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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
The Honorable Jessica Salvini, PCR Action Judge
2023-CP-28-00688

KELTON YOUNG, #389666,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Kelton Young appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Jessica Salvini, circuit court judge, on June 2, 2025, and was denied by written order issued filed on July 15, 2026. Applicant received notice of the judgement on July 17, 2026.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Kelton D. Young, #389666

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-28-688
)

**ORDER DENYING PCR RELIEF
IN PART AND GRANTING IN PART**

FILED FOR RECORD
2026 JUL 15 AM 9:16
GINGER M. FARRER
CLERK OF COURT
KERSHAW COUNTY, SC

Presiding Judge: Hon. Jessica A. Salvini
Applicant's Attorney: Chelsey F. Marto, Esq.
Respondent's Attorneys: D. Russell Barlow, II, Esq.
MacKinnon Westraad, Esq.
Plea Counsel: Brett A. Perry, Esq.
Date of Hearings: May 31, 2024
June 2, 2025
Court Reporters: Lynette L. Chase
Brandi Berry

This matter comes before the Court by way of Kelton D. Young's (Applicant) application for post-conviction relief (PCR) filed on September 25, 2023. Respondent filed its Return on October 26, 2023, requesting an evidentiary hearing to resolve the claims.

On May 31, 2024, an evidentiary hearing was held at the Richland County Courthouse before the Honorable Michael S. Holt. Senior Assistant Deputy Attorney General D. Russell Barlow, II, of the South Carolina Attorney General's Office represented Respondent. Applicant was present and represented by Chelsey F. Marto (PCR Counsel). Applicant proceeded with the claims in his amended PCR application filed on May 31, 2024. In support of these claims, Applicant testified on his behalf and presented testimony from Brett A. Perry, Esquire (Plea Counsel).

Following the evidentiary hearing, Judge Holt passed away. Pursuant to Rule 63 of the South Carolina Rules of Civil Procedure, another hearing was scheduled.

On June 2, 2025, an evidentiary hearing was convened at the Richland County Courthouse before the Honorable Jessica A. Salvini. Assistant Attorney General MacKinnon Westraad represented Respondent. Applicant was present and represented by PCR Counsel. At the outset of the hearing, both parties stipulated to the testimony from the 2024 PCR hearing, and Applicant only went forward on three new allegations: That counsel was ineffective for failing to move to dismiss the first degree burglary charge, for failing to quash the indictment for domestic violence of a high and aggravated nature, and that the court failed to make a finding that his kidnapping offense was not sexual in nature. Respondent consented to remand the latter claim to ensure Applicant is not placed on the sex offender registry. In support of the other two claims, Applicant testified on his own behalf.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the 2024 and 2025 evidentiary hearings, this Court finds Applicant has failed to establish constitutional violations or deprivations entitling him to relief, with the exception of his allegation that he should not be required to register as a sex offender. Accordingly, this Court denies and dismisses this action with prejudice as to all the allegations except the allegation that he should not be required to register as a sex offender.

PROCEDURAL HISTORY

In March 2022, the Kershaw County Grand Jury indicted Applicant for two counts of Domestic Violence of High and Aggravated Nature (DVHAN) (2022-GS-28-470, -487), Burglary—1st Degree (2022-GS-28-469), Kidnapping (2022-GS-28-483), Ill-Treatment of Animals (2022-GS-28-473), three counts of Pointing and Presenting Firearms at a Person (2022-

GS-28-480, -484, -485), Possession of a Weapon During a Violent Crime (2022-GS-28-481), Unlawful Possession of Firearm by Person Subject to DV Order (2022-GS-28-486), Resisting Arrest (2022-GS-28-482), Violation of Court Order of Protection (2022-GS-28-471). Plea Counsel represented Applicant. Fifth Circuit Assistant Solicitor Donna M. Green prosecuted the case.

On December 1, 2022, Applicant appeared before the Honorable Jocelyn Newman and pled guilty under a negotiated sentence to Burglary---1st Degree (2022-GS-28-0469), one count of DVHAN (2022-GS-28-0470), and Kidnapping (2022-GS-28-0483).¹ Judge Newman sentenced Applicant to the negotiated sentence of fifteen years imprisonment on each charge and permanent restraining orders preventing Applicant from contacting the victim or the children.

Applicant did not appeal his convictions or sentences.

