

RECEIVED

Jul 27 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
The Honorable Jane Merrill, PCR Action Judge
2024-CP-21001537

AMOS MYERS, #392237,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Amos Myers appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Jane Merrill, circuit court judge, on May 20, 2026, and was denied by written order issued filed on July 27, 2026. Applicant received notice of the judgement on July 27, 2026.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201
(864)-404-5583

Other Counsel of Record:
D. Russell Barlow, II, Esquire
Office of the Attorney General, State of SC
P.O. Box 11549
Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Amos L. Myers, #392237,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT
)
) CASE NO. 2024-CP-21-01537
)
)

**ORDER GRANTING BELATED
APPEAL AND DISMISSING
ALL OTHER ALLEGATIONS**

Presiding Judge: Hon. Jane H. Merrill
PCR Counsel: Chelsey F. Marto, Esq.
Respondent's Attorney: MacKinnon Westraad, Esq.
Trial Counsel: B. Scott Suggs, Esq.
Date of Hearing: May 20, 2026
Court Reporter: Kayatana Grice

FILED
2026 JUL 27 P 1:34
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

This matter comes before the Court by way of Amos L. Myers 's ("Applicant") application for post-conviction relief (PCR) filed on June 18, 2024. Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss on March 28, 2025, requesting an evidentiary hearing.

On May 20, 2026, an evidentiary hearing convened at the Florence County Courthouse before the Honorable Jane H. Merrill. Applicant was present and represented by Chelsey F. Marto. Assistant Attorney General MacKinnon Westraad represented Respondent. Applicant proceeded forward on his amended application. Applicant testified on his own behalf and presented the testimony of B. Scott Suggs, Esquire ("Trial Counsel"). Respondent presented the testimony of Twelfth Circuit Assistant Solicitor David Richardson, Esq. ("Solicitor Richardson").

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant is entitled to a belated appeal, but has otherwise failed to establish any constitutional violations or deprivations entitling him to relief. Accordingly, this Court grants Applicant's request for a belated appeal, and denies and dismisses all other allegations with prejudice.



PROCEDURAL HISTORY

In November 2021, the Florence County Grand Jury indicted Applicant for two counts of Criminal Sexual Conduct, Second Degree (2021-GS-21-02430; -02431), and Incest (2021-GS-21-02432). On October 16–18, 2023, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. Assistant Solicitor David Richardson prosecuted the case. Trial Counsel represented Applicant. The jury convicted Applicant as indicted, and Judge McIntosh sentenced him to twenty (20) years on one count of Criminal Sexual Conduct, five (5) years on the second count of Criminal Sexual Conduct, and one (1) year for Incest, to be served consecutively with credit for 835 days and GPS monitoring required upon release.

Applicant filed an untimely *pro se* notice of appeal on January 11, 2024. The South Carolina Court of Appeals contacted B. Scott Sugg, Esquire (Trial Counsel), regarding the various deficiencies in the notice of appeal. Trial Counsel responded, stating that "[t]he appeal did not stem from my office, as I saw no appealable issues. Please direct all further correspondence to [Applicant]." The Court of Appeals advised Trial Counsel that he remained counsel of record for Applicant unless relieved by the court and directed him to correct the deficiencies. Trial Counsel failed to respond. Applicant requested that Trial Counsel be relieved and for new counsel to be appointed to him based on allegations of trial counsel ineffectiveness.

On April 9, 2024, the Court of Appeals ordered that it did not have jurisdiction to hear this appeal because the notice of appeal was not timely served and the allegations of "ineffectiveness of counsel claims would be more appropriate set forth in an application for post-conviction relief."¹ The Remittitur was returned to the lower court on April 26, 2024.

SUMMARY OF FACTS ADDUCED AT TRIAL

In February 2021, the Victim and two of her siblings were sent to live with Applicant and his parents on Shuler Road in Florence County. (Trial Tr. pp. 103, 124-25, 213). Between February and March 2021, the Victim testified Applicant had sex with her on several different

¹ See S.C. Code Ann. § 17-27-10 *et seq.* (2014) (the PCR Act); *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000) ("In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party's motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel."); see also *White v. State*, 263 S.C. 110, 113, 208 S.E.2d 35, 36, (1974) (allowing belated review of PCR applicant's direct appeal issues after finding counsel failed to perfect an appeal on his behalf or ensure that applicant knowingly and intelligently waived his right to an appeal).



occasions. (Trial Tr. pp. 105-09). First, in the living room when Applicant offered to let the Victim sleep with him after a fight she had with her sister. (Trial Tr. pp. 105-08). The second incident happened in the laundry room a week later. (Trial Tr. pp. 108-09, 138, 144).

