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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM COLLETON COUNTY
Court of Common Pleas
The Honorable Eugene Warr, PCR Action Judge
2025-CP-15-00286

KENNETH CHISOLM, #388732,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Kenneth Chisolm appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Eugene Warr, circuit court judge, on September 23, 2025, and was denied by written order issued filed on May 19, 2026. Applicant received notice of the judgement on June 1, 2026.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Kenneth M. Chisolm, #388732, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2025-CP-15-00286 **ORDER OF DISMISSAL**

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COLLETON CO CP, GARY HALE

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Kenneth M. Chisolm (Applicant) on February 28, 2025. Respondent made its return requesting an evidentiary hearing. On September 23, 2025, an evidentiary hearing convened before the Honorable Eugene P. Warr, Jr.. Applicant was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness trial counsel David Mathews, 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 presently confined in the South Carolina Department of Corrections serving a life sentence. In September 2017, Applicant was indicted by the Colleton County Grand Jury for three counts of murder (2017-GS-15-00572;-00573;-00574), attempted murder (2017-GS-15-00704) and possession of a weapon during the commission of a violent crime (2017-GS-15-00710). On August 15, 2022, Applicant proceeded to a jury trial before the Honorable Perry Buckner. Applicant was represented by Public Defender David Mathews. Assistant Solicitor

Tameaka Legette represented the State. The jury found Applicant guilty as indicted. Judge Buckner sentenced Applicant to concurrent sentences of life imprisonment for each murder, thirty years for attempted murder, and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Breen Richard Stevens through the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal pursuant to Anders. State v. Chisolm, Op. No. 2024-UP-370 (filed Oct. 30, 2024). The Remittitur was sent November 15, 2024.

EVIDENCE PRESENTED AT TRIAL

Applicant was indicted for three counts of murder after law enforcement discovered the bodies of Philip Miller, his wife Lori Miller, and their thirteen-year-old son V.M. fatally shot in their front yard. Nine-year-old K.W. was also shot but survived; she later drew a picture of the perpetrator.[1]. At trial, the State introduced text messages between Applicant and Philip arranging to meet at a nearby Walmart so Applicant could purchase marijuana. The State also introduced surveillance videos showing Philip's vehicle and the vehicle that Applicant was in meeting up at Walmart; Applicant getting into Philip's vehicle and circling the parking lot; and Applicant returning to his vehicle and following Philip to his home. La'Shay Aiken testified she was driving Applicant that day, and she recounted driving to Philip's home and seeing Applicant shoot Philip on the front porch, briefly go inside the house, and later shoot K.W. outside. Police recovered ten shell casings from the scene, all fired from the same gun. Finally, a DNA analyst concluded that blood recovered from the shoes Applicant was wearing at the time of his arrest matched V.M.'s blood. Applicant did not raise self-defense; he acknowledged he met up with Philip that day but

[1] The drawing was introduced at trial over objection. K.W. drew a chain on the perpetrator that looked like the chain Applicant was wearing when he was arrested.

denied going to his home afterward or knowing about the shooting. At the conclusion of trial, the jury convicted Applicant as indicted.

Current Application

On February 28, 2025, Applicant timely filed this application alleging counsel was ineffective for failing "to suppress statement when interrogated invoked right to counsel." At the start of the hearing, Applicant indicated he was proceeding on the following grounds of ineffective assistance of counsel:

1. Counsel failed to object to "search for truth" language (Tr. 128);

2. Counsel failed to successfully suppress Applicant's statement: Applicant was dragged to the interview and he invoked his right to counsel multiple times;

3. Counsel failed to sufficiently meet and discuss case;

4. Counsel failed to investigate;

5. Counsel failed to present a zealous defense;

6. Counsel failed to highlight the male victim's character issues such as drug dealing and gang relations.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the records before it, including the Colleton County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records of Applicant's direct appeal, 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.[2] After a careful review based on the Strickland standard set forth below,

[2] This Court will reference PCR testimony where relevant 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

In a PCR action, an applicant bears the burden of proving the allegations. 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 decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Truth-Seeking language