FACTS GIVING RISE TO THE CONVICTION

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

This incident occurred April 11th of 2020 here in Kershaw County. Law enforcement initially got a 911 call. That call came from Ms. Brevard's 14-year-old daughter. She stated that she heard a dog barking, and she heard yelling coming from down the hallway of the residence, which is at 862 St. Paul Church Road in Camden, Kershaw County; that when she went into the hallway, she opened the door. She saw the defendant with a gun, and he was yelling at her mother. She stated that her mother told her to go to her room, lock the door, climb out the window, and call the police. She did make this phone call. She stayed on the phone until law enforcement officers arrived. At some point during the 911 call, she tells the dispatcher she heard a gunshot come from inside of the house, and she was familiar with the defendant, Mr. Young, as being in a romantic relationship with her mother, Ms. Brevard, at the time the incident had occurred. When this incident occurred, Mr. Young had been out on bond for the domestic violence second degree from February of the same year, so two months prior to this incident he was out on bond, and she had went to the magistrate court and obtained an order of protection.

¹ The State dismissed all other charges as part of the negotiations.

So his presence violated that order. When law enforcement arrives, they see her daughter and two other minor children on the edge of the roadway with the phone. They are visibly shaken and crying. When law enforcement initially passes the house, and as they're turning around to go into the yard, a relative of hers that was returning with other minor children, including her son, had pulled into the driveway. So as those children get out of the car, one of her sons enters into the residence and immediately takes off running back into the car. Mr. Young is then seen on body cam and in-car video exiting the residence with a gun in his hand. And he's -- well, the child runs back and gets into the car. The car is trying to back up, but he's now blocked in by law enforcement officers that were responding. Ms. Brevard comes out partially dressed, running barefoot away from Mr. Young, and then Mr. Young is immediately behind her with the gun in his hand. He points and presents the gun towards law enforcement. Law enforcement discharged their weapons. During the course of the investigation, law enforcement learned that he had entered into the residence through a sliding glass door at the rear of this house, that once he got inside, that he was engaged in some type of verbal altercation with Ms. Brevard. When he heard the dog barking, he shot at the dog, and the dog was struck. The daughter did see the argument in the hallway and left. She does not hear the gun discharge until she is actually trying to exit the residence, and she relays that to law enforcement. So the burglary comes from him entering, and this happens at night. It's very dark at approximately 8:16 p.m. in April, which is still dark at that time. And so when law enforcement pulls up, everything is in dark. Their strobe lights are basically the only light in that vicinity. But all of this transpires at her residence. Her minor children were present as well as the children that were in the vehicle with -- I believe it was her brother that was bringing them over for a sleepover. So this was a very active scene. When law enforcement arrived, Mr. Young did flee around the back of the trailer. He did discard the weapon by throwing it over a fence. Law enforcement was able to eventually take him into custody in a neighboring residential area, and then they took him to the hospital, at which time he tried to flee from the hospital. But ultimately, they were able to detain him on the same night that this incident occurred.

(Plea Tr. pp. 5–7).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:²

1. Ineffective Assistance of Counsel
 - a. Failure to prepare for trial.

² Applicant's attachment to his application in which he lists his allegations is not entirely legible.

- b. Failure to meet with Applicant.
 - c. Failure to discuss the case with Applicant.
 - d. Failure to explain the charges.
 - e. Failure to discuss potential defenses.
 - f. Failure to have Applicant mentally evaluated.
2. Involuntary Guilty Plea

On May 31, 2024, Applicant filed an amended application through PCR counsel alleging the following:

1. Counsel was constitutionally ineffective for failing to properly prepare a trial strategy or defense and to communicate that defense with Applicant.
2. Counsel was constitutionally ineffective for failing to talk about the discovery and charges with Applicant.
3. Counsel was constitutionally ineffective for failing to communicate with and meet with Applicant enough.
4. Counsel was constitutionally ineffective for failing to tell Applicant about the rights he was waiving by pleading.
5. Counsel was constitutionally ineffective for failing to present Applicants mental health history to the State when negotiating a better plea deal and for failing to present this mental health history in mitigation.
6. Counsel was constitutionally ineffective for failing to contact the alleged victim and for failing to interview her.
7. Counsel was constitutionally ineffective for failing to investigate the State's witnesses.
8. Counsel was constitutionally ineffective for failing to get a better plea deal.
9. Counsel was constitutionally ineffective for failing to independently determine whether Applicant was competent to stand trial.
10. Counsel was constitutionally ineffective for failing to investigate the facts and circumstances surrounding the case and for failure to present evidence found during that investigation.

