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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 Thomas W. McGee III

Case No. 2019-CP-10-3539

Brian Daugherty #371783,

Petitioner,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner Brian Daugherty appeals the Honorable Thomas W. McGee III's Order Denying his Application for Post-Conviction Relief filed on **May 26, 2026**, and the PCR Court's Order Denying Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, on **June 23, 2026**.


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ATTORNEY FOR PETITIONER

July 6, 2026

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cc: Julie J. Armstrong, Charleston County Clerk of Court

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

) Case No.: 2019-CP-10-3539

)
) **ORDER OF DISMISSAL**

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This matter comes before the Court by way of Brian Daugherty's application for post-conviction relief filed on July 2, 2019. Respondent filed its Return requesting an evidentiary hearing. On March 8, 2022, an evidentiary hearing was held virtually before the Honorable Markely Dennis Jr. Dayne C. Phillips represented Respondent. Assistant Attorney General Samantha J. Weidauer represented Respondent. Applicant proceeded forward with the claims in his amended application. In support of these claims, Applicant testified on his own behalf, and presented the testimony of Austin Daugherty, Jasmine Knight, and Stephanie Pitts. Respondent presented the testimony of Lara Caudy (Appellate Counsel), Jessica Birt and Charles Cochran (Trial Counsels). Following the evidentiary hearing, Judge Dennis retired prior to providing a ruling on the case. Pursuant to Rule 63 of the South Carolina Rules of Civil Procedure, another hearing was scheduled.

Beginning on October 17, 2025, and resuming April 15, 2026, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Thomas W. McGee, III. Applicant was present and represented by Dayne Phillips, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Applicant proceeded forward on the claims in his amended application. In support of these claims, Applicant testified on his own behalf and presented the testimony of Austin Daugherty, Jasmine Knight, Lara Caudy (Appellate Counsel), Jessica Birt and

Charles Cochran (Trial Counsels).

Following a thorough review of the record, along with the testimony and evidence presented at the 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

Brian Daugherty (Applicant) is presently confined pursuant to orders of the Charleston County Clerk of Court. In September 2015, the Charleston County Grand Jury indicted Applicant for three counts of first-degree sexual conduct with a minor (2015-GS-10-04916, 2015-GS-10-04917, 2015-GS-10-05005) three counts of second-degree criminal sexual conduct with a minor (2015-GS-10-04922, 2015-GS-10-04924, 2015-GS-10-04925), and two counts of lewd act upon a minor (2015-GS-10-05010 and 2015-GS-10-05010) and in March 2017 the Charleston County Grand Jury indicted Applicant for criminal sexual conduct with a minor (2017-GS-10-2001).

Jessica Birt and Charles Cochran, Esquire, represented Applicant. Solicitor Debbie-Herring Lash, Esquire prosecuted the case. On March 13-15, 2017, Applicant proceeded to trial on all indicted charges before the Honorable Roger Couch. Judge Couch sentenced Applicant to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor, twenty years for each count of second-degree criminal sexual conduct with a minor, and fifteen years for each count of lewd act upon a minor. Applicant then filed a timely notice of appeal. His appeal was perfected by Lara M. Caudy, Esquire. The Remittitur was issued on June 25, 2019.

CURRENT APPLICATION

On July 2, 2019, Applicant filed an application for post-conviction relief alleging that he

is being held in custody unlawfully for the following reasons:

1. Trial counsel failed to advise Applicant of his right when the State added an indictment the day of trial in which was found guilty by jury.
2. Trial counsel failed to adequately impeach the State's witnesses at trial, by refusing to ask questions suggested by Applicant which would have shown the credibility of State's witness.
3. Trial counsel failed to present evidence that would show Applicant's innocence.
4. Trial counsel failed to get the pre-sentence credit by not informing Applicant or asking judge for credit for house arrest that Applicant served.

On June 30, 2020, Applicant, through counsel filed an amended application alleging:

- i. Trial counsel failed to quash the indictments against the applicant as unconstitutionally overbroad and vague. Specifically where each indictment of the alleged offenses occurred at unspecified times ranging from 9 months to over 2 years, and where there was a delay of nearly 4 years between the dates of alleged abuse and applicant's date of arrest. Consequently, these overbroad and vague indictments prevented the preparation and presentation of a full and complete defense due to lost evidence (video footage from apartment complex's pool area) and the defense of alibi due to the vast periods of time. Notably the state enhanced the prejudice against applicant in its closing argument by referring to applicant's opportunity to commit the crimes "out of all those years" and "there's always opportunity when you live within a house with someone"
- ii. Trial counsel applied an inherently unreasonable trial strategy in defending against the CSCM charges by waiving redactions of the interview tape of minor child #1 that would have been excluded references to other rumored allegations of sexual abuse by applicant to a different child in the neighborhood; particularly where the state indicated it would have redacted the statement, the trial court indicated he would redact the statement, and counsel's concession that only "some hearsay" was on the tape. Contrary to counsel's depiction as mere "hearsay" these highly prejudicial comments were tantamount to propensity evidence of sexual abuse of another child in the neighborhood for which applicant was not charged – especially with no opportunity to cross examine the other purported "victim". Notably the state's direct reference to the forensic interview tape – without objection from counsel – enhanced the unfair prejudice.
- iii. Trial counsel failed to properly cross examine the two complaining witnesses by not asking about the State preparing them to testify at

trial. Specifically, counsel failed to utilize “trauma narrative” documents in discovery indicating the complaining witnesses had several hours each working with a therapist to craft the “narrative” regarding the details of their stories and coached for trial – especially when the prosecutor acknowledged in opening statement that “this is a case about credibility”

- iv. Trial counsel failed to move for severance of the charges, or at a minimum, failed to move for a continuance when the state announced it had indicted applicant for a new indictment of csc 1st on the morning of trial.
- v. Trial counsel failed to quash the jury panel pursuant to Batson where the state utilized its statutory strikes to strike a white female, a white male, and a black male from the jury, yet where the state sat nine white jurors and five female jurors.
- vi. Trial counsel failed to object to the trial court’s initial instructions to the jury that were tantamount to instructions to search for the truth and in violation of applicant’s right to due process when the court said “I do believe that our system is one where it seeks justice and that’s what we are here about is to provide that trials are guaranteed by our constitution in this situation and the attorneys have taken an oath to assist you in your search in this case”
- vii. Trial counsel’s provided ineffective assistance when it was inherently unreasonable to present during opening statement that it was equally possible applicant was guilty during his discussion of the presumption of innocence; “applicant doesn’t have to explain why this may or may not have happened. Why he was or was not there. Why he is or is not innocent.”
- viii. Trial counsel failed to object and move to strike the leading testimony by minor child 1.
- ix. Trial counsel failed to object and move to strike hearsay statements by minor child 1 regarding a text message sent by her older sister minor child #2 to a third party, where the text message was about disclosure of sexual abuse, and where the witness admitted to not knowing about it until years later.
- x. Trial counsel failed to object and more to strike when the state asked minor child 1 “how does it make you feel that you talked about this?” pursuant to 401 and 403
- xi. Trial counsel presented an unreasonable trial strategy when, during the cross examination of minor child 1, counsel solicited testimony regarding the name of another girl that this complaining witness believed applicant had also allegedly abused.
- xii. Trial counsel failed to object and move to strike the state’s questions during the redirect of minor child 1 that went beyond the scope of cross examination because the state elicited testimony of an entirely new allegation/incident of sexual abuse that was not covered in either direct or cross.