Applicant first contends counsel was ineffective for not objecting when the court told the jury, pretrial, that a trial "is a search for the truth," and "[s]earching for the truth and trying to make sure that justice is done is often slow, it is often repetitive, it is often deliberate . . . ." (Tr. 128). However, as a matter of law, these statements did not shift the burden of proof or prejudice Applicant because they were made at the start of trial and not in conjunction with the trial court's charge on reasonable doubt or circumstantial evidence. See State v. Beaty, 423 S.C. 26, 33, 813

S.E.2d 502, 506 (2018) ("In Aleksey,[3] we found there was no reversible error because the "seek the truth" language was charged in conjunction with the credibility of witnesses charge, and not with either the reasonable doubt or circumstantial evidence charges."); id. (finding no prejudice in court's truth-seeking comments because "they were a mere statement to the jury and not a charge on the law" and "were not linked to either the reasonable doubt or the circumstantial evidence charges"); Aleksey, 343 S.C. at 27, 538 S.E.2d at 251-52 (finding defendant not prejudiced by trial court's truth-seeking language when "the "seek" language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility"). Applicant thus cannot show prejudice, and this claim is denied.

Suppression of Statement

Applicant next contends counsel was ineffective for failing to successfully suppress his statement. Specifically, he contends he was dragged to the interview and he invoked his right to counsel multiple times. Applicant did not prove this ground.

At the hearing, Applicant testified he went to the police station for questioning and was ambushed, abused, and beat up by law enforcement. He stated he was never told he was under arrest. Applicant stated he repeatedly told law enforcement he wanted a lawyer, but he was in the interrogation room for two hours and "basically just kept answering questions, kept trying to—basically, I don't know, trying to make me say more than one thing, say the same thing over and over, twist it up." (PCR 9). He testified he was forced into the interrogation room and not allowed to leave. Applicant averred counsel should have "put objections or motions or something. Just do something like talking to them, telling them that in the trial, like, why are we not bringing this up?" (PCR 10). He agreed trial counsel should have argued that Applicant kept invoking the right

[3] State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251–52 (2000).

to counsel. (PCR 10). Applicant elaborated,

> I just feel like because he got to say certain stuff to the jury and the jury got to soak it up and it got that picture and that image instead of, like, the real truth of it, the whole backbone of how it like—you feel me. Like, they know, like, me trying to lie—they don't get to see all that in front of the jury. I feel if that was presented to the jury, like all that, you know that I'm saying, interrogation room, trying to ask for a lawyer, trying to get a good counsel before I even say a word, you know what I'm saying. If they took all that into consideration, like, okay, well.

(PCR 11). He testified he asked counsel "to bring up the interrogation. Like, I was asking for a lawyer, asking for a lawyer, asking for a lawyer, asking for a lawyer." (PCR 20).

Counsel testified the only things Applicant admitted to were things the State could already prove: that he sent text to the male victim arranging to buy drugs and met with him at Walmart. However, counsel clarified that Applicant did not admit to the shooting or being at the scene. (PCR 31-32). He agreed "the interrogation was pretty bad in a lot of respects," averring the police took Applicant's clothes and beat him up. (PCR 32).

This Court finds counsel's performance was reasonable under prevailing professional norms and not deficient. Critically, counsel moved pretrial to suppress the statement. During the pretrial hearing, the State elicited testimony that Applicant said he did not want a lawyer. Counsel elicited testimony about law enforcement roughing Applicant up and saying "when I get a lawyer." (Tr. 17-18). Applicant has not set forth what more counsel should have argued that would have reasonably led to the suppression of the statement and thus did not prove deficiency or prejudice. Further, based on other evidence the State had (including V.M.'s blood on Applicant's shoes and Aiken's testimony), and based on counsel's <u>credible</u> testimony that the only thing Applicant admitted to was verifiable information (i.e. meeting with Philip at the parking lot and sending the text message), there is no reasonable probability the outcome would be different had counsel

successfully suppressed this statement. This claim is thus denied.

Meetings with Applicant

Next, Applicant asserts counsel was ineffective for not meeting with him and discussing the case a sufficient number of times. Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel was appointed a few weeks before trial, and he only discussed his case once with counsel. He testified counsel did not discuss discovery other than informing him his codefendant would testify against him. When asked if there was anything additional he believed counsel should have discussed prior to trial, he responded,

> I mean, basically, he should have just told me everything. Like, he didn't come see me, let me know nothing about my codefendant coming to stay. He just didn't tell me nothing. So I was going blind. I was sitting there basically waiting on anybody to come contact me. But I didn't get any contact. They came, it was just like you got court coming up, this is going on, and that was that. I was preparing for trial.