On June 2, 2025, Applicant filed his second amended application through PCR counsel, raising three new allegations:

1. Ineffective assistance of counsel for:
 - a. Failure to move to dismiss the first-degree burglary charge because the incident location was the address listed on his driver's license.
 - b. Failure to move to quash the domestic violence high and aggravated indictment because the indictment read "Richland County" instead of "Kershaw County".

- c. Failure to advise Applicant that he would have to register as a sex offender if he pled to the kidnapping charge.

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

STANDARD OF REVIEW

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

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

S.C. Code Ann. § 17-27-20(A).

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

³ S.C. Code Ann. §§ 17-27-10 to -160.

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 to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

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

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

PART I – DENIAL OF RELIEF ON SPECIFIC GROUNDS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel and prosecutorial misconduct through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony

presented at the evidentiary hearing and was able to observe the witness, which allowed the Court to evaluate and scrutinize his credibility.

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

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

INITIAL FINDINGS

As a matter of general impression, this Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and negotiated sentence he faced at his plea hearing (Plea Tr. pp. 10-11); 2. Applicant was not under the influence of drugs or alcohol other than a blood pressure medication, which he

affirmed did not affect his ability to think clearly (Plea Tr. p. 4); 3. Applicant understood he was there to plead guilty to burglary first degree, kidnapping, and DVHAN (Plea Tr. p. 5); 4. Applicant understood his right to a jury trial, to remain silent, and confront witnesses against him, and that he waived those rights by pleading guilty (Plea Tr. pp. 9-10); 5. Applicant clearly indicated he was satisfied with Plea Counsel, had enough time to speak with Plea Counsel, and that Plea Counsel did everything Applicant asked (Plea Tr. p. 10); 6. Applicant indicated he understood his discussions with Plea Counsel (Plea Tr. p. 10); 7. Applicant indicated he did not have any questions about his guilty plea (Plea Tr. p. 11); 8. Applicant understood the terms of the restraining order, which he signed (Plea Tr. pp. 11-12); 9. Applicant indicated no one promised him anything, nor threatened or coerced him, for his guilty plea (Plea Tr. p. 9); 10. Applicant's plea was freely, intelligently, and voluntarily entered into (Plea Tr. p. 9).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: **Counsel was constitutionally ineffective for failing to properly prepare a trial strategy or defense and to communicate that defense with Applicant.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to properly prepare a trial strategy or defense and to communicate that defense with Applicant. This Court finds this allegation is without merit.

2024 PCR Evidentiary Hearing

At the 2024 evidentiary hearing on direct examination, Applicant testified that he and Plea Counsel did not discuss a trial strategy or defense. (2024 PCR Tr. p. 8). Applicant testified that Plea Counsel could have talked to him more about his case, which affected the case because Applicant probably would have taken the case to trial. (2024 PCR Tr. p. 28). Applicant testified that the negotiated fifteen years was a good offer. (2024 PCR Tr. p. 21).

On direct examination, Plea Counsel testified that the case had a bad set of facts, and he told Applicant that especially shooting the dog would get a jury on his bad side very quickly in Kershaw County. (2024 PCR Tr. p. 33). Plea Counsel testified that he thought he leveraged the facts and circumstances of the case with great success for his client, and thought he did a great job considering what they were dealing with. (2024 PCR Tr. p. 35). Plea Counsel testified that he pressed as hard as he could, and that fifteen years was a "pretty good deal." (2024 PCR Tr. p. 35).

On cross-examination, Plea Counsel testified that it was difficult to come up with a strategy given all the facts and evidence in this case. (2024 PCR Tr. p. 42). Plea Counsel testified that he could try to put holes in the State's case, but it would just be difficult with all the eyewitnesses. (2024 PCR Tr. p. 42). Plea Counsel testified that due to these risks, in addition to Applicant facing life in prison, Applicant never indicated that he wanted to go to trial or thought it would be a good idea. (2024 PCR Tr. p. 42).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Applicant pleaded guilty in this case, and testified that his plea deal was a good offer. Plea Counsel testified that a trial strategy would be difficult given the facts, although he could try to weaken the State's case, which is why they were inclined to take a plea deal. Applicant presented no defense to this Court that he could have raised at trial that his attorney should have discussed with him. Applicant was facing a life sentence with extensive evidence against him, including body cam and eyewitness evidence. Further, Applicant told the guilty plea

court that he understood he was waiving his right to present defenses at trial by pleading guilty,⁴ so there was no prejudice to Applicant.