Andrew Myers (Andrew), the Victim's younger brother, testified that during the night of the first incident, he was in the living room on a separate pull-out couch. (Trial Tr. pp. 280-83). Andrew testified that there was some tossing and turning in Applicant's bed that he was sharing with the Victim, and he thought that was "weird." (Trial Tr. p. 282). Applicant's parents Amos Matthew Myers (Matthew) and Liza Myers (Liza) both testified that they did not see or hear either of these incidents occur. Matthew and Liza testified that they were light sleepers and both would be able to hear if something was going on. (Trial Tr. pp. 322-25, 337, 340-41).

On April 2 or 4, 2021, Matthew and Loretta Myers (Loretta), the Victim's Aunt, took the Victim to Hope Pediatric Center to see a doctor, and they learned the Victim was pregnant. (Trial Tr. pp. 327-28, 337-38). After the appointment, the Victim told Liza and Loretta about the Applicant having sex with her. Andrew testified that the Victim told him about the Applicant's behavior. (Trial Tr. pp. 337-39, 148-53).

Doctor Harvey Brown (Dr. Brown), who was qualified as an expert in obstetrics and gynecology, testified that on April 30, 2021, he performed a surgical termination of pregnancy procedure on the Victim at Planned Parenthood in Columbia. (Trial Tr. pp. 300-03). Prior to the procedure, Dr. Brown evaluated the Victim and determined that based on the size of the fetus, conception was between February 12 and February 22, 2021. (Trial Tr. p. 301). Dr. Brown testified that after the procedure, he packaged the fetal tissue into a plastic jar and gave it to Investigator Flynn Tanner (Investigator Tanner) from the Richland County Sheriff's Department. Dr. Brown testified that the fetal tissue never left his sight, and he signed the evidence log when he handed it over to Investigator Tanner. (Trial Tr. pp. 302-03). Investigator Tanner testified that after he collected the fetal tissue from Dr. Brown, he handed it over to Investigator Clark. (Trial Tr. pp. 180-82). Investigator Clark gave the fetal tissue to Matthew Lee (Lee), who delivered the Victim's buccal swab, the fetal tissue, and Applicant's buccal swab to the South Carolina Law Enforcement Department (SLED). Lee testified that he followed all of the proper protocols to protect the samples. (Trial Tr. pp. 191-97).

Donna Money (Money), a DNA analyst from SLED's forensic services lab, was qualified as an expert in forensic DNA analysis. Money analyzed the DNA samples given by Applicant and



the Victim. (Trial Tr. pp. 250-51). Money testified that "[t]he DNA profile developed from the unborn child of [the Victim] is consistent with being from the biological offspring of [the Victim and Applicant]." (Trial Tr. p. 263, ll. 4-6). Money testified, "It is approximate 24 billion times more likely to see these genetic results if [Applicant] is the true biological father than if a random man is the father." (Trial Tr. p. 263, ll. -6-9). Money testified that "[g]iven the genetic evidence, greater than 99.9 percent of randomly selected men would be excluded as a biological father." (Trial Tr. p. 263, ll. 12-14).

Following these results, Applicant was arrested on July 6, 2021. Investigator Clark and Applicant testified that Applicant was given his Miranda² warning, and that Applicant signed the written consent and cooperated with law enforcement. (Trial Tr. pp. 225-27, 348-49).

CURRENT APPLICATION

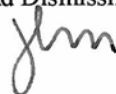
In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. Lack of Subject Matter Jurisdiction³
2. Ineffective Assistance of Counsel
 - a. Counsel failed to investigate the State DNA evidence and challenge its sufficiency.
 - b. Failed to investigate and challenge the sufficiency of the indictment.
 - c. Failed to strike three jurors Applicant wanted to strike, and one of the jurors was a friend of the family.
 - d. Failed to object to the Victim's false testimony which the Solicitor failed to correct.
 - e. Failed to request preliminary hearing or arraignment.
3. White v. State⁴ Claim
 - a. "Petitioner denied the Right to direct appeal Due to ineffective Assistance of Counsel, who would not file a Notice of Appeal."
4. Trial Court Error

² Miranda v. Arizona, 384 U.S. 436 (1966).

