

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Devin R. Johnson, #356055,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

) CASE NO. 2022-CP-21-2249
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:

PCR Counsel:

Respondent's Attorney:

Plea Counsel:

Date of Hearing:

Hon. Milton G. Kimpson

Steven W. Fowler, Esq.

MacKinnon Westraad, Esq.

Robert L. Stucks, Esq.

February 23, 2026

FILED
2026 MAY 21 P 2:43
DONIS POULOS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

This matter comes before the Court by way of Devin R. Johnson's (Applicant) application for post-conviction relief (PCR) filed on October 24, 2022. Respondent filed its Return on March 23, 2020, requesting an evidentiary hearing to resolve the claims.

On December 20, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Michael S. Holt. Staff Attorney Chase Seymour of the South Carolina Attorney General's Office represented Respondent. Applicant was present and represented by Steven W. Fowler (PCR Counsel). Applicant proceeded with the claims in his PCR application. In support of these claims, Applicant testified on his behalf, and Respondent presented testimony from Robert L. Stucks, Esquire (Plea Counsel).

Following the evidentiary hearing, Judge Holt denied Applicant's PCR application. However, before a final order of dismissal could be signed, Judge Holt passed away. Pursuant to Rule 63 of the South Carolina Rules of Civil Procedure, another hearing was scheduled.

On February 23, 2026, an evidentiary hearing was convened at the Florence County Courthouse before the Honorable Milton G. Kimpson. Assistant Attorney General MacKinnon Westraad represented Respondent. Applicant was present and represented by PCR Counsel. Applicant proceeded with the claims in his PCR application, in addition to a claim of "discriminatory prosecution." In support of these claims, Applicant testified on his behalf, and Respondent presented testimony from Robert L. Stucks, Esquire (Plea Counsel) and Twelfth Circuit Assistant Solicitor Jeremiah S. Freeman (Solicitor Freeman).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated with the South Carolina Department of Corrections. During the May 2021 term, the Florence County Grand Jury indicted Applicant for Assault and Battery Second Degree (2021-GS-21-00134)¹, Kidnapping (2021-GS-21-00135) and Assault and Battery of a High and Aggravated Nature (2021-GS-21-00136).

Plea Counsel represented Applicant. Solicitor Freeman prosecuted the case. On March 8, 2022, Applicant appeared before the Honorable William H. Seals, Jr. via the virtual courtroom. Pursuant to a recommended plea, Applicant pled guilty to Assault and Battery of a High and Aggravated Nature (2021-GS-21-00136) and Kidnapping (2021-GS-21-00135). The State

¹ Applicant's Assault and Battery Second Degree (2021-GS-21-00134) was dismissed nolle prosequi pursuant to Applicant's plea to the other two charges.

recommended a cap of fifteen years for both offenses. Judge Seals sentenced Applicant to a concurrent sentence of fifteen years imprisonment for each offense. Judge Seals granted Applicant five hundred and twenty-five days (525) of time served.

Applicant did not appeal his conviction or sentence.

FACTS GIVING RISE TO THE CONVICTION

Solicitor Freeman articulated the facts giving rise to the convictions at Applicant's plea hearing as follows:

On September 26th, 2020, in the early morning hours, the victim, Ms. Alexis Waiters, met up with her current boyfriend, which is the defendant in this matter, Devin Johnson. They went to a location off Betty Lane and Sandpit Road. At that location, the two of them began a conversation in which more or less the victim was attempting to break up with the defendant. Upon hearing such things, the defendant told the victim, like, what makes you think I shouldn't kill you, and this freaked the victim out, which she gets out of the car. And as she's getting out, an individual that she knows by the name of Chicago drives by, you know, and the defendant essentially tells the driver of that vehicle nothing is going on, continue onward, and so he does. And then Ms. Waiters actually runs to a neighbor's house, a Ms. Lawanda McClellan, and starts banging on the door. This is around 12:30 in the morning, and this is in Florence County, Your Honor. Upon banging on the door, Ms. McClellan did not answer, as it was late. She lives by herself, but she did hear the screams dissipate essentially as the victim was [dragged] off by her hair back to the vehicle that actually belonged to the victim in this case. So, the defendant threw the victim in the passenger seat, maintained his grip on her hair, and drive her – drove her off Harmony Street. Upon arriving at Harmony Street, the defendant did continue gripping the victim's hair to pull her out of the vehicle, walking off towards the wood — the woods, Your Honor. He hit her upside the head with a Grey Goose alcohol bottle, and he continued to beat on her face, Your Honor. He took the victim's belt off and strangled the victim to unconsciousness, as well as the keys that belonged to the car, the victim — you know, the victim's car, Your Honor, the defendant took those keys and repeatedly stabbed the defendant in the shoulder and the neck area, the ears. There are marks. I do have pictures, if Your Honor would like to look at those. So when the victim was knocked unconscious, Your Honor, she had actually regained consciousness and found the defendant still on top of her, attacking her. As a result of this, the defendant actually took the victim and put her back into the car and drove to a location, which is off of Eastway Drive. It's in the Glen Cove area. You know, the victim was under the impression that, you know, this is where her life was going to

