21, 2021, Applicant appeared before the Honorable Deadra L. Jefferson, waived presentment to the grand jury (Pl. 13), and pled guilty—pursuant to a negotiated sentence—to attempted armed robbery. Public Defender Benjamin Lewis represented Applicant. Pursuant to the negotiation, Judge Jefferson sentenced Applicant to ten years’ imprisonment, suspended upon the service of six years. Applicant did not appeal.

CURRENT APPLICATION

On May 2, 2023, Applicant timely filed this PCR application alleging:

1. “Department of Corrections refuses to subtract the 17 months from off of the six-year sentence that I received which the judge give me credit for,” in accordance with section 24-13-40 of the South Carolina Code;
2. Counsel was ineffective for failing to “ get 17 months’ time credit that Judge give me subtracted from six-year sentence even after advising him of this Department of Corrections fail to do this. “

On June 13, 2022, Applicant filed a *pro se* Motion to Amend his application alleging his sentence was unconstitutional and invalid because he did not waive his right to a grand jury

³ On December 1, 2025, Applicant was released to community supervision from the sentence for the conviction he is challenging. He was arrested on new charges on January 6, 2026, and is currently detained at Charleston County Detention Center. See Charleston County Sheriff’s Office Inmate Report, <https://inmatesearch.charlestoncounty.org/PrintInmateDetails.aspx?BookingID=26000179&Status=CURRENT&InmateNumber=&BookingStatus=CURRENT&HashCheck=isQqOh0Xl4EvIrtGH0D32a6H1gg=> (last visited April 24, 2026).

indictment, in accordance with section 17-23-130 of the South Carolina Code.

On June 15, 2022, Applicant filed a second *pro se* Motion to Amend his application and a Motion for Relief of Judgment alleging the court lacked subject matter jurisdiction to sentence him because he was not indicted. He also alleged the South Carolina Department of Corrections (SCDC) was not giving him credit for 526 days, in violation of constitutional provisions, and counsel was ineffective for not helping him correct his sentence.

On June 29, 2022, Applicant filed a third *pro se* Motion to Amend his application and a Motion to Vacate his sentence, alleging his sentence was “void due to lack of due process, lack of probable cause for conviction, sentence, and plea as well as lack of subject matter jurisdiction, prosecutor misconduct/malicious prosecution.”

On August 18, 2022, Applicant filed a fourth *pro se* Motion to Amend, alleging:

1. Ineffective Assistance of Counsel
 - a. Failure to move for suppression of identification procedures
 - b. Failure to move for suppression due to lack of probable cause for arrest
 - c. Failure to object to plea of guilty for lack of indictment or lack of signed waiver of presentment to the grand jury
 - d. Failure to advise Applicant that he had a right to waive the indictment in writing
 - e. Failure to advise Applicant that he was pleading guilty would require a “mandatory sentence of 5yrs one month”
 - f. “Failure to Advise Applicant that he was pleading to a violent sentence and that he would not be eligible for parole, early release, furlough, work credits, school credits, work release or good time credits.”

On August 29, 2022, Applicant filed a fifth *pro se* Motion to Amend alleging:

1. Ineffective assistance of counsel:
 - a. Counsel never contacted individuals that Applicant asked him to contact;⁴
 - b. Counsel did not move to suppress due to lack of probable cause and invalid identification in unlawful one-on-one show-up;
2. Violation of Due process/ Invalid show-up:
 - a. Witness did not provide statement regarding suspect’s facial hear

⁴ Applicant acknowledges in this filing that he did not provide counsel the contact information for these individuals. (pg. 2).

or appearance other than stating suspect was black male;⁵

b. “so-called witness identified Applicant as suspect that committed this offense by Appellant face which was not true all remaining victims and witnesses stated suspect was wearing face mask and that they were unable to identify Applicant as suspect and witness that stated Applicant was suspect did so 20 yards away from Applicant in one-on-one show-up while Applicant was in back of EMS truck being treated”;

c. “Witness stated suspect was wearing blue and white gloves, Applicant was not found wearing blue and white gloves only black brace on right hand”;

d. “witnesses stated suspect rode off on a pink bike, bike found was black and pink then witness stated bike was black then pink and purple”;

e. “witness stated suspect was wearing a camouflage jacket. Applicant was found wearing camouflage t-shirt not jacket.”

3. Lack of probable cause for arrest and conviction.

On January 9, 2023, Respondent filed a return and partial motion to dismiss. Specifically, Respondent sought to dismiss the claim related to the calculation of his sentence by SCDC as not cognizable under the PCR Act. See S.C. Code Ann. § 17-27-20 (setting forth proper PCR claims); Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (providing a credit-related claim is an administrative matter and is not cognizable under the PCR Act).

On November 8, 2023, Applicant filed a sixth *pro se* Motion to Amend alleging:

a. Ineffective assistance of counsel:

1. Counsel did not challenge identification;
2. Counsel rendered wrongful advice;
3. Counsel did not review discovery;
4. No stolen items were found on Applicant;
5. Counsel did not investigate witnesses;
6. Counsel did not request Blair hearing;
7. Counsel did not request Franks hearing;

b. Due process violation:

1. Identification was not challenged;
2. Applicant was convicted without an indictment.

On April 26, 2024, Applicant filed a seventh *pro se* Motion to Amend, alleging:

⁵ Applicant acknowledges he was wearing the same clothing—camouflaged pants and shirt—as the perpetrator was described to be wearing. (pg.1).

a. Ineffective assistance of counsel:⁶

1. Counsel allowed me to be convicted without Blair hearing, knowing I was incompetent;
2. Counsel allowed and advised me to plead guilty knowing I was never indicted by Grand Jury;
3. Counsel failed to get charges dismissed at late preliminary hearing;
4. Counsel failed to present my pro se motion to suppress evidence due to lack of probable cause and have charges dismissed due to lack of evidence;
5. Counsel failed to request Franks hearing;
6. Counsel failed to provide me with full Brady/Rule 5 evidence;
7. "I requested counsel to raise affirmative defense not guilty insanity in which he stated jury would not go for it";
8. "Counsel withheld statements from my aunt showing and proving I was in mental hospital 3 times before arrest date and time in which counsel had record of yet still advising me to plea guilty had I known this I would have never relied upon counsel wrongful advice to plea guilty";
9. Counsel failed to request Neil v. Biggers hearing;
10. Counsel advised me to plead guilty without explaining what serious offense meant;

b. Involuntary guilty plea.

On August 5, 2024, Applicant filed an eighth *pro se* Motion to Amend his application, generally alleging his attorney and GAL had violated the Rules of Professional Conduct, and the Assistant Attorney General had conspired with his appointed counsel and GAL. He also raised allegations related to prison conditions.

On September 3, 2024, Applicant filed a ninth *pro se* Motion to Amend his application, alleging:

1. Ineffective assistance of counsel:

- a. Told Applicant preliminary hearing was held but court records show no such hearing;
- b. Did not provide copy of preliminary hearing transcript;
- c. Did not review discovery with Applicant prior to guilty plea;
- d. Did not challenge criminal responsibility based on incompetence at time of offense;
- e. Failed to request Neil v. Biggers hearing;
- f. Failed to request Franks hearing;

⁶ Applicant alternately frames theses as due process violations.