³ Respondent construes Applicant's response on page "B-3" of his attachment as an allegation that the circuit court lacked subject matter jurisdiction over his case.

⁴ 263 S.C. 110, 208 S.E.2d 35 (1974).



- a. "Trial judge did not let me terminate my lawyer on October 16, 2023."
- 5. Brady⁵ Violence
- a. "Solicitor failed to correct false testimony."
- b. "Defendant entitled to a new trial despite guilty plea based on the State's failure to disclose a witness inconsistent statement."

On May 15, 2026, Applicant filed an amended application through PCR counsel alleging the following:

1. Ineffective assistance of counsel for:
 - a. Failure to challenge the indictments and subject matter jurisdiction.
 - b. Failure to investigate evidence, facts and circumstances including DNA evidence, the victim's prior statements, potential defense witnesses, the timeline between the pregnancy and alleged assault.
 - c. Failure to file a belated appeal.
 - d. Failure to strike 3 jurors who were overly emotional or connected to Applicant.
 - e. Failure to object to the victim's false testimony.
 - f. Failure to get a preliminary hearing or arraignment.
 - g. Failure communicate, prepare for trial, discuss plea offer, and review discovery thoroughly.
 - h. Failure to prepare Applicant to testify at trial.
 - i. Failure to request a continuance.
 - j. Failure to challenge who would have woken up if he went into the girl's room to assault his daughter.
 - k. Failure to follow through on Applicant's request to relieve himself.
 - l. Failure to get the plea offer back on the table.

Before this Court are the Florence County Clerk of Court records regarding the Applicant's convictions; Applicant's records from the South Carolina Department of Corrections; a complete record of Applicant's direct appeal; the trial transcript; and the records of the current PCR action.

⁵ Brady v. Maryland, 373 U.S. 83 (1963).



STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁶ (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:

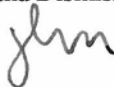
- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence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

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

⁶ S.C. Code Ann. §§ 17-27-10 to -160.



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 "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

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



hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief, with the exception of his claim for a belated appeal. See Rule 71.1(e), SCRCP (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."). However, this Court finds Applicant has met his burden under White v. State, and is thus entitled to a belated appeal.

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 further finds applicable the strong presumption that at all stages of Trial 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).

REQUEST FOR BELATED APPEAL

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

Applicant alleged Trial Counsel failed to file an appeal on his behalf, and Trial Counsel



agreed that he failed to do so. At the evidentiary hearing, Respondent agreed that Applicant was entitled to a belated appeal under White. Based on the record before this Court and the parties' agreement, this Court **GRANTS** Applicant the right to file a belated appeal.

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation 1(a): Failure to challenge the indictments and subject matter jurisdiction

Allegation 1(f): Failure to get a preliminary hearing or arraignment.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to challenge the indictments and subject matter jurisdiction. This Court finds these allegations to be without merit.

"The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." State v. Means, 367 S.C. 374, 383, 626 S.E.2d 348, 353 (2006) (quoting Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)). "An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon." State v. Scriven, 339 S.C. 333, 337, 529 S.E.2d 71, 73 (Ct. App. 2000) (quoting Carter v. State, 329 S.C. 355, 363, 495 S.E.2d 773, 777 (1998)).

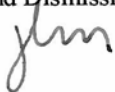
PCR Evidentiary Hearing

On direct examination, Applicant testified that he wanted Trial Counsel to object to the indictment because he could not find the date on the indictment on the court calendar. Applicant testified that he wanted a preliminary hearing, but it never came up with Trial Counsel.

On direct examination, Trial Counsel testified that he had the case for probably a couple of months.

Findings

This Court finds from the combination of the record and Trial 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 Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant's indictment in this case fulfills the requirements of the statutory language. The indictment was true-billed on November 23, 2021, and signed by the grand jury foreperson. This Court finds Applicant failed to show that the date on the indictment was incorrect, and further failed to show how an objection based on the date would have changed the outcome of his trial. Thus, Trial Counsel is not deficient for failing to challenge the indictment.

Applicant alleges he sought a preliminary hearing, but he was indicted by a grand jury in this case and therefore was not entitled to one. See Rule 2(b) SCRCrimP; see also State v. Hawkins, 310 S.C. 50, 54-55, 524 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held). Further, Trial Counsel was not hired until much later after a preliminary hearing would have been requested. This Court finds Trial Counsel not deficient.