end. And they were walking down the street and the victim, Ms. Waiters, actually saw an individual, and this was around 2 o'clock in the morning at this point, 1:30 to 2 o'clock, and Ms. Waiters did see an individual in his car in the front — in his front yard, and she broke loose from the defendant thankfully, tried jumping into — this is Mr. Joshua Taylor, the individual in the vehicle. After she try jumping into his car, the defendant actually tried snatching her back out of the car. At this point, most of her clothes had been ripped off. Joshua Taylor's girlfriend, Ashley Isgett, brought Ms. Waiters into the house. He let her call the police. Joshua Taylor actually ended up driving the defendant further down the road, and the defendant let Mr. Taylor take the car. Mr. Taylor essentially said that, you know, I'm not comfortable with whatever is going on in this. He saw a piece of the broken belt in the car. You know, there was blood in the car, and so the defendant allowed Mr. Taylor to take the car to the victim. You know, this wasn't a — you know, this was a case I wasn't really inclined to make an offer on. That's how brutal the attack was on the defendant [sic]. You know, Ms. Waiters was actually taken to McLeod Hospital after the beating. After 9-1-1, the ambulance arrived, and she actually for a — she had a bilateral mandible fracture. So, both sides of her jaw were actually broken as a result of this attack, you know, and as a result of that, she had to have her mouth wired shut for a period of time when she was on a completely liquid diet. You know, this was a life-changing event for this victim.

(Plea Tr. pp. 6 – 9).

CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective Assistance of Plea Counsel²
 - a. "Counsel failed to investigate and to file motion to suppress all evidence and statements against me due to the untrue reason for the arrest included by the affiant in the affidavit which violates 1976 17-13-50. It states it is unlawful for an officer to assign to the person arrested an untrue reason for the arrest."
 - b. "South Carolina Code 25-1-2480 was also violated. Arrest and confinement, informing person of rights."
 - c. "Counsel failed to ask for a continuance when knowing the case was expected or scheduled for a trial which violates Rule 7."
 - d. "Continuance Rules 403, 410, 602, and 806 was also violated."

² Applicant clarified at his 2023 and 2026 PCR hearings that his allegations regarding the failure to investigate, failure to file motions to suppress/dismiss, and deficiencies with the search warrant all center around the existence and contents of the victim request form.

- e. "Counsel failed to file an appeal and to attack all issues, counsel's representation was deficient."
2. Involuntary Guilty Plea
 - a. "Counsel handed down illegal judgment with unfulfilled promises. I pled guilty on behalf of counsel's advice when counsel fully informed me that I would not receive a 15-year sentence."

On February 3, 2025, Applicant filed an amended application through PCR counsel to include a claim of "discriminatory prosecution" and prosecutorial misconduct to his claims of ineffective assistance of counsel and involuntary guilty plea.

Applicant requests relief in the form of "vacate sentence and set aside conviction because counsel failed to suppress evidence objected to seal issues/failed to appeal."

Before this Court are the Florence County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from SCDC, Applicant's guilty plea and first PCR transcripts, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act³ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

³ S.C. Code Ann. §§ 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, the United States Supreme Court in Hill v. Lockhart, 474 U.S. 52 (1985) extended the two-

part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—**not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel and prosecutorial misconduct through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

As a matter of general impression, this Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate

counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4-5); 2. Applicant was not under the influence of drugs or alcohol, which might have affected his ability to understand the plea proceedings (Plea Tr. p. 6); 3. Applicant understood the sentencing range (Plea Tr. pp. 4-5); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. p. 5); 5. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 5); 6. Applicant indicated Plea Counsel answered all of his questions (Plea Tr. p. 5); 7. Applicant indicated he wanted to give up his rights to a jury trial (Plea Tr. p. 5); 8. Applicant indicated no one was threatening him to plead guilty, Applicant understood all of the questions, and answered truthfully (Plea Tr. pp. 5-6); 9. Applicant indicated no one promised him anything in exchange of his guilty plea (Plea Tr. p. 6); 10. Applicant's plea was qualified as freely, intelligently, and voluntarily entered into (Plea Tr. p. 11).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 2: Involuntary Guilty Plea
Allegation 2(a): Plea Counsel Handed Down Illegal Judgment with Unfulfilled Promises. I Pled Guilty on Behalf of Counsel's Advice When Counsel Fully Informed Me That I Would Not Receive a Fifteen Year Sentence.