- xiii. Trial counsel provided ineffective assistance during re-cross by effectively re-affirming minor child 1's testimony regarding a new allegation in the bedroom by applicant
- xiv. Trial counsel failed to object and moved to strike pursuant to hearsay within hearsay and the confrontation clause when the state elicited testimony from minor child 2 regarding what her friend said to her parents about the text message she sent in 7th grade purportedly disclosing sexual abuse by applicant, what her parents said to school officials regarding the text message, and what school officials told the police about the text message.
- xv. Trial counsel failed to object and move to strike when the state asked minor child 1 "how do you feel [minor child 2] , about having told about this?" pursuant to 401 and 403
- xvi. Trial counsel failed to object and move to strike leading testimony regarding minor child 2's testimony that she never really talked to someone in detail about the alleged abuse until the interview at the DCC
- xvii. Trial counsel provided ineffective assistance when, on cross examination of minor child 2, counsel asked "were you aware of any other individuals who also claimed that [applicant] had hurt them besides minor child 1," to which minor child 2 responded, "I do. But --" where such highly prejudicial testimony was tantamount to propensity evidence, and where the State exploited the matter in its re-direct questions of the witness.
- xviii. Trial counsel failed to object and move to strike the State's questions on redirect of minor child 2 that went beyond the scope of cross examination where the state elicited testimony detailing the purported incident in the pool that were not discussed on cross-examination.
- xix. Trial counsel failed to object and move to strike highly prejudicial hearsay that went beyond the scope of time and place, and to improper bolstering when Benson Gomez testified without objection regarding the identity of applicant as the perpetrator of sexual abuse in the disclosure of both minor child 1 and minor child
- xx. Trial counsel failed to object and move to strike highly prejudicial hearsay that went beyond the scope of time and place for the second time, and to improper bolstering when Benson Gomez testified without objection regarding the identity of applicant as the perpetrator of sexual abuse in the disclosure of both minor child 1 and minor child 2. Notably, trial counsel's previous failure to object made this sustained objection ineffective because it was cumulative testimony.
- xxi. Trial counsel failed to investigate the defense of third party guilt and ultimately waived this defense at trial where applicant indicated in his notes that Benson Gomez (the stepfather of complaining witnesses) would come over to the apartment alone and take the complaining witnesses out of the apartment alone.

- xxii. Trial counsel failed to investigate whether the pool at the apartment complex, which played a prominent role in much of the testimony, was closed during the time covered by the indictments. Notably, no records from DHEC or the apartment complex appeared to have been subpoenaed, yet testimony from Lisa Batten, and notes from Applicant indicate it was closed.
- xxiii. Trial counsel failed to move to dismiss the charges, or at a minimum, as to the indictments related to minor child 2 – in violation of applicant’s right due process based on pre-indictment delay because the state was aware of the allegations of sexual abuse by applicant toward minor child 2 as early as 2011 (sent in a text message to her friend) where the State chose not to investigate any further than speaking once with minor child 2, where the state re-investigated the matter and arrested applicant 4 years later after minor child 2 and minor child 1 spoke with interviewers at the Dorchester children’s center in 2015, and when critical evidence to the defense was lost based on the state’s unreasonable and unfairly prejudicial delay (such as video footage by the pool at the apartment complex, accurate memories of where and when applicant would have been to support an alibi defense, and whether any pornographic videos or pictures were on the computer of Benson Gomez to support a potential third party guilt defense)
- xxiv. Trial counsel failed to object and move to strike pursuant to hearsay and the confrontation clause when the state elicited testimony from the friend of minor child 2 regarding her mother reporting the text message about sexual abuse to school authorities, and then the school authorities reporting the matter to police.
- xxv. Trial counsel failed to object and move to strike the leading testimony of minor child 3 on the very issue for which he was called to testify when the state asked, “and did [minor child 1] come a time in 5th grade when she told you about sexual assault?”
- xxvi. Trial counsel provided ineffective assistance when, on cross examination of Lisa Batten, counsel asked “did you speak with minor child 1 regarding minor child 4 and some assertions regarding her?” and batten responded “I have”. Notably, this unfair prejudicial testimony was tantamount to propensity evidence that bolstered other witness testimony regarding the other rumors of sexual assault.
- xxvii. Trial counsel improperly stipulated that detective Rebecca bailey was unavailable to attend the trial due to surgery where detective bailey obtained and helped execute search warrants for collecting evidence (including a sony laptop), and where the state later admitted testimony that the laptop contained thousands of videos and pictures of pornography through other witnesses as a result.
- xxviii. Trial counsel failed to move to suppress and preserve for appellate review the issue of whether all testimony regarding pornographic videos, pictures and website logs recovered from the

sony laptop that did not match the description of the video recordings allegedly used in the incidents was admissible. Specifically, the state elicited testimony without objection that approximately 241 pornographic videos and over 9000 pornographic pictures were recovered from the laptop used by applicant, including over 5,000 pornographic websites were visited by that computer during the alleged time frame, yet there was no indication of how many of those videos, images, and websites were visited by that computer during the alleged time frame, yet there was no indication of how many of those videos, images, and websites actually matched the description of the complaining witnesses and none of the evidence were child pornography.

xxix. Trial counsel failed to subpoena the laptop of Benson Gomez for the existence of pornographic videos, pictures, and websites used to independently investigate a third-party guilt defense.

xxx. Trial counsel failed to object to testimony by Dr. John Melville, the state's expert witness in child sexual abuse, when he gave improper opinion testimony as to the law regarding the definition of penetration: "a penis could also penetrate just between the labia and the introitus and my understanding is that that would still be considered penetration according to the legal definition in south Carolina" as well as saying "genital penetration – my understanding is that that is more of a legal definition than a medical definition. But my understanding of the legal definition is that any intrusion, however slight, into the genital area or between the labia of the female is considered genital penetration." Notably, this testimony went well beyond the scope of Dr. Melville's expertise and constituted an impermissible intrusion into the province of both the trial court and the jury by testifying as an expert on the law as to a fact to be determined by the jury. Furthermore, the state enhanced the prejudice to applicant by specifically pointing to dr. Melville's testimony regarding legal penetration during its argument.

xxx. Trial counsel failed to object to the state having applicant read a list of pornographic websites and video titles allegedly recovered from the sony laptop to the jury during cross examination where the list was not previously entered into evidence, and where proper foundation was not laid as the list was not a document previously produced by applicant or related to a prior inconsistent statement by Applicant.

xxxii. Trial counsel failed to object and move to strike the State's extensive questioning about prior DSS investigations into his own biological children when this evidence had nothing to do with the present case or the alleged offenses until the state had already asked 17 questions regarding the matter, and when counsel did finally object, the trial court sustained the objection. Pursuant to 401, 403 and 404(b).