- g. Failed to investigate;
2. Due process violation:
 - a. Did not have preliminary hearing despite requesting one;
 - b. Did not receive copy of preliminary hearing transcript;
 - c. Was incompetent at time of offense;
 - d. Convicted upon invalid one-on-one show-up;
 - e. Convicted without Grand Jury indictment; oral waiver insufficient (S.C. Code Ann. 17-23-130, -140, State v. Clarkson)
 - f. Brady violation;
 - g. convicted without Franks hearing;
 - h. Convicted without Blair hearing;
 - i. Speedy trial violation;
3. Involuntary guilty plea: Judge asked if he wanted to plead guilty before advising him of rights he was waiving, maximum/minimum sentence, definition of most serious offense, or that he was waiving presentment of indictment.

In this filing, Applicant sought both the vacation of his sentence and monetary damages, to include punitive damages.

On September 19, 2024, Applicant filed a tenth *pro se* Motion to Amend, raising claims related to prison conditions. On October 15, 2024, Applicant filed an eleventh *pro se* Motion to Amend, raising claims related to prison conditions and seeking \$500 billion in damages.⁷

On December 23, 2024, Applicant filed a *pro se* untitled document that this Court construes as a twelfth Motion to Amend his PCR application. He alleged

1. The Office of the Attorney General, the Judicial Officers, and his GAL were conspiring to deny him due process by using his mental health to delay judgment in his PCR action;
2. Respondent “was in default in over (27) motions, pro se proposed orders, writs in connection with pending PCR case”;
3. He was convicted without an indictment or a signed waiver of indictment;
4. He was convicted without a Neil v. Biggers hearing;
5. He was convicted without a Franks hearing;
6. Speedy trial violation;
7. Brady violation;
8. He was convicted without a State v. Blair hearing;
9. He was convicted at the time of the offense;
10. His guilty plea was not knowing or voluntary.

⁷ He also asserted Respondent was in default.

On December 30, 2024, Applicant filed a thirteenth *pro se* Motion to Amend his application, raising allegations related to his prison conditions. On January 3, 2025, Applicant filed a fourteenth *pro se* Motion to Amend his PCR application, alleging inhumane prison conditions.⁸ On February 5, 2025, Applicant filed a fifteenth *pro se* Motion to Amend his application, raising various claims related to his prison conditions.

On February 6, 2025, Applicant filed two additional *pro se* Motions to Amend his PCR application, raising various claims related to his prison conditions. Additionally, he alleged:

1. Actual innocence;
2. The State did not have “evidence at all placing the petitioner at the location at the time of the offense other than perjury”;
3. Invalid guilty plea;
4. Ineffective assistance of counsel:
 - a. Applicant advised counsel he was innocent;
 - b. Failed to procure alibi witness;
 - c. Counsel conspired with the solicitor’s office;
 - d. Counsel did not review discovery;
5. The solicitors willfully withheld evidence.

Applicant attached a joint affidavit signed by Jamal Smith and Lamont Brown attesting they were with him in downtown Charleston on May 13, 2020, and “there is no way that he could have committed this offense.” He also attached an affidavit signed by Quentella Curry attesting Applicant had told her about inhumane prison conditions.

On February 13, 2025, Applicant filed an eighteenth *pro se* Motion to Amend his PCR application again raising various claims related to his prison conditions.

On February 18, 2025, Applicant filed a nineteenth *pro se* Motion to Amend his PCR application. Construed liberally, he alleged:

1. Applicant is discriminated against due to his age, mental disabilities, race, and religion;
2. The judicial branch and SCDC are conspiring with gang members

⁸ He additionally complained about the December 2024 order holding his action in abeyance.

- to prevent him from receiving justice;
3. He was mentally ill and incompetent when he was arrested;
4. The State withheld evidence, in violation of Brady and Rule 5;
5. Counsel's failure to investigate and request a Franks hearing violated due process;
6. The arrest warrant violated due process in that it "stated the offense of armed robbery but stating [sic] elements of attempted strong arm robbery, attempted purse snatching, and attempting petit larceny, making it impossible to know what charges to defend against;
7. An oral waiver of an indictment is insufficient, and Applicant was thus convicted in violation of due process;
8. Respondent is in default.

On February 21, 2025, Applicant filed a twentieth *pro se* Motion to Amend alleging SCDC had miscalculated his release date by changing it from June 17, 2025, to January 2026. On March 31, 2025, Applicant filed a twenty-first *pro se* amended application again alleging SCDC had miscalculated his release date by changing it from June 17, 2025, to January 2026.^{9, 10}

⁹ Additionally, he requested the removal of his GAL based on allegations of fraud upon the court; perjury; conspiracy to deprive Applicant of his civil rights to due process, fairness, and equal protection; ineffective assistance of counsel; and a conflict of interest.

¹⁰ Applicant filed numerous additional motions, including:

- Motions to Change Venue (May 12, 2025; Feb. 18, 2025; June 13, 2024);
- An untitled motion seeking default judgment and asking the Court to compel SCDC and the Department of Mental Health to provide treatment (Apr. 17, 2025);
- Motions to Compel, raising claims related to prison conditions (Mar. 24, 2025; May 28, 2024; May 10, 2024);
- Motion to Show Cause why PCR hearing was postponed for the 4th time, Motion for PCR counsel and GAL to be removed, and Motion to Alter or Amend the March 2024 PCR order (Nov. 20, 2024);
- Motion for Relief from Void and Fraud Judgment Entered by PCR Judge on Apr. 19, 2023, June 2, 2023, and Mar. 13, 2023 (Oct. 29, 2024);
- Motions seeking the production of documents, specifically the filings from this PCR action and transcripts of all hearings in this case (Nov. 18, 2024; Aug. 21, 2024; Aug. 5, 2024; July 15, 2024; Apr. 24, 2024; April 5, 2024; May 17, 2023);
- Motions to hold various parties in contempt for not producing documents and not responding to motions (May 30, 2024);
- Motions to be transferred from SCDC to the County Detention Center (Sept. 23, 2024; Sept. 18, 2024);
- Motions for Default Judgment (Sept. 19, 2024; June 13, 2024; Nov. 8, 2023; July 28, 2022);

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston Court Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.¹¹ 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 section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

An applicant bears the burden of proving the allegations in a PCR action. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant

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- Motions for Summary Judgment based on lack of subject matter jurisdiction, personal jurisdiction, fraud, and conspiracy; as well as allegations of ineffective assistance of counsel (Aug. 21, 2024; Nov. 8, 2023; Jun. 21, 2022);
 - Motion to set hearing on PCR Motions, Motion for Summary Judgment, and Motion for Default Judgment (Apr. 26, 2024);
 - Motion to Appoint Attorney Denise Swope as stand-by counsel (Apr. 4, 2024);
 - Motin to Alter/Amend PCR Judgment held on March 13, 2024 (Apr. 4, 2024);

A complete list of the pro se filings is included as an appendix to this order.

¹¹ This Court will reference PCR testimony where relevant below.

decisions in the exercise of reasonable professional judgment,” and an applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Courts should “presume that counsel satisfied their obligation to render competent advice at the time their clients considered pleading guilty.” Padilla v. Kentucky, 559 U.S. 356, 372 (2010). Second, a PCR applicant must prove the deficiency prejudiced him 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.

The Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985). When reviewing a guilty plea, the Strickland deficiency prong remains unchanged—an applicant must show counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58–59. To show prejudice, an applicant must show a reasonable probability exists “that, but for counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59.

Expiration of Sentence

Applicant contends he is being held past the expiration of his sentence because SCDC “refuses to subtract the 17 months from off of the six-year sentence that I received which the judge give me credit for,” in accordance with section 24-13-40 of the South Carolina Code. He alternately asserts counsel was ineffective for not having this calculation corrected. Applicant did not prove his sentence had expired.

PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence as authorized by Section 17–27–20(a). A typical PCR claim of ineffective assistance of counsel falls into this category because, if the applicant proves his case, his conviction or sentence will be overturned. *A claim regarding sentence-related credits or other condition of imprisonment does not fall into this category.*”

Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (internal citations omitted) (emphasis added). Issues related to solitary confinement, downgrading of custody status, calculation of sentence credits, and other conditions of imprisonment are administrative matters that are not cognizable in a PCR action. Id. at 368-69, 527 S.E.2d at 749-50. However, a claim that a sentence has expired *is* cognizable under the Act. See id at 368, 527 S.E.2d at 749; S.C. Code Ann. § 17-27-20(5).

At the PCR hearing, Applicant testified he was sentenced to six years, 85 percent, with 526 days of jail credit—making his start date May 13, 2020. He stated SCDC found him guilty of disciplinary violations without a hearing, an SCDC employee admitted to misclassifying him, and his max-out date changed after SCDC “changed my mental health custody level without me seeing a doctor or psychiatrist.” (PCR 33). Applicant also averred he was unconstitutionally changed from Level 2 to Level 3. (PCR 27-28). He maintained his sentence was miscalculated and had expired.

Andrew Carson, a Branch Chief of Inmate Records for SCDC, testified SCDC does two sentence calculations for non-parole-eligible inmates (such as Applicant): a standard 85% and then “a calculation that takes into account the service credit, which is one day for every day served, good time for non-parole inmates, its three days for every cycle.”¹² He explained the inmate serves the longest of the two because “he can’t go below the 85 percent and he has to earn enough work credits for good time to get down to the 85 percent days.” (PCR 49). Carson testified Applicant received credit for 526 days of jail time, which was subtracted from his conviction date to create start date of May 13, 2020. He explained Applicant’s current max-out date was January 3, 2026, and if he served 100% of his sentence, his max-out date would be May 13, 2026. (PCR 51). Carson testified Applicant had over sixty disciplinaries while incarcerated and had lost 130 days of good

¹² A cycle is a month. (PCR 60).

time as well as failing to earn good time during the months he committed those offenses. However, he clarified that during the time Applicant was classified as mentally ill by SCDC, he did not lose good time for those disciplinaries. (PCR 51-52, 55-59, 61).

Initially, the calculation of sentences and classification of inmates is not within the purview of the PCR Act. See Al-Shabazz, 338 S.C. at 367, 527 S.E.2d at 749. However, this Court can address whether Applicant is being unlawfully held past the expiration of his sentence. See id. at 368, 527 S.E.2d at 749. Although this issue is moot due to Applicant's release to community supervision on December 1, 2025,¹³ this Court finds Applicant did not prove his sentence had expired prior to that time. Specifically, this Court finds credible Carson's testimony that Applicant lost credit for disciplinaries that occurred while he was not classified as mentally ill—extending his max-out date to January 3, 2026. Even that date is not 100 percent of his sentence. Applicant failed to show he was being held past the expiration of his sentence, and this claim is denied.

Subject matter jurisdiction / Indictment

Applicant next raises various allegations related to his waiver of an indictment by the Grand Jury, which he contends deprived the general sessions court of subject matter jurisdiction. Applicant does not dispute that he orally waived presentment at his plea hearing (Pl. 13); rather, he asserts this waiver was invalid because it was not done in writing. Applicant alternately frames this as an allegation of ineffective assistance of counsel. Applicant did not prove this ground.

At the PCR hearing, Applicant testified he did not sign a waiver of indictment, and an oral waiver of indictment is insufficient under sections 17-23-130 and -140 of the South Carolina Code

¹³ This Court acknowledges the expiration of the sentence does not render the entire PCR action moot due to other collateral consequences of a conviction. However, because this claim relates only to the expiration of Applicant's sentence and Applicant has now been released, this Court finds this claim is moot. See Sloan v. Greenville Cnty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.”); id. (“The court does not concern itself with moot or speculative questions.”).

as well as State v. Clarkson, 337 S.C. 518, 523 S.E.2d 817 (Ct. App. 1999), rev'd, State v. Clarkson, 347 S.C. 115, 553 S.E.2d 450 (2001); and Odom v. State, 350 S.C. 300, 566 S.E.2d 528 (2002), overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).¹⁴ Counsel testified that once they received a favorable negotiated plea (that Applicant was going to accept), there was no reason to “wait for an indictment.” (PCR 78).

Applicant’s argument overlooks State v. Gentry, 363 S.C. at 93, 610 S.E.2d at 494. Prior to Gentry, a proper indictment (or written waiver) was necessary to confer subject matter jurisdiction on the general sessions court. See, e.g. Odom, 350 S.C. at 302, 566 S.E.2d at 529 (“In the absence of an indictment, there must be a valid waiver of presentment for the trial court to have subject matter jurisdiction of the offense.”). However, Gentry changed that precedent by narrowing the concept of subject-matter jurisdiction and holding that an indictment is simply a notice document: “subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. *Circuit courts obviously have subject matter jurisdiction to try criminal matters.*” Id. at 101, 610 S.E.2d at 499 (emphasis added). The South Carolina Supreme Court recently reiterated the Gentry holding: “Consonant with the modern understanding, we reiterate that defects in an indictment charging a recognized crime do not deprive a circuit court of its subject matter jurisdiction over a case.” State v. Sweet, 446 S.C. 356, 365, 919 S.E.2d 909, 914 (2025). Critically, the Sweet Court stated, “Given Gentry’s re-narrowing of the concept of subject matter jurisdiction, it is at best of questionable help for litigants to rely on pre-Gentry cases for authoritative statements of the law concerning subject matter jurisdiction. Id. at 365, 919 S.E.2d at 914.

Under Gentry, the circuit court had subject matter jurisdiction to accept this plea. This

¹⁴ Applicant also referenced “State v. Caughman,” but this Court has been unable to find a South Carolina criminal case with that name that address the waiver of indictments.

Court further finds that counsel's advice to plead guilty was reasonable based on counsel's credible testimony about the State's evidence and the favorable plea that counsel negotiated.¹⁵ Applicant has not shown deficiency in counsel's advice and has not met his burden.

Competency

Applicant contends counsel was ineffective for not requesting a Blair¹⁶ hearing but rather advising him to plead guilty when he knew Applicant was incompetent. He also contends he was incompetent at the time of the offense, and he "requested counsel to raise affirmative defense not guilty insanity [but counsel] stated jury would not go for it." Applicant did not prove this ground.