(PCR 6). He believed counsel should have contacted him more. Applicant testified he first learned his codefendant was testifying against him about a week before trial.

Applicant later clarified that trial counsel was first appointed at the beginning of his case, his case was briefly transferred to Public Defender Trasi Campbell, and then reassigned to trial counsel after Campbell left the Public Defender's Office. He acknowledged Campbell visited him three or four times at jail and reviewed discovery with him. However, he stated he did not learn the codefendant would testify against him until a few weeks before trial. Applicant acknowledged trial counsel told him that the codefendant would testify against him. (PCR 22).

Trial counsel testified he was assigned the case in 2017, it was assigned to Campbell on February 6, 2018, and reassigned to him on December 6, 2021. (PCR 46-47). Counsel testified he received the codefendant's statement on August 8, 2022, and he met with Applicant that day and

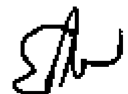
let him read the statement. (PCR 33-34). He testified his records indicated he met with Applicant at the jail on June 12, 2017; September 14, 2017; July 20, 2022; and August 8, 2022. Additionally, they had a video visit on January 13, 2022, and phone calls on March 22, 2022, and June 27, 2022. (PCR 47-48).

Based on counsel's foregoing credible testimony, counsel met with Applicant a sufficient number of times and was not deficient in this regard. Additionally, this Court finds counsel relayed to Applicant information about the codefendant as soon as it became available and was not deficient in this regard. Applicant has not demonstrated how additional meetings would have changed the outcome and thus did not prove deficiency or prejudice. This claim is thus denied.

Investigation

Applicant next contends counsel was ineffective for failing to investigate. Applicant did not prove this ground. At the PCR hearing, Applicant averred counsel should have investigated the codefendant. He explained she did not make a statement until right before his trial, and his understanding was "the State told that her that she was to cooperate that she would've been released after the case." Applicant stated he first learned his codefendant would testify against him about a week before trial, and he believed counsel should have attempted to have the case continued. Applicant believed the codefendant was being coached by the State.

This Court finds counsel's testimony about his investigation (recounted below in the sections "Zealous defense" and "Character of Victim") to be credible. Based on this testimony, counsel's investigation was reasonable under prevailing professional norms and not deficient. Further, Applicant did not present credible information showing what counsel would have uncovered upon a further investigation and thus did not prove deficiency or prejudice.



Zealous defense

Applicant asserts counsel was ineffective for failing to present a zealous defense. Applicant did not prove this ground. At the PCR hearing, Applicant averred counsel performed poorly. When asked what defense counsel presented, Applicant responded, "Nothing. Really nothing, really." When asked what counsel should have presented, Applicant replied,

> I mean, he should have—I mean, I just feel like he ain't really nothing. He should have like—like, a lot things that I was trying to, like, tell him and it mix it up, like, at the trial, like, on certain stuff. Like, he washed it under a bridge, like. Even we had our recess and I contacted my people and family and stuff, when they had, like, you know what I'm saying, concerns, still was like washing it under a bridge. So I feel like everything that I was trying to, like, why can't we go this way, why we can't look at it like this, why can't we do this. It was like he was trying to completely lie, oh, that wouldn't make sense or like—he was basically trying to cut everything that I was trying to bring to the table.

(PCR 7-8). Applicant testified he met the male victim in a public place, and the State tried to "paint the picture like I followed this dude and did all this extra stuff." (PCR 15). He claimed he lived in the area, and he wanted counsel to bring that out at trial. (PCR 15). He also averred the surviving child-victim had been coached.

Counsel testified Applicant's primary defense was "it wasn't me, it was somebody else." He elaborated,

> I knew that the victim, the adult male victim, was selling drugs. . . . . And from stuff I found through my investigation, it looked like he might've had some racial animus, the victim in that case. And, you know, suggested the possibility of one of the things that I think that the sister, the adult male's sister, I think—somebody in the family—had talked about a debt that somebody owed to the adult male. And we looked at, you know, maybe producing that as an alternative shooter. Did what we could with it.