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

Allegation: Counsel was constitutionally ineffective for failing to talk about the discovery and charges with Applicant.
Allegation: Counsel was constitutionally ineffective for failing to communicate with and meet with Applicant enough.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to talk about the discovery and charges with Applicant, and for failing to communicate and meet with Applicant enough. This Court finds these allegations are without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). “Brevity of time spent in consultation, without more, does not establish that counsel was ineffective.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the

⁴ Plea Tr. pp. 9-10.

case, and holding the record revealed that counsel was so prepared.).

In order to prevail upon a claim that counsel did not adequately prepare, investigate, or review discovery in a case, an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

2024 PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel did not discuss the discovery with him. (2024 PCR Tr. p. 7). Applicant testified that he did get the discovery from his attorney before Plea Counsel. (2024 PCR Tr. pp. 7, 20). Applicant testified that he met with Plea Counsel four times, where they discussed bond, the plea negotiations, and the plea offer. (2024 PCR Tr. pp. 7-8).

On cross-examination, Applicant testified that while his first lawyer gave him the discovery, there was probably more evidence provided in discovery after that. (2024 PCR Tr. p. 20). Applicant testified that he did not know if there was more discovery. (2024 PCR Tr. p. 20).

On direct examination, Plea Counsel testified that he was Applicant's second attorney, and he was appointed to represent him for about six months or something similar. (2024 PCR Tr. pp.

29-30). Plea Counsel testified that he met with Applicant countless times, certainly more than four. (2024 PCR Tr. p. 30). Plea Counsel testified that he met with Applicant on multiple occasions to thoroughly go over all the discovery, which Applicant had a copy of, and there was nothing new in it that Applicant did not have. (2024 PCR Tr. p. 30). Plea Counsel testified that the number of times he met with Applicant was "probably closer to ten." (2024 PCR Tr. p. 30).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Even assuming Plea Counsel and Applicant only met four times, as Applicant stated, Applicant provided no evidence that the number or length of the meetings was insufficient to address the issues in his case. Plea Counsel got a plea offer for Applicant that Applicant testified was a "good offer." Additionally, Applicant admitted that he had the discovery from his first attorney, and did not know if there was more discovery that he was not provided with. Plea Counsel testified that they thoroughly went over that discovery, and that Applicant had everything in the discovery.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Plea Counsel's

performance. Therefore, Applicant's request for relief by way of these allegations is **DENIED** and **DISMISSED**.

Allegation: Counsel was constitutionally ineffective for failing to contact the alleged victim and for failing to interview her.

Allegation: Counsel was constitutionally ineffective for failing to investigate the State's witnesses.

Allegation: Counsel was constitutionally ineffective for failing to investigate the facts and circumstances surrounding the case and for failure to present evidence found during that investigation.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the facts and witnesses, and for failing to present such evidence. Specifically, Applicant alleges Plea Counsel should have interviewed the victim, investigated the State's other witnesses, and investigated the facts and circumstances surrounding the case. This Court finds these allegations are without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices

made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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

Additionally, Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant and make an independent investigation of the facts and circumstances of the case. Edwards, 392 S.C. at 456, 710 S.E.2d at 64; Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover, 318 S.C. at 498-99, 458 S.E.2d at 540. The applicant's mere speculation about what the witnesses' testimony cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

2024 PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel never interviewed any family. (2024 PCR Tr. p. 7). Applicant testified that Plea Counsel never interviewed the victim or the witness Applicant had. (2024 PCR Tr. p. 8). Applicant testified that Plea Counsel told him it was best not to talk to the State's witnesses. (2024 PCR Tr. p. 8). Applicant testified that he wanted Plea Counsel to do an independent investigation in his case, which essentially meant talking to the State's witnesses and to his family. (2024 PCR Tr. p. 13). Applicant testified that he also wanted Plea Counsel to go through his phone from that day and see what was going on, which was also never brought up to the judge. (2024 PCR Tr. p. 14). Applicant testified that he and the victim were together, which he brought up with Plea Counsel. (2024 PCR Tr. p. 14).