"Due process prohibits the conviction of a person who is mentally incompetent," and [t]his right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) "The test of competency to enter a plea is the same as required to stand trial." Id. at 232, 417 S.E.2d at 596. "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." Id. A PCR applicant maintains the burden of proof, and to show prejudice under Strickland, the applicant must show "a reasonable probability he would have been determined to be incompetent." Id. at 232, 234, 417 S.E.2d at 596.

[T]here is no higher level of competency required at differing stages in the judicial process. If the defendant is competent enough to plead not guilty then it is only reasonable that the defendant is competent enough to plead guilty. The waiver of rights, the pleading of a defendant, and even execution of sentence necessarily require the same level of competency.

Sims v. State, 313 S.C. 420, 423, 438 S.E.2d 253, 254-55 (1993).

¹⁵ The reasonableness of counsel's advice is discussed further in the sections below related to competency, discovery, and motions to suppress. This Court incorporates its findings and analysis from those sections as if cited fully herein.

¹⁶ State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) (remanding for a competency to stand trial hearing).

In contrast, the test for insanity is whether, “at the time of the commission of the act constituting the offense, as a result of mental disease or defect, [the defendant] lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.” State v. Lewis, 328 S.C. 273, 277-78, 494 S.E.2d 115, 117 (1997). “Insanity is an affirmative defense to a prosecution for a crime.” *Id.* at 277, 494 S.E.2d at 117. Under the second prong of Strickland, an applicant must demonstrate by a reasonable probability he was insane at the time of the offense. Jeter, 308 S.C. at 233, 417 S.E.2d at 596.

At the PCR hearing, Applicant testified he had a lengthy record of being in and out of State hospitals, and he was sent to a mental health hospital the day of his arrest. Applicant testified:

Dr. Samuel Rosen gave, and he testified, and he got emails that was presented in exhibits in my November 8th summary judgment motion stating that I was incompetent, manic, and mentally ill at the time of the arrest. Along with statements from the arresting officer, as well as . . . Dr. Susan Knight, that evaluated me. She says there’s no problem. That I was incompetent and mentally ill at the time of my arrest.

(PCR 11). Applicant stated he was diagnosed with bipolar, PTSD, antisocial disorder, and paranoid schizophrenic, and was hospitalized three times in the two weeks before his arrest. He averred he

was declared and labeled as incompetent and mentally ill at the time of my arrest, not only by the mental health evaluation doctor, but by Sammy Rosen at the hospital the day of my arrest. Which he stole, which he stated to the arresting officers that, to hold me overnight so that he could evaluate me because it seemed like I’m incompetent and mentally health, because I was not off my medication. As soon as he said that, they rushed me out of the emergency room and booked me for armed robbery charge against the doctor’s wishes.

(PCR 15).

Counsel testified Applicant was found incompetent after his arrest, sent to Just Care to stabilize his medication, and restored to competency before the plea. He stated he did not have concerns about Applicant’s competency after he was restored. (PCR 76, 78-79). Counsel testified

he did not have a reason to request a Blair hearing although that was something he would have explained to Applicant. (PCR 78-79, 84). He averred they could have argued a guilty but mentally ill defense, but that would not change the sentence. Counsel did not believe an insanity defense would be successful. He stated he obtained a funding order and had Dr. Knight evaluate Applicant, and he used her report to negotiate a lighter sentence. (PCR 71-73).

This Court acknowledges Applicant was found to be incompetent during the pendency of this PCR action and the time of his arrest. However, this Court finds credible plea counsel's testimony that at the time of the plea hearing, Applicant had been restored to competency, and counsel did not have concerns about his competency at the plea hearing. This testimony is corroborated by the plea transcript. (Pl. 9-10). Based on this testimony, Applicant did not show counsel was deficient in advising him to plead guilty, nor is there a reasonable probability the Court would have found him incompetent had it conducted a Blair hearing.

Regarding his criminal capacity at the time of the offense, this Court finds Applicant has not met his burden of proving insanity or that counsel's advice related to an insanity defense was ineffective. The standard for not guilty by reason of insanity is different than the standard for capacity to stand trial, and a finding of incapacity does not necessarily indicate a person lacks criminal responsibility. This Court finds credible counsel's testimony that he considered this defense and hired an independent psychologist to look into it, but he concluded it probably would not be successful.¹⁷ Ultimately, it was Applicant's' decision to waive all defenses and plead

¹⁷ As part of this action, Applicant filed with the circuit court a September 6, 2021 email to plea counsel from a Board-Certified Forensic Psychologist. See Motion to Compel, Exhibit 8, filed July 15, 2024. In the email, the psychologist stated her review of Applicant's records did not indicate he was given a shot for psychosis on the day of his arrest. She also stated:

In discussing the offense circumstance with Mr. Curry, he described heavy substance use in the hours prior to his arrest, including weed, cocaine and spice (K2), using them altogether by smoking them on blunts. (Spice or

guilty—and the record establishes he was competent to do so. Although this Court acknowledges Applicant has several mental health diagnosis, this Court finds his diagnosis, prior hospitalizations, and prior findings of incapacity do not establish *insanity* at the time of the offense. Applicant has not met his burden of showing by a reasonable probability he was insane at the time of the offense or that counsel’s advice related to an insanity defense was ineffective.¹⁸ See Butler, 286 S.C. at 441, 334 S.E.2d at 813 (providing an applicant bears the burden of proving the allegations in a PCR action); Lewis, 328 S.C. at 277, 494 S.E.2d at 117 (“Insanity is an affirmative defense to a prosecution for a crime.”); Jeter, 308 S.C. at 233, 417 S.E.2d at 596 (providing a PCR applicant must demonstrate by a reasonable probability he was insane at the time of the offense to show prejudice based on counsel’s failure to pursue an NGRI defense). This claim is thus denied.

Failure to review discovery

Applicant contends counsel was ineffective for not reviewing the Rule 5/Brady material

K2 is synthetic weed which cases psychosis and agitation in many users.)
I was hoping the ER records would push us more into the psychosis/mental illness side of things, but it appears the drugs were the primary cause of his behavior (agitation, impulsivity, aggressiveness, rambling speech, paranoia), although we can’t rule out a contributory role of mental illness. In his competency restoration records, Mr. Curry reports heavy use of spice, using last on 5/13/20, so it’s also documented elsewhere. Bottomline, if I wrote it up, I would need to include the drug use as the primary causative agent.

Based on this email, counsel’s advice that an insanity defense would probably not be successful was reasonable. See State v. Vaughn, 268 S.C. 119, 125, 232 S.E.2d 328, 330 (1977) (“We adopt the rule that voluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific.”). Likewise, this email further supports this Court’s conclusion that Applicant did not show by a reasonable probability he was insane at the time of the offense.

¹⁸ This Court has reviewed the attachments to Applicant’s November 8, 2023 Motion for Summary Judgment, as referenced in his testimony at the PCR hearing. While most of the attachments are Rule 5 discovery related to this case, Attachment 4(A) (pg. 34, as enumerated by Applicant) appears to be a mitigation statement that tracks the mitigation statement presented by plea counsel to the plea court. (Pl. 18). This statement, however, does not establish insanity. Likewise, the other attachments to this motion (or the other motions filed November 8, 2023) do not support insanity.

with him before his plea. Additionally, he contends, “Counsel withheld statements from my aunt showing and proving I was in mental hospital 3 times before arrest date and time in which counsel had record of yet still advising me to plea guilty had I known this I would have never relied upon counsel wrongful advice to plea guilty.” Applicant did not prove this ground.