Applicant alleges lack of subject matter jurisdiction. This claim fails as a matter of law. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. *Circuit courts obviously have subject matter jurisdiction to try criminal matters.*" (emphasis added)). Before the Court will hold an evidentiary hearing, a PCR applicant must make a prima facie showing he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has not made a prima facie showing that he is entitled to relief on this claim, and did not present any testimony on this issue at his evidentiary hearing.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1(b): Failure to investigate evidence, facts, and circumstances including DNA evidence, the victim's prior statements, potential defense

**witnesses, the timeline between the pregnancy
and alleged assault.**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to investigate evidence, facts, and circumstances in the case. This Court finds this allegation to be without merit.

A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

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)), 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)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional



norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. at 690. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

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.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he told Trial Counsel to investigate the time between the assault and the pregnancy, the crime scene, age limits, and more. Applicant testified that nothing was done, and he felt that impacted his case a lot. Applicant testified that he wanted Trial Counsel to obtain pictures of the trailer where they lived for his trial, so the jury could see the layout and size.

On cross-examination, Applicant testified that a diagram he drew of the house was admitted at trial. Applicant testified that regarding the timing of the pregnancy, he wanted Trial Counsel to investigate when the victim was pregnant and how long she had been pregnant. Applicant testified that he thought she claimed the assault occurred in June, not February.

On redirect examination, Applicant testified that Trial Counsel should have investigated or challenged the chain of custody of his DNA.

On recross-examination, Applicant testified that it was true that Trial Counsel cross-examined the State's witnesses regarding chain-of-custody issues.

On direct examination, Trial Counsel testified that the timeline of when the victim got pregnant matched the timeline of the assault allegations. Trial Counsel testified that he questioned the chain of custody vigorously during trial, but it did not appear to affect the jury. Trial Counsel testified that Applicant's diagram of the trailer showed the layout and how small it was, and he felt



that they sufficiently showed how difficult it would be to assault someone in a tiny trailer with eight people living there.

On cross-examination, Trial Counsel testified that he investigated the facts of the case. Trial Counsel testified that he did not recall Applicant's assertion that an assault occurred in the bedroom, and he at least recalled an assault in a laundry room.

Findings

This Court finds from the combination of the record and Trial 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 Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, *supra*. Based upon the record before this Court, it is undoubtedly clear that Trial Counsel investigated thoroughly and provided representation that satisfies the *Strickland* deferential standard. *See Mazzell v. Evatt*, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

Applicant testified that he thought the assault occurred in June, not February, and did not recall testimony that the assault occurred in February. However, the trial transcript directly contradicts this, and Applicant even testified at his trial that the investigation into these allegations occurred in April of that year.⁷ This Court finds Applicant **not credible**. Trial Counsel **credibly** testified that the timeline of the pregnancy lined up with the assault allegations, and the trial transcript is consistent with Trial Counsel's testimony.⁸ This Court also finds that Trial Counsel thoroughly cross-examined the DNA analyst and Investigator Clark regarding the chain of custody for Applicant's DNA.⁹ Applicant further failed to show how pictures of the trailer would have changed his case when he was able to admit his own diagram of the home into evidence for the jury.

⁷ Trial Tr. p. 361.

⁸ Trial Tr. pp. 103, 105, 110, 115, 280, 301, 358, 361.

⁹ Trial Tr. pp. 240-248, 266-268.



Additionally, Applicant failed to provide any information or evidence that Trial Counsel could have obtained through further investigation, and he did not present any witnesses at his PCR hearing. See Harris, 377 S.C. at 75-76, 659 S.E.2d at 145-46; see also Glover, 318 S.C. at 498-99, 458 S.E.2d at 540 (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.).

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 Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1(d): Failure to strike 3 jurors who were overly emotional or connected to Applicant.

Applicant alleges Trial Counsel's representation was constitutionally deficient for failing to strike jurors who were overly emotional or connected to Applicant. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he asked Trial Counsel to move to strike jurors, including a girl who was crying and a guy Applicant fought with once over his wife. Applicant testified that Trial Counsel said don't worry about them, we will just move on to next ones.

On cross-examination, Applicant testified that he did not know the jurors' names or juror numbers.

On direct examination, Trial Counsel testified that Applicant helped him pick the jury, and he did not recall any issues.

Findings



This Court finds through the combination of the record and Trial Counsel's credible 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 Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Applicant provided no evidence or information, such as names or juror numbers, for this Court to make a determination on this issue. Trial Counsel credibly testified that he did not recall any issues.