- xxxiii. Trial counsel improperly impeached the credibility of his own witness (Ashley Young) when on direct examination counsel asked if applicant currently lived with her and their new child, which prompted her to invoke her right against self incrimination due to DSS restrictions because of an order from the family court prohibiting overnight visitation by applicant with their child.
- xxxiv. Trial counsel failed to object to the trial court's jury instruction regarding consent as an unconstitutional charge on the facts when the court stated "an unmarried woman under the age of 14 cannot legally consent to sexual intercourse"
- xxxv. Trial counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of applicant's defense. Specifically, trial counsel failed to interview critical witnesses who could have added to the credibility of applicant's case and challenged the credibility of the state's witnesses when it was reasonable and necessary to do so in preparation for trial.
- xxxvi. Trial counsel failed to adequately prepare for trial by not interviewing witnesses who could have testified regarding applicant's good character and reputation when it was reasonable and necessary to present this evidence at trial and request a jury instruction on good character and reputation evidence.
- xxxvii. Appellate counsel failed to brief and argue trial counsel's objection to the admission of pictures of the apartment (State's exhibits 5,6,8,9 and 10)
- xxxviii. Appellate counsel failed to brief and argue trial counsel's objection to testimony that went beyond the scope of cross examination where the state sought testimony on the differences between the personalities of lisa batten's daughters, yet no questions by counsel were asked regarding their personalities.
- xxxix. Appellate counsel failed to brief and argue trial counsel's motion for a directed verdict.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

- 1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2) That the court was without jurisdiction to impose sentence;
- 3) That the sentence exceeds the maximum authorized by law;

¹ S.C. Code Ann. §§ 17-27-10 to -160.

- 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[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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), SCRPC; 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 v. Washington to determine whether counsel's conduct “was so [ineffective] as to require reversal” of the applicant’s conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing

of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption “by proving that his attorney’s representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy.” Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, make every effort “to eliminate the distorting effects of hindsight,” and “evaluate the conduct from counsel’s perspective at the time” in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel’s performance was deficient, the applicant must demonstrate that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 687. Accordingly, counsel’s performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply “deviated from best

practices or most common custom.” Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691. To meet this burden, counsel’s deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel’s trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both Strickland components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that

under Strickland, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying conviction, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are the Court’s findings of fact 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 in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118,

386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 117-18, 386.

Failed to Get House Arrest Credit – Original Application

Applicant alleged Counsel was ineffective for failing to get the pre-sentence credit by not informing Applicant or asking for credit for house arrest that Applicant served. This Court finds this allegation is without merit. Applicant asserted at the 2026 PCR hearing "I was court ordered to wear GPS, but they did not put GPS on me. They said Charleston County no longer requires that. And I was, you know, under house arrest. They came to visit me at home and at my work." A sentencing court may, in its discretion, award a defendant credit ***while under GPS monitored house arrest***. S.C. Code Ann. § 24-13-40. Here, Applicant was not under GPS monitored house arrest. Therefore, Applicant could not have possibly been awarded credit. Applicant failed to prove deficiency and prejudice and this claim is denied.

Failed to move to quash indictments (i)

Applicant alleges counsel was ineffective for failing to quash the indictments against the applicant as unconstitutionally overbroad and vague. This Court finds this allegation is without merit.

At the March 2022 PCR Hearing, Counsel Charles Cochran testified that he felt prepared as they were situated to try the case based on what Applicant had told him and what their understanding of the accusations against him were. Counsel testified that procedurally they had notice of the general timeframe of when this was supposed to have happened and what the accusations were against Applicant so on the day of trial he was prepared to go forward with the trial.

At the April 2026 PCR Hearing, Counsel Charles Cochran testified that at the time he had this case he had handled dozens of criminal sexual conduct cases and that delayed disclosure was common in these types of cases. Counsel testified that he had cases with much larger delays than this case including cases going back to the 1980s. Counsel testified that he had moved to quash the indictments in these much broader cases and that was not successful. Counsel testified that at the time applicant was indicted the law was not favorable to that type of objection. This Court finds Counsel's testimony *credible*.

Applicant has failed to prove Counsel was deficient for not moving to dismiss the indictments. See State v. Tumbleston, 376 S.C. 90, 102, 654 S.E.2d 849, 855 (Ct. App. 2007) (finding that the stealth and repetitive nature of the alleged conduct compels identification of the broader time period and the indictments contain the necessary elements of the offenses charges and sufficiently apprise [Applicant] that he must be prepared to address his conduct towards the minor victim over the span of a 3-year time period). This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Trial Strategy (ii)

Applicant alleged trial counsel applied an inherently unreasonable trial strategy in defending against the charges by waiving redactions of the interview tape of minor child #1 that would have been excluded references to other rumored allegations of sexual abuse by applicant to a different child in the neighborhood; particularly where the state indicated it would have redacted the statement, the trial court indicated he would redact the statement, and counsel's concession that only "some hearsay" was on the tape. This Court finds this allegation is without merit.

When counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20

(1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

At the March 2022 PCR hearing, Counsel Charles Cochran testified that the forensic interview tapes were maybe as long as two hours and that is a frequently employed strategy unless there is something egregious and prejudicial in the video. Cochran testified that if you start parsing out the video you can lose something that is beneficial to you even though its objectionable hearsay. Cochran testified there might be something that could support your arguments in closing or cross examination and he considered that here and made the strategic decision to request the whole tape be played. At the April 2026 PCR hearing, Cochran testified that his reason for having the unredacted video present was that it corroborated his theory of the case that the victims had maybe gotten the idea from the other girl in the neighborhood. This Court finds counsel's testimony credible.

This Court finds Counsel articulated a valid strategic reason for waiving redactions of this tape and was not deficient. Further, this Court finds Applicant has failed to prove that had there been redactions in this tape, that there is a reasonable probability the outcome of his trial would have been different and thus, failed to prove prejudice. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to cross-examine (iii)

Applicant alleged counsel was ineffective in cross-examining the two complaining witnesses by not questioning them regarding their preparation to testify at trial and not utilizing "Trauma Narrative" documents in discovery. This Court finds this allegation is without merit.

When counsel articulates a valid strategic reason for his action or inaction, counsel's

performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

At the March 2022 PCR hearing, Counsel Jessica Birt testified that she watched all the interviews and read all the transcripts and the girls did not look like they were being coached at all and to the extent that she could question them about it, she did not feel that it would have brought any significant point up to the jury that they would have understood. Birt testified that it would have confused the issues that they were really trying to present to the jury to clearly and concisely show that what the victims were alleging was not possible. Birt testified that she did elicit the testimony that the victims had talked to the solicitor and people that were trying to push the case against Applicant. Birt testified that this was a way to get that information without distracting from what they were really trying to elicit from the victim's testimony. At the April 2026 hearing, Birt testified that their strategy was to indicate that it was a one-sided case and that the victims had talked to counselors, the solicitors and never talked to the defense. Birt testified that when she initiated her cross-examination that she asked the victims if they had ever spoken with her before to show that it was a very one-sided issue and that the victims had only ever spoken with the State and it was completely fabricated and unreliable. This Court finds counsel's testimony credible.

This Court notes that the approach and scope of cross-examination should not be second-guessed. See Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Marzullo not intended to promote judicial second-guessing on questions of strategy as basic as handling of a witness); see also Dunham v. Travis, 313 F.3d 724, 732 (2d Cir. 2002) ("Decisions about 'whether to engage in cross-examination, and if so to what extent and in what manner, are ... strategic in nature' and

generally will not support an ineffective assistance claim.” (quoting *United States v. Nersesian*, 824 F.2d 1294, 1321 (2d Cir. 1987)); *Johnson v. Hofbauer*, 159 F.Supp.2d 582, 607 (E.D.Mich. 2001) (“Impeachment strategy is a matter of trial tactics, and tactical decisions are not ineffective assistance of counsel simply because in retrospect better tactics may have been available.”) (citing *Gallo v. Kernan*, 933 F.Supp. 878, 881 (N.D.Cal.1996); *aff’d* 141 F.3d 1175 (9th Cir. 1998); *cert. den.* 525 U.S. 856 (1998)). This Court finds cross-examination is a matter of trial strategy, and Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (citing *Strickland*, 466 U.S. at 690). Counsel articulated a valid trial strategy in her cross-examination of the victims. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to Move to Sever (iv)

Applicant alleges counsel was ineffective for not moving to sever the charges or, at a minimum, failing to move for a continuance when the State announced it indicted Applicant for a new charge on the morning of trial. This Court finds this allegation is without merit.