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel handed down an illegal judgment with unfulfilled promises. Applicant alleges he pleaded guilty upon counsel's advice when Plea Counsel informed him that he would not receive a fifteen-year sentence. Applicant alleges but for counsel's errors, he would not have pleaded and would instead have insisted on going to trial. This Court finds these allegations are without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Plea Hearing

The following plea colloquy occurred between the Plea Court and Applicant: ⁴

⁴ Prior to Applicant's plea, Solicitor Freeman addressed the State's recommendation of a cap of fifteen (15) years before the Plea Court. (Plea Tr. p. 4).

- Q: All right. Mr. Johnson, you are pleading guilty to kidnapping, which carries up to 30 years in jail; right?
- A. Yes, sir.
- Q. And you are pleading guilty to assault and battery of a high and aggravated nature, which carries up to 30 years in jail – is that – up to 20 years in jail; is that right?
- A. Yes, sir.
-
- Q. Is anybody promising you anything to get you to plead?
- A. No, sir.
- Q. Anybody threatening you in any way to make you plead?
- A. No, sir.
- Q. Have you answered me truthfully?
- A. Yes, sir.

(Plea Tr. pp. 4-6).

2023 PCR Evidentiary Hearing

At the 2023 evidentiary hearing on direct examination, Applicant testified he was forced to plead when Plea Counsel deprived him of his defense and failed to suppress the victim's accusations against him. (2023 PCR Tr. p. 22).

2026 PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified Plea Counsel compelled him to take the guilty plea because he was under the impression he would receive fifty years at trial, but there was no victim to testify, so he was confused and panicked and took the plea. Applicant testified that it was a misrepresentation by counsel that compelled him to plead involuntarily. Applicant testified he guessed that Plea Counsel's statement that Applicant would not get the full fifteen years was Plea Counsel's own opinion.

On cross-examination, Applicant testified that he and Plea Counsel had discussed the charges and the elements the state was required to prove. Applicant testified that he told the judge that no one had coerced him into pleading guilty based on what he was led to believe.

On direct examination, Plea Counsel testified that before he was retained, it was a straight-up plea offer, but he got it down to a cap of fifteen years. Plea Counsel testified he told Applicant the judge could sentence him anywhere in that range, but did not tell him the judge would not give him the whole fifteen years. Plea Counsel testified Applicant seemed to understand their discussions and did not want to go to trial. Plea Counsel testified that he believed it was in Applicant's best interest to take the plea, and that he still believed Applicant would have been sentenced to the maximum penalty if he had taken the case to trial.

Findings

This Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362, 426 S.E.2d 795, 797 (1993). Notably, Applicant faced a potential exposure of fifty years at trial and received a significantly

lesser sentence than he would have faced had he proceeded to trial. Applicant reaped the benefit when he chose to plead.

Furthermore, this Court finds the combination of the record and Plea Counsel's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement and negotiated cap, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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

Allegation 1(a): "Counsel failed to investigate and to file motion to suppress all evidence and statements against me due to the untrue reason for the arrest included by the affiant in the affidavit which violates 1976 17-13-50. It states it is unlawful for an officer to assign to the person arrested

an untrue reason for the arrest."⁵.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate statements made against him. Applicant further alleges Plea Counsel was constitutionally ineffective for failing to file a motion to suppress all evidence and statements made against him, violating S.C. Code 17-13-50. Applicant alleges that there were no charges to prosecute when the victim excluded herself in his victim request form. This Court finds these allegations are without merit.

Where an ineffectiveness claim is based on counsel's failure to file a motion to suppress, under the deficient performance prong of Strickland, it is enough to call into question counsel's performance that an unfiled motion would have had "some substance." Tice v. Johnson, 647 F.3d 87, 108 (4th Cir. 2011). However, to succeed on both prongs, the petitioner is required to show both (1) that the motion was meritorious and likely would have been granted, and (2) a reasonable probability that granting the motion would have affected the outcome of his trial. Kimmelman v. Morrison, 477 U.S. 365, 375, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986); Tice, 647 F.3d at 104, 107–08.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

⁵ S.C. Code Ann. 17-13-50 -- Right to Be Informed of Ground of Arrest; Consequences of Refusal to Answer or False Answer. Applicant was not only properly indicted on both charges, but when he pleaded guilty, waived his right to any defenses. Therefore, Plea Counsel's action or inaction to file a motion to suppress when there was no basis did not violate said statute.

investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

2023 PCR Evidentiary Hearing

At the 2023 evidentiary hearing on direct examination, Applicant testified that the only evidence Plea Counsel failed to investigate was the victim's statements.⁶ (2023 PCR Tr. p. 9).