At the plea hearing, counsel testified he was appointed to Applicant’s case pretty close to the time of his arrest and he spoke to him pretty regularly. (PCR 64). Counsel testified he spoke to Applicant more than five times, and possibly more than ten times, and he had adequate time to speak with Applicant. (PCR 65). Counsel testified he reviewed the State’s evidence, which included several videos clearly depicting the perpetrator wearing “a very distinct camouflage jumpsuit,” a glove on his right hand with blue fingers (and no glove on his left hand), and gold-rimmed glasses. He explained the videos depicted the perpetrator swinging a knife at the victim and fleeing on a pink bicycle. (PCR 66-67). He further testified the clerk had looked at the perpetrator’s id prior to the robbery and recalled his first name was “Jerome.” (PCR 66). Counsel testified Applicant was arrested shortly after the robbery in a park; when he was arrested, he had “the soda that was stolen and then the blue glove.” He stated police conducted a show up prior to arresting Applicant, and Applicant was depicted on police body cameras “still wearing the blue glove.” (PCR 67-68). Counsel testified he sent the discovery to Applicant while he was in jail. He acknowledged he may not have sent the videos because “they don’t have the mechanism to watch video at the jail” but explained he probably sent still-shots from the video. (PCR 69-70).

Based on counsel’s foregoing credible testimony, counsel’s review of the discovery with Applicant was reasonable under prevailing professional norms and not deficient. Applicant specifically avers counsel did not review with him discovery related to his aunt’s statements—which he contends show he was in a mental hospital three times before his arrest date. Applicant

seems to be referencing counsel's notes regarding a conversation he had with Applicant's aunt on June 1, 2020.¹⁹ However, these notes do not establish an insanity defense. It is clear from counsel's testimony that counsel investigated Applicant's mental health issues but concluded Applicant was not likely to be found not guilty by reason of insanity. Based on the assessment of the psychologist (recounted above in the *Competency* section), this was a reasonable conclusion under prevailing professional norms. Applicant has not shown counsel was deficient, nor has he pointed to any discovery that shows he was, in fact, insane at the time of the offense. This claim is thus denied.

*Failure to investigate*²⁰

Applicant avers counsel was ineffective for not investigating alibi witnesses. Specifically, Applicant filed with the Court a joint affidavit signed by Jamal Smith and Lamont Brown attesting they were with him in downtown Charleston on May 13, 2020, and "there is no way that he could

¹⁹ Those notes are attached as an exhibit to Applicant's Motion to Compel, filed with the Court July 15, 2024. Specifically, the notes state:

Sherrene Fraiser (Aunt): IN the last three months, Jerome has been having a 'mental breakdown.' Aunt has been trying to get him some help. She went to MH after he had his first episode in April (week of Easter) call from ST. Francis that was brought in and gave him some medication and then released him the following day. Went to MH and got a probate and tried to get a petition to get him committed. With everything going on they weren't having court procedures, May 6th, got another call that he had a mental breakdown and was admitted on the sixth. Dr. diagnosed with severe bipolar with psychotic features, he is mentally il. Wee that this happened, he was kind of highly agitated. MH has like a crisis line that they will assist people with and they were trying to get him picked up and put back in. Had an appointment with MH and he was agitated then and refused treatment and he left. After hadn't heard form him in a few days. When spoke with him the night of the 12th, was agitated. Saw that he had made a withdrawal from the bank of \$250. Basically what she's saying is that he does have a mental illness and she's trying to help him. With his state of mind right now and not being on his medication. He cannot help himself. The days before he was being paranoid. Saing ha people were listening to his phone calls and stuff like that.

²⁰ An analysis of counsel's investigation of Applicant's mental health issues in included above in the "Competency" section.

have committed this offense.” Applicant did not prove this ground.

At the PCR hearing, counsel testified Applicant raised several defenses, including that he did not know anything about it and was innocent. He testified, “Later he made something that was a statement about having five alibi witnesses, but he wouldn’t give me their names.” (PCR 71). He stated he was not aware of any affidavits from purported alibis prior to the plea, but he “would be very worried about anybody who prepared one and swore it, to it and filed it in light of the evidence that exists in this case and his own admissions during his plea. I, I’m sorry to hear that someone has filed a sworn affidavit.” (PCR 87-88). Counsel testified it was ultimately Applicant’s decision to plead guilty. (PCR 83).

Based on counsel’s foregoing credible testimony, this Court finds counsel’s investigation was reasonable under prevailing professional norms and not deficient. Critically, counsel noted Applicant would not provide names and further averred any claim of an alibi was refuted by the State’s evidence. This Court further finds Applicant did not present credible evidence of an alibi. Although Applicant filed affidavits, he did not call any witnesses at the PCR hearing. Because the witnesses were not called to actually testify to the purported alibi, this Court finds the affidavits not credible. Finally, it was Applicant’s decision to waive this defense and plead guilty—which he did knowingly and voluntarily. This claim is thus denied.

Failure to file motion to suppress identification

Applicant contends counsel was ineffective for not moving to suppress an identification based on Neil v. Biggers. He alternately frames this as a due process violation. Applicant did not prove this ground.

At the PCR hearing, Applicant maintained he was

misadvised by my counsel about a Neil versus Bigger’s hearing on identification, one-on-one show-up that I was identified by a so-

called witness that could be named at a later date that was never named. Saying I met the description, which when I finally got my records two years and two weeks after my guilty plea, the 911 call proving that that was all a lie. There was no description of me at all, whatsoever. The only description was black male, gold-framed glasses, camouflage.

(PCR 14). He explained he was in the back of an ambulance being treated for injuries when he was “so-called identified from 20 yards away.” He further testified the witnesses and victims did not identify him in a photo lineup, “saying that the suspect that committed the offense wear a face mask, and they also picking a person in the photo lineup that was not me.” Applicant claimed those individuals all picked the same person that was not him.²¹ (PR 18). Notwithstanding this, he claimed counsel told him he was not entitled to a Neil v. Biggers hearing. In contrast, counsel testified he would have filed a Neil v. Biggers hearing had the case proceeded to trial. However, he averred that based on the State’s evidence, the State could have tried the case without a victim. (PCR 69).

Based on counsel’s foregoing testimony, as well as his testimony about the State’s evidence (recounted on pg. 19 above), which this Court finds credible, this Court finds Applicant did not prove counsel’s advice related to a motion to suppress the identification was deficient. Critically, counsel explained he *would* have filed the motion had Applicant proceeded to trial, but he believed the State’s evidence was so strong that it could have tried the case without relying on victim testimony. Based on counsel’s credible explanation of the evidence, this Court agrees. Additionally, it was Applicant’s decision to plead guilty and waive any defenses, and he did so knowingly and voluntarily. Applicant has not met his burden, and this claim is denied.

²¹ Applicant attached Rule 5 discovery to his November 8, 2023 Motion to Amend, which includes statements from two witnesses who viewed a lineup and indicated they were unable to make an identification. See Exs. 1(A) & 2(B), pg. 19-22.