In order to show that counsel was ineffective for failing to move for a continuance, applicant must show what benefits would accrue from additional preparation. *See, Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). In *Skeen*, the Supreme Court found that applicant failed to meet his burden of proof that counsel was ineffective for failing to request a continuance where he offered no evidence as to what benefits additional preparation would have yielded. *Id.* When counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective.

Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

At the March 2022 PCR hearing, Counsel Charles Cochran testified that Applicant was not interested in a continuance and that new indictment did not change the fundamental allegations that were against Applicant. Cochran testified that it would not have changed their strategy, it would not have changed their defenses, and it would not have changed the evidence that they would be facing. Cochran testified that it would not have changed any fundamental aspect of trial. Cochran testified that Applicant wanted to go forward with the trial and that there was no concern on his part for moving forward at that time. At the April 2026 hearing, Cochran testified that there was a strategy to have everything together to support the theory that the two accusers fed off each other's allegations and this would not be available if they were severed. Cochran testified that the theory was that the girls were lying and they brought it up together because they wanted Applicant out of the picture, and this defense would not be available to them if they were separate trials. This Court finds counsel's testimony credible.

This Court finds Counsel articulated a valid trial strategy. Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how a continuance or a severance in this case would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Batson (v)

Applicant alleged counsel was ineffective for not moving to quash the jury panel when the State utilized its statutory strikes to strike a white female, a white male, and a black male from the petit jury, yet sat nine white jurors and five female jurors. This Court finds this allegation is without merit.

At the March 2022 PCR Hearing, Counsel Charles Cochran testified he did not recall there being any Batson issues. Counsel testified the jury had nine white jurors, five female jurors, and nothing jumped out at him. This Court finds Applicant has failed to show any basis to make a Batson motion, and therefore Counsel was not deficient. See Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986) (finding to establish a prima facie case of purposeful discrimination in selection of the petit jury defendant must first show that he is a member of a cognizable racial group, that prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race and that the facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race). This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Pretrial instructions (vi)

Applicant alleges counsel was ineffective for not objecting to the Court's initial instructions to the jury that said "I do believe that our system is one where it seeks justice and that's what we are here about is to provide that trials that are guaranteed by our Constitution in this situation," and "[the attorneys] have taken an oath to assist you in your search in this case." This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Charles Cochran testified that at the time he was

not aware of any case that would have called that statement into question and that it did not contradict the reasonable doubt standard or presumption of innocence. This Court finds that any objection would have been non-meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Opening statement (vii)

Applicant alleges counsel was ineffective during opening statement by saying, “[Applicant] doesn’t have to explain why this may or may not have happened, why he was or was not there, why he is or is not innocent.” This Court finds this allegation is without merit.

At the March 2022 PCR hearing Counsel Jessica Birt testified that her intention was to explain to the jury that the burden of proof rested with the State and that the burden of proof was not on Applicant. Birt testified that they anticipated some questions throughout would be brewing in the jury’s mind throughout the testimony and they wanted to get in front of that and lay that framework. At the April 2026 PCR hearing Birt testified that they were really pushing that Applicant did not have to provide anything and that the burden was fully on the State and Applicant did not have to prove or disprove anything.

This Court finds opening statements are a matter of trial strategy and Counsel articulated a valid trial strategy. Applicant has failed to prove that Counsel’s performance fell before prevailing professional norms and has therefore failed to prove deficiency. Further, Applicant has failed to prove that Counsel’s opening statement had Applicant has failed to prove deficiency and prejudice

and therefore this claim is denied.

Leading (viii), Hearsay (ix)

Applicant asserts counsel was ineffective for not objecting to and moving to strike leading questions during Minor Child 1's direct testimony regarding a text message sent by her older sister (Minor Child 2) to a third party, where the message was about disclosure of sexual abuse, and where the witness admitted to not knowing about it until years later. Applicant further alleges counsel was ineffective for not objecting to and moving to strike hearsay during Minor Child 1's direct testimony. This Court finds these allegations are without merit.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.") cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

At the March 2022 PCR hearing, Counsel Jessica Birt testified that they knew those allegations had been made and that nothing happened and they were unfounded. Birt testified that this went to the fact that the victims were making statements that were just not reliable. At the April 2026 PCR hearing, Birt testified that getting the full picture of what the victims were saying was going to expose the fact that their story and allegations were unreliable. Birt testified that the hearsay showed they would tell some people one thing, tell somebody something else, and that they weren't disclosing what happened until quite a bit of time later.

This Court finds Counsel articulated a valid trial strategy in the decision not to object. This testimony supported their theory of defense in the case. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Relevance / Unfair Prejudice (x & xv))

Applicant alleged counsel was ineffective for not objecting based on relevance and unfair prejudice when the State asked Minor Child 1, “How does it make you feel to talk about this?” and when the State asked Minor Child 2 “How do you feel, [Minor Child 2], about having to talk about this?” This Court finds this allegation is without merit.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation.” United States v. Nguyen, 379 F. App’x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.”) cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

At the March 2022 PCR hearing, Counsel Jessica Birt testified that the reasoning for not objecting is that there is a sensitivity that they were trying to not pierce, while still making sure

that they got the information that they needed to later close in on those girls and let the jury decide how inconsistent what the victims were saying really was. At the April 2026 PCR hearing, Birt testified that there is a balance in how you treat alleged victim witnesses and you need to decide how much you want to fight, argue, muddy and lose the jury. Birt testified she remembered that question and she decided to let this go because it did not seem like it was that problematic.

This Court finds Counsel articulated a valid trial strategy in the decision not to object. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Trial Strategy (xi)

Applicant alleged counsel was ineffective during its cross-examination of Minor Child 1 for soliciting testimony about the name of another girl that Minor Child 1 believed Applicant had also abused. This Court finds this allegation is without merit.

At the March 2022 PCR hearing Counsel Jessica Birt testified that she directly asked about this other girl on purpose. Birt testified that part of the strategy was to highlight the alleged victim’s testimony was not reliable and part of that strategy was to bring out certain information with certain witnesses whether or not they fleshed it out with that witness or not it was intentional to bring it out and it could be explored with additional witnesses later on. At the April 2026 PCR hearing, Birt testified that the strategy was to allow this in because it showed what the victims were latching onto. Birt testified that it showed that these victims saw this other unfounded thing and that it was

unreliable and they were possibly being influenced by the scandal of the neighborhood girl.

This Court finds Counsel articulated a valid trial strategy. As Counsel testified, this testimony supported their theory of defense in the case. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to Object – Redirect of Minor Child 1 (xii), Cross Examination (xiii)

Applicant alleged counsel was ineffective for not objecting to and moving to strike the State’s questions during Minor Child 1’s redirect that went beyond the scope of cross-examination, where the State elicited testimony of an entirely new allegation/incident of sexual abuse that was not covered in direct or cross. Applicant further alleged counsel was ineffective for affirming this testimony on re-cross. This Court finds these allegations are without merit.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation.” United States v. Nguyen, 379 F. App’x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.”) cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

At the March 2022 PCR hearing, Counsel Jessica Birt testified that this was really exemplified lines 20 and 21 in the witness's answer "No, I only told her about the first time. That wasn't the first time" and that this was going back to the fact that the girls were not being consistent in what they were talking about. Birt testified that this showed other instances here and there and things were scattered all over and this goes back to their same defense strategy. At the 2026 PCR hearing, Birt testified that this would have gone back to the same strategy that this was another red herring and unreliable. Birt testified that this is something that the girls are claiming and that the State's trying to grasp at straws and that their statement is unreliable.