On cross-examination, Applicant testified that Plea Counsel should have spoken to a witness named Ashley Pratt, who was a friend he had known since he was thirteen years old. (2024 PCR Tr. pp. 17-18). Applicant testified that prior to the day of the crimes, the victim was calling Applicant on Facebook Messenger, and Ashley Pratt would have broken down the pieces of the story and what was going on prior to that day. (2024 PCR Tr. p. 18). Applicant testified that Ashley Pratt was not present when the crimes were committed, and her testimony about the background would not have made him go to trial instead of pleading guilty, but it may have made the judge feel lenient. (2024 PCR Tr. p. 19). Applicant testified that Plea Counsel should have interviewed the victim to get her side of the story rather than going off the statement she wrote on paper. (2024 PCR Tr. p. 19).

On direct examination, Plea Counsel testified that the victim, the daughter, and law enforcement were all going to testify about what happened and what they witnessed. (2024 PCR Tr. p. 33). Plea Counsel testified that he was aware of the prior relationship with the victim, and that the victim and Applicant had a tumultuous relationship. (2024 PCR Tr. p. 34). Plea Counsel

testified that he spoke to witnesses and to law enforcement, but not to the victim, because that was generally bad practice and he had her statement. (2024 PCR Tr. p. 36). Plea Counsel testified that he spoke with the solicitor the morning of the plea to be sure that the victim had not wavered in her choice to come testify, because that would make a difference in whether he could get something more from the State. (2024 PCR Tr. pp. 36-37).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Regarding the allegation that Plea Counsel should have spoken with Ashley Pratt and Applicant's family, Applicant did not present testimony from these witnesses at either of his PCR hearings, so this Court is unable to consider what impact they may have had on Plea Counsel's investigation or strategy. See Glover, 318 S.C. at 498-99, 458 S.E.2d at 540.

The same is true for the allegation that Plea Counsel did not go through Applicant's phone to see his messages from a different day than the incident. Applicant did not present this evidence at either of his PCR hearings, so this Court cannot consider its impact on Applicant's case. Further, Applicant himself admitted that the investigation into his phone and Ashley Pratt would not necessarily have caused him to go to trial instead of pleading guilty, but maybe the judge would "feel lenient." As this was a negotiated fifteen-year sentence, Applicant has not shown how this

information would have changed his sentence, and he admits it did not change his decision to plead guilty.

Plea Counsel testified that he spoke to witnesses and law enforcement, but did not speak with the victim. However, Plea Counsel also testified that he had the victim's statement and had communicated with the solicitor regarding the status of her testimony. This Court finds this performance adequate given the circumstances of the case, especially considering that Plea Counsel negotiated a fifteen-year sentence, while Applicant was facing life in prison. Plea Counsel made reasonable decisions about what to investigate based on the facts and on his goal to obtain a favorable plea offer. Without presenting further proof of Plea Counsel's alleged failure to investigate, this Court finds Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Allegation: Counsel was constitutionally ineffective for failing to tell Applicant about the rights he was waiving by pleading.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to tell Applicant about the rights he was waiving by pleading. This Court finds this allegation is without merit.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519

F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

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On direct examination, Applicant testified that he was going off what Plea Counsel said, which was to take the fifteen years because "if you go to trial, you get a life sentence." (2024 PCR Tr. p. 8). Applicant testified he did not know what rights he was waiving prior to the day of the plea. (2024 PCR Tr. p. 9).

On cross-examination, Applicant testified that he went forward with the plea and did not tell the court he was unhappy with Plea Counsel because he was following Plea Counsel's advice that fifteen years was a good offer rather than a life sentence. (2024 PCR Tr. p. 21). Applicant testified Plea Counsel never explained to him his right to a trial, but he remembered the plea court explaining it to him. (2024 PCR Tr. p. 23).

On direct examination, Plea Counsel testified that he made it very clear to Applicant that if he went to trial, he could get a life sentence, because Applicant needed to know that to make an educated decision on whether or not to enter a plea (2024 PCR Tr. pp. 34-35). Plea Counsel testified that he told Applicant it was unlikely he would receive a life sentence, but that it was definitely possible. (2024 PCR Tr. p. 35). Plea Counsel testified that he and Applicant discussed the possibility of going to trial. (2024 PCR Tr. p. 36). Plea Counsel testified that he "absolutely" discussed with Applicant the rights Applicant was waiving. (2024 PCR Tr. p. 37). Plea Counsel testified that they discussed those rights at the jail and on the morning of the plea, because Plea Counsel always goes over the rights his clients are waiving before having them sign a sentencing or plea sheet. (2024 PCR Tr. p. 37).