Failure to file motion to suppress arrest warrant

Applicant contends counsel was ineffective for not moving to suppress his arrest warrant based on an alleged Franks²² violation and lack of probable cause. He contends it contained perjury and stated “elements of purse snatching, attempt strong-arm robbery, attempt petty larceny. Making that notice document impossible for me to decide which charge to defend against.” He alternatively frames this as a due process violation. Applicant did not prove this ground.

At the PCR hearing, Applicant stated he provided counsel “pro se documents and motions to have it dismissed due to lack of evidence and stuff like that, what we’re talking about now, right now. Not meeting the description and all of that. All of it being frivolous.” (PCR 26). He testified he received 911 records from Rule 5 discovery two years after his plea and learned the “arrest affidavit was based upon perjury, conspiracy, and fraud upon the Court.” (PCR 44). He testified,

Stating that I matched the description of the assailant that committed this offense, known that no description, the only description was made was, it was a black male, gold-framed glasses, army fatigue, which could be anywhere, anybody; no eight, no facial appearance, nothing like that. Along with, in the same affidavit it’s also saying that the victim and the witness never identified me as the suspect that committed this offense.

(PCR 43). Applicant also claimed the arrest warrant contained the elements of attempted strong-arm robbery rather than robbery. (PCR 43). He maintained counsel should have requested a Franks hearing to have the arrest warrant dismissed. (PCR 43-44). In contrast, counsel testified he did not see a basis to file a Franks motion, nor did he believe a challenge based upon Franks would be successful. (PCR 80-81). He likewise testified he would not have discussed Franks with Applicant because he typically only raises that in the context of a search warrant. (PCR 84). However, he

²² Franks v. Delaware, 438 U.S. 154 (1978) (providing a criminal defendant is entitled to a hearing to challenge a warrant when he alleges the supporting affidavit contains statements provided in “deliberate falsehood or reckless disregard for the truth”).

stated that had this gone to trial, he would have “throw[n] the kitchen sink at it.” (PCR 80).

This Court finds counsel’s foregoing testimony credible, and counsel’s decision-making here reasonable under prevailing professional norms. This Court has reviewed the arrest warrant and supporting affidavit and finds there was no valid basis to challenge it. Further, Applicant has not demonstrated that law enforcement presented the affidavit with “deliberate falsehood or in reckless disregard of the truth.”²³ Franks, 438 U.S. at 171-72. Finally, this Court notes it was Applicant’s decision to plead guilty and waive any defenses, and he did so knowingly and voluntarily. Applicant has not shown deficiency or prejudice, and this claim is denied.

Failure to advise

Applicant contends counsel was ineffective for failing to advise him that his plea would require a “mandatory sentence of 5 yrs one month,” and for not advising Applicant what a serious offense meant or “that he was pleading to a violent sentence and that he would not be eligible for parole, early release, furlough, work credits, school credits, work release or good time credits.” Applicant did not prove this ground.

At the PCR hearing, Applicant testified he pled guilty based on “wrongful advice of my attorney, saying that if I did not plead guilty, that they had witnesses to come and testify. And I would get maybe 30, 60 years because of my record and my past conviction.” (PCR 12). He further explained he did not “want to fall under three strikes and get a lot of time.” (PCR 16). In contrast, counsel testified he “never would have told him he could have gotten 60 years. But he certainly could have gotten 30, 45.” (PCR 69). Counsel testified he negotiated a ten-year-sentence suspended upon six years of active service; the State initially wanted five years’ probation at the

²³ In fact, the discovery Applicant attached to his November 8, 2023 Motion for Summary Judgement—specifically the 911 call (attached as Ex. #3(C),(D), pg. 27-28)—along with plea counsel’s credible testimony about the surveillance videos supports the arrest warrant’s affidavit.

end of the sentence, but “Judge Jefferson corrected us and said you can’t get probation after a statutorily, most serious statutorily violent offense.” (PCR 73). As a result, Applicant ended up with a more favorable sentence (two years of community supervision rather than five years of probation) than what the State offered. (PCR 73-74). Counsel testified he explained the negotiation to Applicant and what “active versus the split sentence” meant, as well as the sentence he could receive if convicted at trial. Additionally, he testified he did not advise Applicant that this case would make him eligible for LWOP. (PCR 74-75). Counsel testified he advised Applicant it was an 85 percent sentence, although “Judge Jefferson says you need to assume that you’re going to serve 100 percent of your sentence.” (PCR 86).

Based on counsel’s foregoing credible testimony, this Court finds counsel’s sentencing advice was reasonable under prevailing professional norms and not deficient. Counsel properly explained the sentence range as well as the negotiation. Further, counsel does not have a duty to advise a client of collateral consequences such as parole eligibility, whether an offense is serious or violent, or the calculation of a sentence by SCDC, and Applicant has not shown counsel *misadvised* him in this regard. See Jackson v. State, 349 S.C. 62, 64, 562 S.E.2d 475, 475 (2002) (“It is well settled that parole eligibility is a collateral consequence of sentencing, and that trial counsel need not advise a client of his parole eligibility.”); Smith v. State, 329 S.C. 280, 285, 494 S.E.2d 626, 629 (1997) (“Because the consequences of a violent crime are collateral, Smith’s guilty plea is not rendered involuntary due to counsel’s failure to inform him of the consequences of a violent crime conviction.”). Finally, Applicant told the plea court that he understood the sentence he faced as well as the negotiated sentence, that this was a violent and most serious offense, and that he “should assume you will serve the entire time in jail that you’re sentenced to, day for day.” (Pl. 3-8, 13-24). Applicant has not shown any deficiency or prejudice based on counsel’s

sentencing advice, and this claim is denied.

Preliminary hearing/Speedy trial violation

Applicant contends counsel was ineffective for failing to “get charges dismissed at late preliminary hearing.” He avers counsel told him a preliminary hearing was held but court records show no such hearing, and counsel did not provide a copy of preliminary hearing transcript. Applicant alternately frames this as a violation of due process. Additionally, Applicant generally contends the lack of a speedy hearing denied him due process. Applicant did not prove this ground.

At the PCR hearing, Applicant testified, “I was denied due process, speedy trial violation for my nine months, undue delay from my preliminary hearing, without the charges being dismissed. That’s ineffectiveness of counsel, due process violation that my attorney did not do anything about that.” (PCR 13-14). He further testified, “I was, stated that I had a preliminary hearing nine months later while I was in (indecipherable) mental hospital at that. And that’s a due process violation. That should have been dismissed, because its violating the rules of a preliminary hearing. It wasn’t within a timely matter.” (PCR 25-26). Counsel testified most of his conversations with Applicant related to bond, but he never had a good argument for bond because Applicant did not have a place to stay if he was released. (PCR 64-65). He testified he never waived a preliminary hearing, but it was difficult to get one during COVID. (PCR 77). However, once he negotiated a favorable plea, he would not have pursued a preliminary hearing. (PCR 78).