This Court finds that Counsel articulated a valid strategic trial strategy. As Counsel testified, this testimony supported their theory of defense in the case. Applicant has failed to overcome the presumption that Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Hearsay – Minor Child 2's testimony (xiv)

Applicant alleged counsel was ineffective for not objecting to and moving to strike hearsay with hearsay during Minor Child 2's testimony. Specifically, he contends counsel should have objected when the State elicited testimony from Minor Child 2 about what her friend said to her parents about the text message she sent in the seventh grade purportedly disclosing sexual abuse by Applicant, what her parents said to school officials regarding the text messages, and what school officials told police and that this violates the confrontation clause. This Court finds this allegation

is without merit.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation.” United States v. Nguyen, 379 F. App’x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.”) cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

At the March 2022 PCR hearing, Counsel Jessica Birt testified that they knew those allegations were made and that nothing happened and that they were unfounded. Birt testified that this went to the fact that the girls were making statements that were just not reliable. Birt testified that there had been an instance where they told someone about the incident allegedly happening with Applicant and then saying oh just kidding that did not actually happen when the child said they were going to have to tell their mom. Birt testified that this added more fuel to the fire that this was a big, overarching, inconsistent thing and went to the fact that the burden of proof couldn’t have been met based on the allegations the girls were making.

At the April 2026 PCR hearing, Counsel Jessie Birt testified that this went to the fact that it is referencing unreliability, baseless claims that were unfounded. Birt testified that the fact that this was unfounded and not substantiated was important and again went to the strategy that they were trying to employ. This Court finds Counsel’s testimony credible.

This Court finds that Counsel articulated a valid strategic trial strategy. As Counsel testified, this testimony supported their theory of defense in the case. Applicant has failed to

overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Leading – Minor Child 2 (xvi)

Applicant alleged counsel was ineffective for failing to object and move to strike leading testimony that Minor Child 2 never really talked to someone in detail about the alleged abuse until the interview at the DCC. This Court finds this allegation is without merit.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation.” United States v. Nguyen, 379 F. App’x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.”) cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

At the March 2022 PCR hearing, Counsel Jessica Birt testified that this testimony goes to reliability and credibility. At the March 2022 PCR hearing, Counsel Charles Cochran testified that the question is just “the kind of thing that just happens, you don’t necessarily object to every little thing.”

This Court finds that Counsel articulated a valid strategic trial strategy. As Counsel

testified, this testimony supported their theory of defense in the case which was attacking the reliability and credibility of the victims. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Cross-examination – Minor Child 2. (xvii)

Applicant alleged counsel was ineffective for asking Minor Child 2 on cross-examination, “[W]ere you aware of any other individuals who also claimed [Applicant] had hurt them besides Minor Child 1.,” to which Minor Child 2 responded, “I do, but—.” This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Jessica Birt testified that with these witnesses it was to draw out certain responses for factual information that they were going to try to use in questioning other witnesses about and that asking her about this supported their defense strategy that the girls had motive and inconsistency in their credibility. At the April 2026 PCR hearing, Birt testified that every question she was asking these complainants was to show that they were fabricating their allegations, that there was nothing reliable about them and that they were making this up and that was the purpose of the question. Birt testified that this question was going to the fact that this was a baseless claim that they were making. This Court finds counsel’s testimony is credible.

This Court finds that Counsel articulated a valid strategic trial strategy. As Counsel testified, this testimony supported their theory of defense in the case which was attacking the

reliability and credibility of the victims. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how the exclusion of this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Redirect – Minor Child 2 (xviii)

Applicant alleged counsel was ineffective for not objecting to and moving to strike the State’s questions during Minor Child 2’s redirect that went beyond the scope of cross-examination, where the State elicited testimony of an incident in the pool that was not discussed on cross. This Court finds this allegation is without merit.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation.” United States v. Nguyen, 379 F. App’x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.”) cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

At the March 2022 PCR hearing, Counsel Jessica Birt testified that she asked Minor Child 2 about the incident and what occurred and how no one was around or had seen it occur and she believes she opened the door to it. Birt testified that the questioning comes in after the theory that she was essentially trying to elicit that there were people around and things were going on at the

time and if this were to have happened how would no one else have seen it occur.

This Court finds that Counsel articulated a valid strategic trial strategy. As Counsel testified, this testimony supported their theory of defense in the case which was to attack the reliability and credibility of the victims. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Hearsay – Gomez (xix & xx)

Applicant alleged counsel was ineffective for not objecting to hearsay testimony by Benson Gomez that went beyond the time and place and bolstered Victim’s testimony. Applicant further alleged counsel was ineffective for not moving to strike such testimony when counsel objected the second time Gomez identified Applicant as the perpetrator. This Court finds this allegation is without merit.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation.” United States v. Nguyen, 379 F. App’x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.”) cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot).

At the March 2022 PCR hearing, Counsel Charles Cochran testified that the witness was rambling and then he says they were talking about Applicant and says they told him everything and then he is interrupted by the prosecutor. Cochran testified that he thinks the prosecutor recognized that he was maybe going on a little bit too freely and then when it got brought back to it Counsel objected. Cochran testified that the prosecutor was trying to cure the situation himself by interrupting his witness. At the April 2026 PCR hearing, Cochran testified that Gomez was already a time and place witness and was giving a rambling response and didn't interject and then he objected when the prosecutor jumped in.

Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). As Counsel testified, the prosecutor was trying to cure the situation himself by interrupting the witness and then he did ultimately end up objecting. Further, Applicant has failed to prove how objecting to this testimony sooner would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Third-party Guilt (xxi) Gomez's Laptop (xxix)

Applicant alleged counsel was ineffective for not investigating third-party guilt related to Gomez, where Applicant had indicated Gomez (Victim's stepfather) would come over to the apartment alone and take Victim out of the apartment alone. Applicant further alleged counsel was ineffective for failing to subpoena the laptop of Gomez for the existence of pornography. This Court finds these allegations are without merit.

At the March 2022 PCR hearing, Counsel Charles Cochran testified that third party defense is not necessarily that easy of a defense to formally get into, because you have to be able to make

some kind of a case against another person. Cochran testified that in this case you have two girls who are very assertive in accusing Applicant and not Mr. Gomez. Cochran testified that there is nothing to indicate other than speculation that maybe it could have been Mr. Gomez. Cochran testified that if they did not have enough to present a formal third-party guilt defense, they still argued in a reasonable doubt sense, that this could be a false accusation against Applicant and basically a deflected accusation from somebody that the girls were abused but it was not Applicant. Cochran testified that they tried to explore it on cross of Mr. Gomez, but it did not go all that well and he shut down any idea that it might have been him or that he might have done anything wrong with them. Cochran testified that they discussed this and tried to do as much as they could without making the formal third-party guilt defense because he does not know that they ever would have had anything close to having anything to actually try and make a case against Mr. Gomez or anyone else. Counsel testified there would never have been a real basis for a true third-party defense and there was certainly nothing to indicate that there was evidence against Mr. Gomez from anybody. Cochran testified that nothing was ever brought to his attention that there would be evidence on his laptop about this case and he is not sure that a judge would ever sign off on that subpoena.

Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Applicant did not provide anything to support this defense. Trial Counsel articulated a reasonable strategy for not pursuing this defense which was supported by his testimony that there would never have been a real basis for a true third-party defense and there was certainly nothing to indicate that there was evidence against Mr. Gomez from anybody. Further, Applicant has failed to prove how pursuing this defense would have had a reasonable probability in changing the outcome of his trial. This

Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to investigate (xxii)

Applicant alleged counsel was ineffective for not investigating whether the pool was closed during the time covered by the indictments. He asserts counsel failed to subpoena records from DHEC even though Lisa Batten and Applicant indicated it was closed. This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Charles Cochran testified he would imagine that he looked into it and was not able to confirm that the pool was closed for that extended period of time. Cochran testified that the other issue is that there was one accusation of an incident taking place at the pool and other incidents surrounding the pool and they had Applicant, Ashley and Ronda all testifying to the family using the pool, when they would have used the pool and whether the kids would have been alone at the pool. Cochran testified that they had three witnesses who lived at the apartment complex, used the pool, and knew when it was open or closed. Cochran testified that Ronda was very adamant when she watched the girls that she was an attentive babysitter, and they didn't just go to the pool with Applicant or leave the Applicant. Cochran testified he did investigate to the extent that they had three witnesses who were familiar with the pool. Cochran testified that the pool being closed was not all that contested and the girls did not pin down and specific dates for when the abuse took place and therefore there is limited utility on harping on the pool closure. At the April 2026 PCR hearing, Counsel Cochran testified that he believes his investigator tried to nail down the window of time when this pool was inoperable. Cochran testified that even if they nailed down that the pool was closed from May to July of this year, it's a pretty broad window of when the abuse could have taken place.

Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). This Court finds Counsel did conduct a reasonable investigation surrounding the pool closure and was not deficient. Further, Applicant has failed to prove how subpoenaing these pool records would have had a reasonable probability in changing the outcome of his trial. Witnesses testified to the pool being closed at trial and further, there were no specific dates that the abuse allegedly happened at this pool and therefore as Counsel testified, there is limited utility on harping on the pool closure. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Pre-indictment delay (xxiii)

Applicant alleged counsel was ineffective for not moving to dismiss all charges—or at a minimum the indictments related to minor child 2 - due to pre-indictment delay, which violated Applicant’s due process rights when the State was aware of Minor Child 2’s allegations of sexual abuse as early as 2011 (sent in text messages to her friend) but chose not to investigate further than speaking once to minor child 2, where the state only reinvestigated the matter and arrested Applicant four years later after minor child 2 and minor child 1 spoke with forensic interviewers, and when critical evidence to the Defense was lost (such as video footage by the pool, accurate memories of where Applicant would have been to support an alibi defense, and whether Gomez had any pornographic videos or pictures on his computer to support a third-party defense). This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Jessica Birt testified that delayed disclosure was a big part of this case and a lot of what she elicited from the girls on cross-examination had to do

with that.

At the March 2022 PCR hearing, Counsel Charles Cochran testified that he cannot remember the extent to which the State was made aware of this text message and whether or not it was specific to the allegations that they were trying or not. At the April 2026 PCR hearing, Cochran testified that delayed disclosures were common in these type of cases and he has had other cases with much larger delays where he moved to quash the indictments and was not successful. Cochran testified that at the time Applicant was indicted, the law was not favorable to that type of objection.

Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove prejudice. Applicant alleges critical evidence to the Defense was lost (such as video footage by the pool, accurate memories of where Applicant would have been to support an alibi defense, and whether Gomez had any pornographic videos or pictures on his computer to support a third-party defense). As discussed *supra*, the video footage of the pool would not have made a difference as Counsel articulated. As discussed *supra*, the indictments were for abuse allegations over a broad period of time as the girls did not allege specific dates and therefore the Albi witness theory would have been inconceivable. As discussed *supra*, there was nothing to support a third-party defense in this case and Counsel articulated a valid trial strategy and intentionally did not choose to pursue the unsupported third-party defense route in this case. Therefore, contrary to Applicant’s position, “critical evidence” was not lost in this case as a result of the alleged delay and Applicant has failed to prove prejudice. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Hearsay – Minor Victim 2's friend (xxiv)

Applicant alleged counsel was ineffective for not objecting to the confrontation clause and hearsay testimony from Minor Child 2's friend regarding her mother reporting the text message about sexual abuse to the school authorities, and then the school authorities reporting the matter to police. He further contends this violated the confrontation clause. This Court finds this allegation is without merit.

When counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

At the 2022 PCR hearing Counsel Charles Cochran testified that there's legitimate strategic reason in using this as an unfounded claim by the girl and that she had a history of making stuff like this up, and that this can be extremely helpful.

At the 2022 PCR hearing Counsel Jessica Birt testified that they knew those allegations had been made and that they were basically unfounded and this went to the fact that the girls were making statements that were just not reliable. At the 2026 PCR hearing Birt testified that this showed another unfounded, unreliable claim that they were just following suit on this case.

This Court finds that Counsel articulated a valid strategic trial strategy. As Counsel testified, this testimony supported their theory of defense in the case which was to attack the reliability and credibility of the victims. Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland,

466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Leading – Minor Child 3 (xxv)

Applicant alleged counsel was ineffective for not objecting to leading during Minor Child 3's testimony on the very issues for which he was called to testify, when the State asked, "And did [there] come a time in fifth grade when she told you about a sexual assault?" This Court finds this allegation is without merit.

At the 2022 PCR hearing, Counsel Charles Cochran testified he would be a good time and place witness and that is why he would not have objected. Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). As an initial matter, had Counsel objected to the question, the State could have simply rephrased the question to elicit the same testimony. Further, Applicant has failed to prove how objecting to this question would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Cross-examination – Lisa Batten (xxvi)

Applicant alleged counsel was ineffective during his cross-examination of Lisa Batten by asking, "Did you speak with Minor Child 1 regarding Minor Child 4 and some assertions regarding her?" and Batten responded, "I have." He contends this testimony was highly prejudicial, tantamount to propensity evidence, and bolstered other witness testimony. This Court finds this allegation is without merit.

At the 2022 PCR hearing Counsel Charles Cochran testified that they had a pretty well thought out strategy that involves some risks and sometimes letting in potentially prejudicial testimony to make the attempt to turn it around against the government and against the witness and that they were purposeful in not objecting to this.

This Court finds that Counsel articulated a valid strategic trial strategy. As Counsel testified, this testimony supported their theory of defense in the case which was to attack the reliability and credibility of the victims. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this testimony would have had a reasonable probability in changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Stipulation (xxvii)

Applicant alleged counsel was ineffective for stipulating that Detective Rebcca Bailey was unavailable to attend trial due to surgery when Detective Bailey obtained and helped execute search warrants collecting evidence (including a Sony laptop that contained thousands of videos and pictures of pornography). This Court finds this allegation is without merit.

At the 2022 PCR hearing, Counsel Charles Cochran testified that this was not a situation where the Court would have suppressed the evidence, the only thing they would have considered is continuing the trial and he was not sure that Applicant had any interest in continuing the trial based on Ms. Bailey not being there. Cochran testified that the other detective who conducted the search warrant testified and there was no prejudice and nothing he felt he needed to question Detective Bailey about personally.

Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). As Counsel testified had he raised issue with this, the Court would have merely considered continuing the trial. Further, Applicant has failed to prove how stipulating to this had a reasonable probability of changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Pornographic videos (xxviii)

Applicant alleged counsel was ineffective for not moving to exclude the 241 pornographic videos, over 9,000 pornographic pictures, and over 5,000 pornographic websites recovered from Applicant’s Sony laptop when there was no indication of how many of the videos and images actually matched the description of the witnesses and were not child pornography. This Court finds this allegation is without merit.

When counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

At the 2022 PCR hearing, Counsel Charles Cochran testified that the strategy was to allow this and not object to it because they were then able to make the argument that you have an open window into his sexual preferences and everything that he looks at on the internet including pornography and that you would expect someone who has been accused of this to have child pornography and not a such a strong interest in adult pornography. Cochran testified that this to

some jurors might have been a compelling argument. Cochran testified there was a clear strategic tact that they were taking with not objecting. At the 2026 PCR hearing, Cochran testified that the strategy was basically to say this is a huge amount of pornography and he spent a lot of time looking at it and the fact that there is not one piece of child pornography completely cuts against the government's allegations. Cochran testified that there was also a witness who testified that his girlfriend was upset about something she had seen him looking at on his phone or laptop and that the insinuation of this was that he had some illegal type of pornography and this cut against any assumption that the jury could make that he was interested in children.

This Court finds Counsel articulated a valid trial strategy. Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this would have a reasonable probability of changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Expert testimony (xxx)

Applicant alleged counsel was ineffective for not objecting to Dr. John Melville's improper opinion testimony about the legal definition of penetration. Specifically, he alleged counsel should have objected when Dr. Melville stated, "A penis could also penetrate just between the labia in the introitus and my understanding is that that would still be considered penetration according to the legal definition in South Carolina," and "Genital penetration—my understanding is that that is more of a legal definition than a medical definition. But my understanding of the legal definition is that any intrusion, however slight into the genital area or between the labia of the female is considered genital penetration." This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Charles Cochran testified that they welcomed this witness's testimony and they did not have any problems with his credibility or the things he was saying because there were no medical exams in this case and he had not examined the girls. Cochran testified they could look at this and use it to say to the jury to look how much these doctors know and how much they can learn from these exams and that there was one recommended in this case and they didn't even follow up on their own recommendation.

This Court finds Counsel articulated a valid trial strategy. Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this would have a reasonable probability of changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to Object – Applicant's cross-examination (xxxi)

Applicant alleged counsel was ineffective for not objecting when the State had him read a list of pornographic websites obtained from his computer when the list was not previously entered into evidence, a proper foundation had not been laid for the list, the list was not previously produced by Applicant, and the list was not related to a prior inconsistent statement by Applicant. This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Charles Cochran testified that his position at the time was that they were not hiding from this and that Applicant is openly admitting to the pornography that is on there and that there is no child pornography.

This Court finds Counsel articulated a valid trial strategy. Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this would have a reasonable probability of changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to Object – Prior DSS investigations (xxxii)

Applicant asserts counsel was ineffective for not objecting to evidence of DSS’s prior investigations into his biological children until the state had already asked 17 questions about the matter. This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Charles Cochran testified that he does not know that this was necessarily prejudicial because these were DSS reports that Applicant was making in one instance and some being physically abused by someone else. Cochran testified that none of the testimony related to the actual victims in the case and was not really related to any conduct from Applicant and that he does not believe this testimony moved the needle at all. At the April 2026 PCR hearing Cochran testified that he did not mind this testimony coming out because it was something he could use to show that Applicant was a diligent parent who is not afraid of the government and not afraid of oversight from DSS or law enforcement, and has called DSS when he thought something was inappropriate. Cochran testified that he eventually ended up objecting because he thinks this was a very extensive cross-examination of Applicant and he thinks the government was fishing and at some point, he objected just to keep them from getting way off course. Further, at the April 2026 PCR hearing, Applicant testified that he wanted this information before the jury.

This Court finds Counsel articulated a valid trial strategy. Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, Applicant has failed to prove how objecting to this would have a reasonable probability of changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Examination of Ashley Young (xxxiii)

Applicant alleged counsel was ineffective for impeaching the credibility of defense witness Ashley Young by asking if Applicant currently lived with her and their new child, which prompted her to invoke her right against self-incrimination due to DSS restrictions and a family court order prohibiting overnight visitation by Applicant. This Court finds this allegation is without merit.

At the March 2022 PCR hearing, Counsel Charles Cochran testified that he did not see this coming and that witnesses are unpredictable sometimes no matter how much you talk to them and think you know their story and what they are going to testify to. Cochran testified that she knew why she was testifying and could have offered that up to Counsel when they were going through what she was going to testify to. Cochran testified that she was in the office with Applicant whenever he came over to review the case and was always unequivocally supportive of Applicant. At the April 2026 hearing, Cochran testified that if his witness invoked the fifth while he is questioning them that would not have been something that he foresaw and he would have been blindsided by this. The Court finds Cochran’s testimony credible.

Applicant has failed to overcome the presumption that Trial Counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Counsel thoroughly discussed testimony and met with this witness but ultimately cannot predict what a witness is going to testify to at trial and thus, Applicant has failed to prove Counsel was deficient. This Court finds

Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to object – Consent Jury Charge (xxxiv)

Applicant asserts counsel was ineffective for not objecting to the Court's consent charge as an unconstitutional charge on the facts when the Court stated, "[A]n unmarried woman under the age of 14 cannot legally consent to sexual intercourse." This Court finds this allegation is without merit. At the 2022 PCR hearing Counsel Charles Cochran testified that even reading that now he does not know that he would object to it and that it is not wrong and that he is not aware of any case that would make it objectionable. This Court finds any objection would have been non-meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Failed to investigate mitigation evidence (xxxv); Failed to investigate character witnesses (xxxvi)

Applicant alleged counsel was ineffective for not investigating all available, relevant, and admissible or mitigating evidence, including interviewing critical witnesses who could have added to the credibility of Applicant's case and challenged the credibility of the State's witnesses. Applicant also alleged that counsel failed to adequately prepare for trial by not interviewing witnesses who could have testified regarding Applicant's good character and reputation. This Court finds these allegations are without merit.

At the 2026 PCR hearing, Counsel Charles Cochran testified that he spoke to Applicant's children before trial. Cochran testified that he would have been concerned about calling them as witnesses at trial because they were pretty young at the time and there was a lot of discussion about

them and they did not get along with the accusers and there was animosity. Cochran testified that the concern would be that calling them would be off-putting to the jury and distracting to show the animus between the two parties would not have helped and maybe could have backfired. Cochran testified that with these kinds of cases that almost any defense can cut both ways. Cochran testified that you have to weigh and anticipate all the potential downsides of that testimony. Cochran testified that there was an issue with one of the girls acting inappropriately and that Applicant's children's testimony would have gone down that road and potentially given some fuel to the prosecutor. Cochran testified that Applicant was being prosecuted by a very experienced sex crimes prosecutor and she can take testimony like that and turn it the minute and their experts will end up testifying that that kind of inappropriate behavior is a result of the abuse they are alleging.

This Court finds Counsel's testimony credible. This Court finds Counsel articulated a valid trial strategy in not calling Applicant's children to testify. Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Further, at the April 2026 PCR hearing, Applicant presented the testimony of his children Jasmine Knight and Austin Daugherty. Based on their testimony, Applicant has failed how calling these witnesses would have had a reasonable probability of changing the outcome of his trial. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every nonfrivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d

523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Tisdale v. State, 357 S.C. 474, 476. 594 S.E.2d 166, 167 (2004) (quoting Jones v. Barnes, 463 U.S. 745, 754 (1983) ("For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy")).