⁶ On October 28, 2020, the Clerk of Court received the victim request form. (PCR Tr. p. 11). In her request form, victim indicated that she wanted Applicant's charges dismissed because she did not want to see Applicant go to jail for twenty (20) or thirty (30) years. Victim further indicated

Applicant testified that he and Plea Counsel discussed the victim form many times. (2023 PCR Tr. pp. 14-15).

2026 PCR Evidentiary Hearing

On direct examination, Applicant testified that the state had no accuser to support probable cause because there was no victim, and that his counsel should have filed motions to suppress the prosecution and to dismiss the charges. Applicant testified that this was supported by the victim request form where the victim wrote that she did not want to see anyone do thirty or twenty years for kidnapping, that Applicant needed counseling and rehab, and that she did not want to go forward.

On cross-examination, Applicant testified that he remembered Plea Counsel providing the victim's request form to the court at his guilty plea.

On redirect examination, Applicant testified that Plea Counsel did not go over how important the victim's request form was and instead brushed it off as nothing, but Applicant felt it was very important and would have changed his mind. Upon direct questioning by this Court, Applicant testified that he had seen the victim's request form before pleading guilty.

On direct examination, Plea Counsel testified that he reviewed the evidence and charges with Applicant. Plea Counsel testified that the State would have presented that both sides of the victim's jaw were fractured by Applicant resulting in a surgery where her jaw was wired shut; that she was forced into a car, driven around Florence and assaulted repeatedly; that she somehow got out of the car and knocked on someone's door; that there was another gentleman who would have testified that Applicant asked him for a ride; that there were photos of the injuries including bruises

Applicant could benefit from rehabilitation and counseling instead of a lengthy jail sentence. (PCR Tr. p. 12). However, victim did not deny the incidents leading to Applicant's conviction.

all over her face; that they found a belt in the car with her DNA on it, which she alleged she was strangled with; and that a witness would have testified the victim came to their house, told them what happened, and asked them to call law enforcement. Plea Counsel testified that, in his opinion, the evidence was overwhelming.

Plea Counsel testified that, despite Applicant repeatedly bringing up the victim's request form, the victim never claimed that Applicant didn't commit the crime in the form. Plea Counsel testified that Applicant did not want to go to trial, and Applicant's biggest contention was that he was caught up on the victim form and thought the State could not move forward, but that was not the case.

On cross-examination, Plea Counsel testified that he asked the judge to have the victim request form admitted as an exhibit because he thought it was important for the judge to see the victim did not want Applicant to go to prison for a long time.

On redirect examination, Plea Counsel testified that if he had gone to trial, he would have used the victim's request form to show the victim did not want to go forward, but there was nothing else they could have used against her allegations. Plea Counsel testified that if he did that, he would have had to reconcile all her other injuries and the corroborated time frame, and he did not see anyone being sympathetic to a defendant who broke a woman's jaw that had to be wired for months, regardless of whether she wanted the prosecution to go forward.

On direct examination, Solicitor Freeman testified that a woman would have testified that the victim ran to the woman's house and knocked on the door, screaming and leaving her cell phone there, then was dragged by her hair and put into a vehicle by Applicant. Solicitor Freeman testified that if he had this case today, he would not have offered the fifteen years he previously offered, based on his current experience. Solicitor Freeman testified that the victim never said

Applicant did not commit the crime, they had ample evidence outside of her testimony, and that he planned to go forward with the trial whether or not the victim testified. Solicitor Freeman testified that he told the victim he would subpoena her and she would have to testify, and his trial prep included that she would be called as a witness.

On cross-examination, Solicitor Freeman testified he went down to a fifteen-year plea offer for two reasons: one, his negotiations with Plea Counsel; and two, honoring the victim's preference not to testify and balancing that with the gravity of what Applicant did.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Applicant presented no evidence to this Court as to what Plea Counsel could have discovered or what other defenses could have been pursued had Plea Counsel investigated more. In fact, Plea counsel **credibly** testified he tried to use the victim form as mitigation. Plea Counsel **credibly** testified that the victim form would not have prevented the State from prosecuting Applicant. Solicitor Freeman also **credibly** testified that he informed the victim she would be subpoenaed and was prepping to question her at trial.⁷