Plea Counsel testified that he never felt like Applicant did not understand his right to a jury trial or what a jury trial was. (2024 PCR Tr. p. 37). Plea Counsel testified that he explained to Applicant his right to call witnesses, to testify or not to testify, that the judge would tell the jury his silence could not be held against him, and "all that." (2024 PCR Tr. pp. 37-38). Plea Counsel testified that if Applicant had given him any indication that he needed to discuss matters further or that there was something he did not understand, Plea Counsel would have told Judge Newman that he needed a break to discuss matters further with his client and would have taken as long as necessary. (2024 PCR Tr. p. 39). Plea Counsel testified that if Applicant said he still did not understand something, Plea Counsel would have told the judge they could not go forward with the plea that day, and he would have begged the solicitor to keep the deal in place while his client took more time to decide. (2024 PCR Tr. p. 39).

On cross-examination, Plea Counsel testified that Applicant never indicated he wanted to go to trial, and that he absolutely agreed with Applicant's decision to plead guilty. (2024 PCR Tr. p. 42).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Notably, Applicant faced life at trial and received a significantly lesser sentence than he would have faced had he proceeded to trial. Applicant reaped the benefit when he chose to plead.

This Court finds the combination of the record and Plea Counsel's testimony at the 2024 evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement and negotiated sentence, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant was aware of the rights he was waiving by pleading guilty.

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

Allegation:	Counsel was constitutionally ineffective for failing to present Applicants mental health history to the State when negotiating a better plea deal and for failing to present this mental health history in mitigation.
Allegation:	Counsel was constitutionally ineffective for failing to get a better plea deal.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to present Applicant's mental health history when negotiating, and for failing to present the mental health history in mitigation. Specifically, Applicant alleges that Plea Counsel could have gotten a better plea deal with this information. This Court finds these allegations are without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). “The United States Supreme Court has held that ‘defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.’” Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169-70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145.

To show prejudice, an applicant for post-conviction relief “must demonstrate a reasonable probability that: (1) he [or she] ‘would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;’ (2) ‘the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;’ and (3) ‘the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.’” Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant’s self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

2024 PCR Evidentiary Hearing

On direct examination, Applicant testified that he had mental health issues and he was in special education classes in school. (2024 PCR Tr. p. 9). Applicant testified that he was diagnosed with PTSD, paranoid schizophrenic, and ADHD. (2024 PCR Tr. p. 10). Applicant testified that Plea Counsel never asked Applicant about any of these things. (2024 PCR Tr. p. 10). Applicant testified that he was on Zoloft and Abilify for his mental health. (2024 PCR Tr. p. 11). Applicant testified that he was on the same medications when he pleaded guilty, but that the county SCDC gave him Seroquel. (2024 PCR Tr. p. 12). Applicant testified that he thought that impacted his ability to understand what he was doing. (2024 PCR Tr. p. 12). Applicant testified that he wanted Plea Counsel to raise these issues in negotiations with the State, because he thought he could have gotten a better deal that way. (2024 PCR Tr. p. 12).

On cross-examination, Applicant testified that he felt Plea Counsel could have told the plea court about his mental health and reached out to the school or his mom to find out about the special education classes he was in, but he never asked Applicant anything about it. (2024 PCR Tr. p. 27).

On direct examination, Plea Counsel testified that he absolutely discussed Applicant's mental health history with the State during negotiations. (2024 PCR Tr. p. 32). Plea Counsel testified that those discussions were a big reason they got what they did, based on all the facts, the mental health issues, and the tumultuousness of the relationship. (2024 PCR Tr. pp. 34-35). Plea Counsel testified that he pressed as hard as he could, and he believed he leveraged Applicant's mental health issues to great success. (2024 PCR Tr. p. 35).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. From the testimony, it is clear that Plea Counsel was very aware of Applicant's mental health history and used that as leverage in plea negotiations. Applicant was also asked by the plea court whether he was on any medications, and Applicant stated only that he took blood pressure medication and that he was still able to think clearly.⁵ This Court finds that Applicant did not present sufficient evidence to overcome his statements during his plea colloquy, nor to show that there would have been a better plea offer absent a deficiency by Plea Counsel. Additionally, there was no rational basis for Plea Counsel to present Applicant's mental health history as mitigation, because it was a negotiated fifteen-year plea.