Based on counsel’s credible foregoing testimony, Applicant did not prove counsel was deficient. Counsel testified he did not waive a preliminary hearing, but it was difficult to get a hearing date during COVID.²⁴ Further, the lack of a preliminary hearing does not implicate due process. See State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982) (“There no longer

²⁴ This robbery occurred May 13, 2020—just months after the COVID pandemic.

exists a State (nor has there ever existed a Federal) constitutional right to a preliminary hearing.”). Finally, Applicant waived any claim related to a speedy trial motion and a preliminary hearing when he pled guilty. See State v. Green, 436 S.C. 492, 494, 872 S.E.2d 869, 870 (Ct. App. 2022) (“Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights.” (internal quotation marks omitted)); id. at 496, 872 S.E.2d at 870 (holding defendant “waived his constitutional right to a speedy trial when he voluntarily pled guilty”); Rule 2(b), SCCrimP (providing a preliminary hearing shall not be held if the defendant waives indictment before the hearing is held). This claim is thus denied.

Involuntary Plea

Finally, Applicant contends his plea was involuntary and unknowing. Specifically, he contends the “Judge asked if he wanted to plead guilty before advising him of rights he was waiving, maximum/minimum sentence, definition of most serious offense, or that he was waiving presentment of indictment.” Applicant did not prove this ground.

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). Further,

there is no higher level of competency required at differing stages in the judicial process. If the defendant is competent enough to plead not guilty then it is only reasonable that the defendant is competent enough to plead guilty. The waiver of rights, the pleading of a defendant, and even execution of sentence necessarily require the same level of competency.

Sims v. State, 313 S.C. 420, 423, 438 S.E.2d 253, 254–55 (1993).

At the PCR hearing, Applicant maintained he was “still mentally ill at the time” of his plea, and he “wasn’t even advised of all my rights.” (PCR 23). In contrast, counsel testified Applicant had been restored to competency prior to the plea; he did not have concerns with Applicant’s competency at the time of the plea; and he explained to Applicant his rights to a jury trial, to cross-examine witnesses, to present a defense, and to remain silent. (PCR 75). He likewise testified Applicant did not give him any indication during the plea hearing that he did not understand his rights. (PCR 82). Based on counsel’s foregoing credible testimony, this Court finds Applicant was competent to plead guilty, and he entered this plea knowingly and voluntarily. The plea transcript itself supports that Applicant was competent when he pled guilty, aware of the offense, the sentencing range, the negotiation, and the nature of the constitutional rights being waived. (Pl. 3, 6-10, 12-16). Thus, Applicant entered this plea freely, voluntarily, and knowingly.

Prosecutorial Misconduct / Malicious Prosecution

Applicant generally alleged prosecutorial misconduct. More specifically, he alleged the solicitors willfully withheld evidence. At the PCR hearing, he testified evidence was “withheld from me for, for two years and two weeks, which is the indictment that never was presented to the Grand Jury. I was not indictment, indicted.”²⁵ (PCR 17). However, Applicant failed to present any credible evidence at the PCR hearing that the State withheld evidence in violation of Brady and Rule 5—especially here where he waived presentment of the indictment, and the only evidence he pointed to that was allegedly withheld was the indictment. Thus, Applicant has not met his burden.

²⁵ Petitioner additionally alleged the Office of the Attorney General committed perjury and fraud upon the Court by stating in “Page 2 of the return that I was ,pled guilty as an indictment, as indicted.” (PCR 17). This Court notes the Assistant Attorney General corrected that misstatement at the beginning of this hearing (PCR 3) and finds it was a scrivener’s error in the return.

Conspiracy

Applicant raises various allegations of conspiracy between Respondent, his appointed counsel and GAL, members of the Judicial Branch, and incarcerated gang members, which he contends denied him of due process. He further contends the foregoing parties used his mental health records to conspire to deny him a PCR hearing—in violation of due process. To the extent this can be construed as a cognizable PCR claim, this Court finds Applicant did not present credible evidence showing the parties conspired to delay disposition of this case. Rather, the delays were caused by the parties' concerns about Applicant's competency in light of his stated desire to proceed *pro se*, and Respondent's objection to him proceeding *pro se* while incompetent was reasonable.²⁶ The records in this case do not support a conspiracy to deprive Applicant of a hearing—especially in light of findings on at least two occasions that Applicant was incompetent during times he was not represented by counsel. Applicant failed to present any credible evidence

²⁶ Applicant's first counsel was relieved April 19, 2023. A hearing was scheduled for June 27, 2023, but at the hearing Respondent expressed concerns about the competency of Applicant (who was proceeding *pro se*) due to a prior finding of incompetency and conversations with plea counsel. Applicant reiterated his desire to proceed *pro se*. Due to concerns about Applicant proceeding *pro se* while potentially incompetent, the Court appointed a GAL "to communicate with Applicant and assess whether Applicant can go forward at this time or whether a competency evaluation should be conducted." See Or./Appointment of Guardian ad Litem, filed July 17, 2023.

On November 8, 2023, a GAL was appointed, and the next hearing was held March 13, 2024. At that time the Court ordered a competency evaluation. A status conference was scheduled for September 10, 2024, but continued because the presiding judge had presided over Applicant's plea on a different charge that Applicant was also challenging through the PCR process. Following a status conference on December 19, 2024, the Court issued an order finding Applicant lacked capacity to proceed *pro se*, ordering SCDC and the Department of Mental Health to take steps to restore him to competency, and holding the matter in abeyance.

The next hearing was held May 30, 2025; at that time the Court relieved the GAL upon the motion of both the GAL and Applicant (after Applicant named him as a defendant in a civil lawsuit). The Court also found Applicant was not competent to proceed without counsel and appointed Chelsey Marto, Esquire, to represent him. Additionally, "[t]he Court inquired about having Mr. Curry seen by doctors at Broad River to adjust medication and restore him to competency." See Order: Relieve GAL, Appoint Counsel & Medication Inquiry, filed May 30, 2025. Thereafter, the matter was restored to the docket on July 30, 2025, and the hearing was held August 7, 2025.

of a conspiracy and thus did not meet his burden.

Non-cognizable claims

Applicant raises several additional claims that are outside the scope of a PCR action. First, he asserts actual innocence. He contends no stolen items were found on him, the State did not have “evidence at all placing the petitioner at the location at the time of the offense other than perjury,” and he told counsel he was innocent. However, this is not a cognizable claim. See S.C. Code Ann. § 27-17-20(B) (providing the PCR Act “shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction). Applicant also raises multiple allegations related to prison conditions. He additionally contends he is being discriminated against, and his appointed attorneys and GAL have violated various Rules of Professional Conduct. These allegations are also not cognizable in a PCR action.²⁷ See § 17-27-20.

Motions

For the reasons set forth herein, Applicant’s motions for summary judgment are denied. Applicant’s motions for default are also denied. See Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the statutory time for filing a return in a PCR action is not mandatory but discretionary with the circuit court, and the circuit court may extend the time for filing a return); Rule 55(e), SCRCP (“No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof . . . unless the claimant establishes his claim to relief by evidence satisfactory to the Court.). Applicant’s post-hearing motions to relieve counsel and appoint new counsel are denied. Applicant’s pre-hearing motions to amend are granted, and this Court has incorporated those allegations into this order. However, to the extent Applicant’s post-hearing motions to amend raise new allegations, they are denied as untimely. Applicant has not set forth a

²⁷ Applicant filed a civil suit raising many of these issues, and he has indicated he filed a complaint with the Office of Disciplinary Counsel.

valid basis to change venue (which is proper), and his motions to change venue are denied. Applicant's motions to compel production of discovery and compel judgment are denied as moot, and the motions to alter or amend filed before this order are denied as premature.