Applicant must show that appellate counsel's performance was deficient and that she was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 525; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon neglecting to file a merits brief, Applicant must show that (1) appellate counsel unreasonably failed to discover nonfrivolous issues and file a merits brief raising them, and (2) a reasonable probability that, but for her counsel's unreasonable failure to file a merits brief, she would have prevailed on her appeal. Smith v. Robbins, 528 U.S. 259, 285 (2000). Applicant must show that a reasonably competent attorney would have found one nonfrivolous issue warranting a merits brief and that the issue identified would have won on appeal. Id. at 288.

Accordingly, in order to meet his burden of proof, Applicant must establish a reasonable probability that, but for appellate counsel's failure to raise a specific issue on appeal, he would have prevailed on his appeal. Smith, 528 U.S. at 285-86. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

xxxvii. Appellate Counsel Failed to Brief and Argue Trial Counsel's Objection to the Admission of Pictures of the Apartment (State's Exhibits 5,6,8,9 and 10)

Applicant alleged Appellate Counsel was ineffective for failing to brief and argue trial counsel's objection to the admission of pictures of the apartment (State's exhibits 5,6,8,9, and 10). This Court finds this allegation is without merit.

At the 2026 PCR hearing Appellate Counsel Lara Caudy testified that the objection was relevance under 403 that the evidence was cumulative and that she did not think there was any merit to that allegation. Caudy testified that they were photographs of the apartment and she was not sure that there were no other photographs that were admitted of the apartment that would have made these exhibits cumulative. Caudy testified that the issue she raised had to do with the admission of an expert in sex abuse dynamics, which at the time the issue had not yet been addressed by the South Carolina Supreme Court, and they were still litigating whether sex abuse experts would be permitted to testify before the jury.

Applicant has failed to establish a reasonable probability that, but for appellate counsel's failure to raise this issue on appeal, he would have prevailed on his appeal. See Smith supra. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

xxxviii. Appellate Counsel Failed to Argue Counsel's Objection to Testimony that Went Beyond the Scope of Cross-Examination

Applicant alleged Appellate Counsel was ineffective for failing to brief and argue Trial Counsel's objection to testimony that went beyond the scope of cross-examination where the State sought testimony on the differences between the personalities of Lisa Batten's daughters, yet no questions by counsel were asked regarding their personalities. This Court finds this allegation is without merit.

At the 2026 PCR hearing Appellate Counsel Lara Caudy testified that she did not think that this testimony seemed relevant. Caudy testified that the issue she raised had to do with the admission of an expert in sex abuse dynamics, which at the time the issue had not yet been addressed by the South Carolina Supreme Court, and they were still litigating whether sex abuse experts would be permitted to testify before the jury.

Applicant has failed to establish a reasonable probability that, but for appellate counsel's failure to raise this issue on appeal, he would have prevailed on his appeal. See Smith supra. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is denied.

xl. Appellate Counsel Failed to Argue Counsel's Motion for a Directed Verdict.

Applicant alleged Appellate Counsel was ineffective for failing to argue counsel's motion for a directed verdict. This Court finds this allegation is without merit.

At the 2026 PCR hearing, Appellate Counsel Lara Caudy testified that the trial court directed a verdict for one of the indictments based on the State's concession that there was no evidence to support that specific indictment. Caudy testified that the remainder of the directed verdict motion was very generalized and that the children's testimonies would have constituted direct evidence of guilt. Caudy testified that the issue she raised had to do with the admission of an expert in sex abuse dynamics, which at the time the issue had not yet been addressed by the South Carolina Supreme Court, and they were still litigating whether sex abuse experts would be permitted to testify before the jury.

Applicant has failed to establish a reasonable probability that, but for appellate counsel's failure to raise this issue on appeal, he would have prevailed on his appeal. See Smith supra. This Court finds Applicant has failed to prove deficiency and prejudice and therefore, this claim is

denied.

CONCLUSION

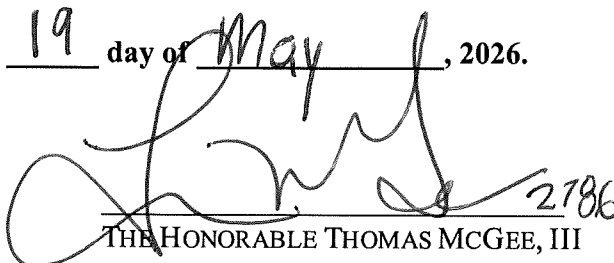
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE**.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has 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. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 19 day of May, 2026.


THE HONORABLE THOMAS MCGEE, III
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

Jessica Birt and Charles Cochran, Esquire, represented Applicant. Solicitor Debbie-Herring Lash, Esquire prosecuted the case. On March 13-15, 2017, Applicant proceeded to trial on all indicted charges before the Honorable Roger Couch. Judge Couch sentenced Applicant to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor, twenty years for each count of second-degree criminal sexual conduct

with a minor, and fifteen years for each count of lewd act upon a minor. Applicant then filed a timely notice of appeal. His appeal was perfected by Lara M. Caudy, Esquire. The Remittitur was issued on June 25, 2019.

Applicant filed his application for post-conviction relief on July 2, 2019. On March 8, 2022, an evidentiary hearing was held virtually before the Honorable Markely Dennis Jr. Dayne C. Phillips represented Respondent. Assistant Attorney General Samantha J. Weidauer represented Respondent. Applicant proceeded forward with the claims in his amended application. Following the evidentiary hearing, Judge Dennis retired prior to providing a ruling on the case. Pursuant to Rule 63 of the South Carolina Rules of Civil Procedure, another hearing was scheduled. Beginning on October 17, 2025, and resuming April 15, 2026, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Thomas W. McGee, III. Applicant was present and represented by Dayne Phillips, Esquire. Assistant Attorney General Kylee Kancealey represented Respondent. This Court dismissed the application by Order filed on May 26, 2026. On June 11, 2026, Applicant filed his Motion to Reconsider Under Rule 59(e), SCRPC.

APPLICANT'S MOTION TO ALTER OR AMEND

On June 11, 2026, Applicant filed a Motion to Reconsider Under Rule 59(e), SCRPC. In his motion, Applicant objected to the inclusion of testimony from the first evidentiary hearing before the Honorable Markley Dennis Jr., in 2022.

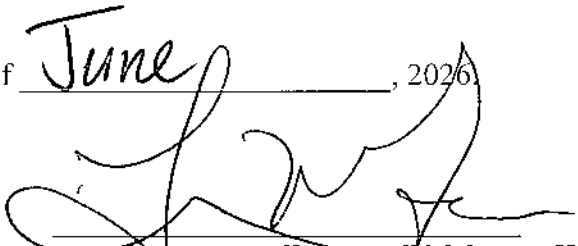
This Court has carefully reviewed the submission of Applicant and has reviewed the record again in this matter. After careful consideration, this Court declines to alter or amend the prior ruling of the Court in the Order of Dismissal.

CONCLUSION

After careful consideration of the arguments of Applicant and review of the record, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. The Order of Dismissal issued by this Court contains the appropriate findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code of Laws and Rule 52(a) of the South Carolina Rules of Civil Procedure. Accordingly, Applicant's motion for reconsideration is **DENIED**.

IT IS THEREFORE ORDERED that Applicant's motion is hereby **DENIED AND DISMISSED**.

AND IT IS SO ORDERED this 23rd day of June, 2026.



THE HONORABLE THOMAS W. MCGEE, III
Presiding Judge
Ninth Judicial Circuit

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Darlington, South Carolina