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

Allegation:	Counsel was constitutionally ineffective for failing to independently determine whether Applicant was competent to stand trial.
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⁵ Plea Tr. p. 4.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to independently determine whether Applicant was competent to stand trial. This Court finds this allegation is without merit.

Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence that he was incompetent at the time of his plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland, though considered in reverse as a practical necessity: applicant must demonstrate (1) a 'reasonable probability' that he was not competent at the time of the crime or at the time of the plea, and (2) that counsel's failure to seek an evaluation was unreasonable. Id. at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

2024 PCR Evidentiary Hearing

On direct examination, Applicant testified that his first attorney did a competency evaluation, but Plea Counsel did not do one and "only told [Applicant] to get like one." (2024 PCR Tr. p. 13). Applicant testified that he asked Plea Counsel to have him evaluated again, but that never happened. (2024 PCR Tr. p. 13).

On cross-examination, Applicant testified that he recalled telling the plea court that, despite the medication he took, he still understood everything. (2024 PCR Tr. p. 25). Applicant testified that the blood pressure medication messed with his mind, and he couldn't really think clearly. (2024 PCR Tr. p. 25). Applicant testified that he was not mentally competent that day and did not understand what he was doing. (2024 PCR Tr. p. 26).

On direct examination, Plea Counsel testified that he was familiar with Applicant's competency evaluation conducted with his first attorney, and that he read the information and discussed it with Applicant. (2024 PCR Tr. p. 30). Plea Counsel testified that, based on the facts that the State could show, such as the way he committed the crime and his attempt to flee, it was clear Applicant knew that what he did was wrong. (2024 PCR Tr. pp. 30-31). Plea Counsel testified that, based on the evaluation and the facts, it was clear to him that Applicant understood the difference between right and wrong and, at all times, understood everyone's roles in the process. (2024 PCR Tr. p. 31). Plea Counsel testified that he never felt Applicant lacked the ability to help Plea Counsel. (2024 PCR Tr. p. 31).

Plea Counsel testified that he knew Applicant had prior mental health issues, which was fairly common, but that given the prior evaluation, the facts, Applicant's conduct, and Plea Counsel's interactions with him, it was clear that Applicant was competent. (2024 PCR Tr. pp. 31-32). Plea Counsel testified that he had no questions or concerns about Applicant's competency and was generally very quick to request evaluations if there was any remote possibility they could help his client. (2024 PCR Tr. p. 32). Plea Counsel testified that he often receives an evaluation on a client, thinks they missed the mark, and orders a private evaluator, but he did not think a second competency evaluation would produce different results in Applicant's case. (2024 PCR Tr. p. 32). Plea Counsel testified that he never had an indication from Applicant that he did not understand

something that was going on, and in fact Applicant answered questions appropriately and paid close attention to the solicitor's recitation of the facts, and never whispered in Plea Counsel's ear saying they got something wrong or something needed to be corrected. (2024 PCR Tr. p. 38).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant *did* have a competency evaluation, in which he was found competent, and he presented no evidence to this Court that would contradict the findings of his competency evaluation. Plea Counsel testified that he was familiar with the competency evaluation and walked through the various facts that made him certain that Applicant was competent. This was also addressed by the solicitor and Plea Counsel at the time of the guilty plea.⁶ Applicant has failed to show how another competency evaluation would have impacted his guilty plea, or what reason Plea Counsel would have to doubt his competency.

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

Allegation:	Failure to move to dismiss the first-degree burglary charge because the incident location was the address
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⁶ Plea Tr. pp. 8, 12-13.

listed on his driver's license.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to move to dismiss the first degree burglary charge because the address he burglarized was his residence. This Court finds this allegation is without merit.

A person is guilty of burglary in the first degree if the person **enters a dwelling without consent** and with intent to commit a crime in the dwelling, and either:

- (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
 - (a) is armed with a deadly weapon or explosive; or
 - (b) causes physical injury to a person who is not a participant in the crime; or
 - (c) uses or threatens the use of a dangerous instrument; or
 - (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
- (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
- (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-311 (emphasis added).