Even if Plea Counsel was deficient, Plea Counsel adequately discussed the elements with Applicant, the victim's request form, and the overwhelming evidence corroborating the victim's allegations against him. There is no indication that further investigation into the victim's

⁷ Notably, the victim's grandmother testified at Applicant's plea hearing that the victim had ongoing problems with her jaw; that she was seeing a psychiatrist and unable to live alone because of this experience; and that the grandmother could not get the victim to speak because the victim was terrified. (Plea Tr. p. 10).

statements would have changed Applicant's choice to plead guilty. There was no basis to file a motion to suppress or dismiss the allegations against Applicant. Plea Counsel and Solicitor Freeman **credibly** testified that there were two potential witnesses who could have testified as to the events that occurred within the time of the incident, along with testimony from the victim and photos of her injuries. Without presenting further proof of Plea Counsel's alleged failure to investigate, this Court finds Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of these allegations is **DENIED** and **DISMISSED**.

Allegation 1(e): Plea Counsel Failed to File an Appeal and To Attack All Issues.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to file an appeal to attack all issues. This Court finds this allegation is without merit.

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145, L. Ed. 2d 985 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (emphasis added). Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23–24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

2026 PCR Evidentiary Hearing

On direct examination, Applicant testified that he never discussed anything regarding an appeal with Plea Counsel, and that, in retrospect, he feels Plea Counsel should have filed an appeal. On cross-examination, Applicant stated that he never asked Plea Counsel to file an appeal.

On direct examination, Plea Counsel testified Applicant did not ask for an appeal.

Findings

This Court finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to file an appeal. Plea Counsel **credibly** testified Applicant did not ask him to file an appeal. Applicant himself testified he did not ask Plea Counsel to file an appeal and that it was never discussed.

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

Allegation: Discriminatory Prosecution/Prosecutorial Misconduct

Applicant alleges the prosecution was discriminatory because they refused to dismiss the case against Applicant, given the fact that the victim did not want the case to go forward. This Court finds the allegation is without merit.

"A defendant who pleads guilty usually may not later raise independent claims of constitutional violations." Gibson v. State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999). "However, 'a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case.'" Id. (quoting Sanchez v. United States, 50 F.3d 1448, 1453 (9th Cir. 1995)). "When a defendant lacks knowledge of material evidence in the prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary." Id. "Accordingly, [Applicant] may challenge the voluntary nature of his guilty plea in a PCR action by asserting an alleged Brady⁸ violation." Gibson, 334 S.C. at 524, 514 S.E.2d at 324.

Brady requires the State to disclose evidence in its possession favorable to the accused and

⁸ Brady v. Maryland, 373 U.S. 83 (1963).

material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

2026 PCR Evidentiary Hearing

On direct examination, Applicant testified that he did not have a statute number for this allegation, but he felt the prosecution was discriminatory and that there was no lawful basis for it due to the lack of an accuser.

Findings

As an initial matter, this Court finds there is no viable claim of prosecutorial misconduct. Applicant testified he saw the victim request form before his guilty plea, so there was no Brady violation. Applicant presented no evidence or legal authority for the claim that a case where a victim requests the charges not be pursued, because she does not want to see someone serve that much time in prison, must be dismissed by the prosecution. As Solicitor Freeman testified, the victim was expected to testify if the case went to trial, and the State still had extensive evidence without the victim's direct testimony.

Accordingly, this Court finds Applicant has failed to establish any misconduct by the prosecution. Thus, this allegation must be **DENIED** and **DISMISSED**.

ABANDONED ALLEGATIONS

- Allegation 1(b):** **Plea Counsel violated S.C. Code 25-1-2480 Arrest and Confinement, Informing Person of Rights**
- Allegation 1(c):** **Plea Counsel Failed to Ask for A Continuance When Knowing the Case Was Expected or Scheduled for A Trial Which Violates Rule 7.**
- Allegation 1(d):** **"Continuance Rules 403, 410, 602, and 806 was also violated."**

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." *Palmer v. State*, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, the Court deems these allegations abandoned.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

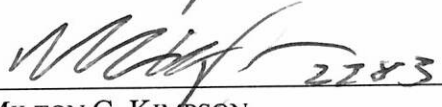
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 12 day of May, 2026.


MILTON G. KIMPSON
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2022CP2102249**

Devin Rashad Johnson		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

5/21/2026

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **May 21, 2026**, and a copy mailed first class or placed in the appropriate attorney's box on **May 22, 2026**, to attorneys of record or to parties (when appearing pro se) as follows:

Steven Willard Fowler 730 Main Street Unit # 237 North
Myrtle Beach, SC 29582

D. Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