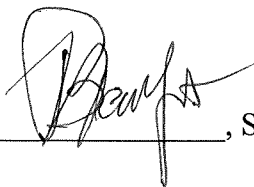
CONCLUSION

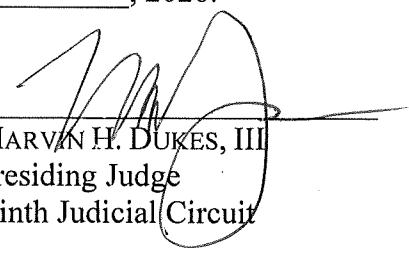
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that requires this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 12 day of 12, 2026.


_____, South Carolina


MARVIN H. DUKES, III
Presiding Judge
Ninth Judicial Circuit

Appendix: Pro se filings

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|----|------------|--|
| 1. | 04/01/2026 | Motion to Compel Judgment in pending PCR case |
| 2. | 03/17/2026 | Motion/Production of Docs, all orders, pro se filings |
| 3. | 03/02/2026 | Motion/Compel judgment in pending PCR case w/o delay |
| 4. | 03/02/2026 | Motion/Alter & Amend PCR Judgment in support of Motion/Alter |

5. 02/13/2026 Supplemental pleadings pursuant to Rule 15(D)
6. 02/13/2026 Motion/Support of Motion/Alter& Amend PCR Judgment
7. 02/02/2026 Motion/Appoint PCR counsel
8. 09/26/2025 Motion/Removal of Court-appointed Attorney Marto & Appoint
9. 05/12/2025 Motion/Change of Venue due to Conflict of interest & pending
10. 04/17/2025 Motion/Amend PCR complaint pursuant to Rule 15, SCRCF
11. 03/31/2025 Motion/Amend PCR petition pursuant to Rule 15, SCRCF
12. 03/24/2025 Motion/Compel PCR Judge Newman Order 12/19/24 restoring
13. 02/21/2025 Motion/Amend PCR as pursuant to Rule 15, SCRCF
14. 02/21/2025 Letter in re: To Judge McCoy
15. 02/18/2025 Motion/Amend PCR application & complaint
16. 02/18/2025 Motion /Change Venue f/PCR case
17. 02/13/2025 Motion/Amend PCR pursuant to Rule 15, SCRCF
18. 02/06/2025 Motion to Amend PCR Complaint
19. 02/06/2025 Motion to Amend pursuant to Rule 15, SCRCF
20. 02/06/2025 Motion/Amend PCR Complaint & sworn affidavit statement
21. 02/05/2025 Letter in re: request of documents
22. 02/05/2025 Motion to amend and protection order due to assault & inhumane
23. 01/27/2025 Letter in re: Notice to Court
24. 01/03/2025 Motion/Amend complaint in PCR proceedings
25. 01/02/2025 Letter in re: update of address
26. 12/31/2024 Letter in re: notice of appeal PCR judgment
27. 12/31/2024 Notice of appeal PCR judgment and affidavit of Service by mail
28. 12/30/2024 Letter in re: Petition to Amend
29. 12/30/2024 Letter in re: PCR hearing for December 19, 2024
30. 12/23/2024 Letter in re: statement of facts
31. 11/20/2024 Motion/Show cause & affidavit of service by mail
32. 11/18/2024 Motion for production of documents & service
33. 10/29/2024 Motion/relief & affidavit of service by mail
34. 10/15/2024 Motion/amend PCR complaint & affidavit of service by mail
35. 09/23/2024 Motion/Transport FR/SCDC prison to Charleston County Jail
36. 09/19/2024 Motion/Judgment on Pleadings due to default by Attorney General
37. 09/19/2024 Motion/Amend PCR complaint, motion/hold PCR court common
38. 09/19/2024 Letter
39. 09/18/2024 Motion/Removal out of SCDC Prison System & place
40. 09/03/2024 Motion/Relief from void judgment & affidavit/service by mail
41. 08/21/2024 Motion/Production of PCR hearing transcript
42. 08/21/2024 Motion/Summary Judgment
43. 08/19/2024 Motion/Remove court-appointed guardian ad litem
44. 08/05/2024 Filing/Subpoena in a civil case & service
45. 08/05/2024 Motion to amend complaint and & service
46. 08/05/2024 Motion for Production of Documents
47. 07/15/2024 Motion to compel clerk of court & AG to produce documents
48. 07/11/2024 Subpoena in a civil case
49. 06/13/2024 Motion/Change of Venue & Affidavit of Service
50. 06/13/2024 Motion/Entry of Default Judgment, sworn affidavit & aff/service

51. 05/30/2024 Motion for contempt and motion to compel
52. 05/28/2024 Motion/compel to stop inhumane treatment living conditions
53. 05/10/2024 Motion/compel to provide mental health programs & treatment
54. 04/26/2024 Motion/Amended complaint
55. 04/26/2024 Amended complaint & affidavit of service
56. 04/26/2024 Motion/set hearing on PCR motions filed, sworn affidavit
57. 04/24/2024 Motion/Production of all PCR hearing transcripts
58. 04/05/2024 Motion/Relieve PCR counsel & Motin/Relieve GAL
59. 04/05/2024 Motion/Compel attorney to produce client's file Atty General
60. 04/04/2024 Motion/Appoint counsel Denise Swope as counsel
61. 04/04/2024 Motion to Alter & Amend Judgment & Affidavit of Service
62. 02/23/2024 Request for Hearing on March 13, 2024
63. 02/15/2024 Misc. documents & service
64. 01/22/2024 Request for Judge's signature
65. 11/08/2023 Motion for summary judgment
66. 11/08/2023 Motion for entry of Default Judgment
67. 11/08/2023 Motion/Amend & Motion for relief from void judgment
68. 07/05/2023 Return mail: inmate refused
69. 07/03/2023 Letter in re: June 27, 2023 hearing
70. 06/26/2023 Letter to clerk, affidavit of facts, service & misc.
71. 05/17/2023 Motion requesting copy of PCR hearing
72. 05/11/2023 Application to proceed in forma pauperis
73. 08/29/2022 Motion to Amend PCR application
74. 08/18/2022 Motion to amend PCR application
75. 08/11/2022 Letter to Attorney General (from Applicant) in re: filings
76. 07/28/2022 Motion for entry of default judgment & crt/svc
77. 06/29/2022 Motion/Amend PCR application & Motion/Vacate sentence
78. 06/21/2022 Motion/Summary Judgment due to lack of subject matter jurisdiction
79. 06/15/2022 Motion to amend PCR application & Motion/relief fr/judgment
80. 06/13/2022 Motion to amend PCR application
81. 05/02/2022 Post-conviction relief application



ALAN WILSON
ATTORNEY GENERAL

May 20, 2026

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: **Jerome Curry v. State of South Carolina**
Case No.: 2022-CP-10-02017

Dear Ms. Armstrong:

Enclosed please find the original Order of Dismissal signed by the Honorable Marvin H. Dukes, III, in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Danielle Dixon
Assistant Attorney General

DD/vh
Enclosure

cc: Chelsey Faith Marto, Esquire