(PCR 30). He testified he had concerns about whether K.W. was coached or whether her identification of Applicant was based on things she saw on television. However, he recalled that

overall, "she was a pretty good witness"; he explained, "when they come out and do a credible job and likeable and believable, it's really hard to get past that." (PCR 41).

This Court finds counsel's presentation of a defense was reasonable under prevailing professional norms, and Applicant has not shown deficiency or prejudice in this regard. Counsel's cross-examination of K.W. was reasonable under prevailing professional norms, and counsel attacked K.W.'s credibility during closing argument. (Tr. 816-19). Applicant has not set forth with clarity what more counsel should have done in this regard that would have had a reasonable probability of changing the outcome. Regarding eliciting information that Applicant lived in the area, this Court finds that in light of the fact V.M.'s blood was on Applicant's shoes, there is no reasonable probability this information would have changed the outcome. Applicant has not shown deficiency or prejudice, and this claim is denied.

Character of victim

Applicant contends counsel was ineffective for failing to highlight the male victim's character issues such as drug dealing and gang relations. Applicant did not prove this ground.

At the PCR hearing, Applicant testified the male victim was a drug dealer, and counsel should have presented more information about the male victim's background. He explained,

> I just heard that he was a drug dealer. A big drug dealer in the city. I heard he had his own beef with the people in the city. I didn't know him, physically. Like, me meeting up with him that day, that was just like a first time—like I say, I was buying drugs. Like, I buy weed. . . . I met him in a public place.

(PCR 15). Counsel testified he was aware the male victim was a drug dealer, and he had some information that the victim "might've had some racial animus," but he didn't have information that the victim was involved in gangs. (PCR 30, 36). He elaborated,

> [O]ne of the relatives there, an aunt or somebody like that, said that she thought that the adult male victim had said that another—and he

> put it just basically another black guy. And I think the words he used were actually not that confident. I think they were pretty racist. But said owed him money. And because of that, I think I looked into the possibility, tried to—
>
> [technical difficulties]
>
> . . . . [T]here was a possibility an aunt or somebody like the victim's sister maybe—I don't remember who it was—but had said that in a call to—I don't know if it was Angela Stallings or who it was—but made a call or a text to somebody saying that he had said that another—I'm gonna use the phrase African-American male. That's not the phrase he used—owed him money. Presumably from drugs, might have been form something else, but owed him money. I looked into the possibility that maybe he could've been the suspect. I don't think it worked out. But if you're just going with "it wasn't me," then it's nice if you have somebody else who could've been. And we looked into that possibility. I don't think it stuck. But that was one of the things I looked at and tried to suggest.

(PCR 43-44). He testified it was clear at trial that the victim was a drug dealer, and "it's hard for me to imagine the jury didn't understand that." (PCR 37).

Based on counsel's foregoing <u>credible</u> testimony, counsel's performance here was reasonable under prevailing professional norms and not deficient. Critically, counsel *did* attempt to insinuate to the jury during closing argument that the male victim had a conflict with someone else. (Tr. 829). The male victim's drug use was before the jury, and Applicant did not present any credible evidence that the male victim was involved in gangs. Applicant has not shown deficiency or prejudice, and this claim is denied.

<u>CONCLUSION</u>

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require 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.

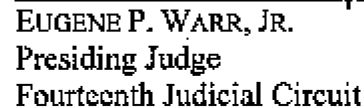
See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 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 5th day of MAY, 2026.



EUGENE P. WARR, JR.
Presiding Judge
Fourteenth Judicial Circuit

Darlington, South Carolina

ALAN WILSON
ATTORNEY GENERAL

May 13, 2026

The Honorable Gary Hale
Colleton County Clerk of Court
Post Office Box 620
Walterboro, South Carolina 29488-0028

Re: **Kenneth M. Chisolm, #388732 v. State of South Carolina**
Case No.: 2025-CP-15-00286

Dear Mr. Hale:

Enclosed please find the original Order of Dismissal signed by the Honorable Eugene P. Warr, Jr., 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

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COLLETON CO CP, GARY HALE

DD/vh
Enclosure

cc: Chelsey Faith Marto, Esquire