S.C. Code Ann. § 16-11-310 states that for purposes of this code section, "[e]nters a building without consent" means: "(a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession."

2025 PCR Evidentiary Hearing

On direct examination, Applicant testified that he wanted Plea Counsel to move to dismiss the first-degree burglary charge because his driver's license reflects the same address as the place where he was arrested, so his argument was essentially that he could not break into his own house. (2025 PCR Tr. p. 7). Applicant testified that counsel never discussed that with him. (2025 PCR Tr. p. 7).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Per the relevant parts of S.C. Code Ann. § 16-11-311 and § 16-11-310, one commits first-degree burglary when they enter a dwelling without consent of the person in lawful possession and with intent to commit a crime in the dwelling, in addition to an aggravating factor. Applicant did not present evidence to this Court that he had consent to enter the home in this case. Further, Applicant entered the victim's dwelling, where the victim had a protective order against him; thus, he did not have consent to enter the premises, even if the residence was his own. Plea Counsel had no legal basis to move to dismiss this charge.

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

Allegation: **Failure to move to quash the domestic violence high and aggravated indictment because the indictment read "Richland County" instead of "Kershaw County".**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to move to quash the indictment for DVHAN because of the indictment reading "Richland County" instead of "Kershaw County." This Court finds this allegation is without merit.

2025 PCR Evidentiary Hearing

On cross-examination, Applicant testified that the DVHAN indictment did state "Kershaw County" in multiple places. (2025 PCR Tr. p. 10). Applicant testified he would not have pleaded guilty to a county he was not in. (2025 PCR Tr. p. 11).

Findings

This Court finds from the combination of the record and Plea Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Even if Plea Counsel had moved to quash the indictment based on one error naming the county out of several areas where the county was correctly named, the trial court would simply amend the indictment pursuant to S.C. Code Ann. § 17-19-100. Thus, Applicant failed to satisfy the prejudice prong—that Plea Counsel's failure to move to quash the indictment impacted his guilty plea to that charge.

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

PART 2 – GRANT OF RELIEF ON SPECIFIC GROUND

Allegation: Plea Court should have made a finding that Applicant's kidnapping charge was not sexual in nature to prevent registration as a sex offender

Applicant alleges that the plea court should have made a finding that Applicant's kidnapping charge was not sexual in nature to prevent registration as a sex offender. At the outset

of the 2025 evidentiary hearing, both parties agreed that there should have been a finding on the record that the kidnapping offense was not sexual in nature. S.C. Code Ann. § 23-3-430(C)(15) provides that no registration as a sex offender is required if the court makes a finding on the record that the offense was not sexual in nature.

2025 PCR Evidentiary Hearing

On direct examination, Applicant testified that his charges were not sexual in nature. (2025 PCR Tr. pp. 8-9).

Findings

Pursuant to Hazel v. State, this Court finds that Applicant's kidnapping conviction did not include a criminal sexual offense or an attempted criminal sexual offense. Hazel v. State, 377 S.C. 60, 65, 659 S.E.2d 137, 140 (2008) (finding that the Court of Common Pleas "has the power to make the determination that a prior kidnapping offense did not involve sexual misconduct such that the one convicted is required to register as a sex offender."). The record is clear that Applicant's kidnapping charge did not involve a sexual offense, thus he is not required to register as a sex offender.

Accordingly, this Court finds Applicant's kidnapping offense was not sexual in nature, and he should not be registered as a sex offender. Therefore, Applicant's request for relief by way of this allegation is **GRANTED**.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

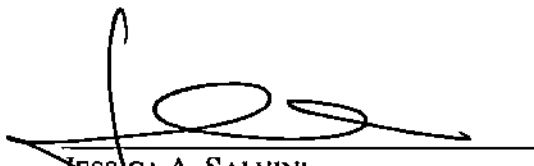
Based on all the foregoing, this Court finds and concludes that Applicant has not established constitutional violations or deprivations that would require this Court to grant his application except as to his last allegation. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED with PREJUDICE** in part, and **GRANTED** in part.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice in part;
2. The application is granted in part, to the extent that Applicant should not be required to register as a sex offender; and
3. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

7/7/2024


JESSICA A. SALVINI
Presiding Judge
Fifth Judicial Circuit

, South Carolina