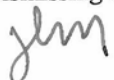
Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific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

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

Allegation 1(e): Failure to object to the victim's false testimony
Allegation 1(j): Failure to challenge who would have woken up if he went into the girl's room to assault his daughter

Applicant alleges Trial Counsel's representation was constitutionally deficient for failing to object to the victim's false testimony. Specifically, Applicant alleges that the victim's testimony regarding where she was sleeping and who would have heard them should have been more thoroughly challenged. This Court finds these allegations to be without merit.

"An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable'



action, nor can it prejudice the defendant against whom the evidence was admitted.” Id.; 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). Also, “[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.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel should have objected to the victim's testimony and cross-examined her better. Applicant testified that Trial Counsel should have cross-examined her on whether the incidents were forced or coerced, and should have pointed out that the brother was not in the room even though he testified for her.

On cross-examination, Applicant testified that Trial Counsel specifically should have objected to the victim saying she went in her bedroom, and the brother testifying when he did not know anything.

On direct examination, Trial Counsel testified that his strategy with the victim was to discredit her. Trial Counsel testified that the judge stopped him from going into prior sexual acts to try to cast doubt on the pregnancy. Trial Counsel testified that it was very difficult to overcome the evidence from the medical abortion showing DNA evidence that the child was Applicant's.

On direct examination, Solicitor Richardson testified that he was unaware of any false testimony by the victim. Solicitor Richardson testified that there were two instances of criminal sexual conduct, one occurring in a laundry room and another occurring somewhere else in a trailer.

Findings

This Court finds the combination of the record and Trial Counsel's **credible** 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 Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Trial Counsel's testimony **credible** and consistent with the trial transcript, which shows that he attempted to discredit the victim and to cross-examine her about the small size of the trailer relative to the



number of people in it.¹⁰ Trial Counsel had no basis to object to her testimony, as it was admissible as her version of events.

Applicant's allegation seemed to center around the idea that the victim claimed that she had a bedroom when she did not, and that she slept with her sister, but the victim clearly testified she did not have her own bedroom and was sleeping on the pull-out couch in her grandma's bedroom with her sister.¹¹ Further, Applicant alleges that there was an issue with the brother's testimony because he was "not there" where she slept. All the testimony at trial, including Applicant's, was that the night of the first assault, the victim fought with her sister and slept with Applicant on the pull-out couch in the same room as her brother, instead of her pull-out couch she shared with her sister in a different room.¹² This Court finds that Applicant is **not credible** and that his testimony at his PCR hearing contradicts his testimony at trial.

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

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED WITH PREJUDICE**

**Allegation 1(g): Failure to communicate, prepare for trial, discuss
plea offer, and review discovery thoroughly.**
Allegation 1(h): Failure to prepare Applicant to testify at trial.

Applicant alleges Trial Counsel's representation was constitutionally deficient for failing to communicate, prepare for trial, discuss plea offers, and review discovery thoroughly. Additionally, Applicant alleges Trial Counsel failed to prepare him to testify at trial. This Court finds these allegations to be without merit.

¹⁰ Trial Tr. pp. 125-144.

¹¹ Trial Tr. pp. 129-130.

¹² Trial Tr. pp. 105-106, 131, 279-280, 353-354.

In order to prevail upon a claim that counsel did not adequately prepare 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)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel should have communicated better. Applicant testified that he and Trial Counsel did nothing to prepare for trial, did not review discovery, and no discovery was discussed. Applicant testified that he had enough time to prepare for trial, but he wanted Trial Counsel to request a continuance because he could have weighed his plea options after he got an offer. Applicant testified that he would have gotten convicted regardless, but he thought he would have gotten less time. Applicant testified that Trial Counsel did not prepare him to testify and that they had maybe 30 seconds to discuss it. Applicant testified that there was a plea offer of fifteen years, and he told Trial Counsel he would think it over, but then he came back with twenty-five years, and Applicant did not want that.

On cross-examination, Applicant testified that he and Trial Counsel met twice before trial. Applicant testified that Trial Counsel should have requested a continuance if he was not prepared for trial.

On direct examination, Trial Counsel testified that he and Applicant probably met five times in jail and more often with his parents in Trial Counsel's office. Trial Counsel testified that they reviewed discovery and he mailed it to Applicant. Trial Counsel testified that he did not recall the exact offers; he thought there was an offer for CSC 3rd with a cap, and he advised Applicant to take it. Trial Counsel testified that Applicant had to think about it but ultimately would not make a decision. Trial Counsel testified that if there were an expiration date on the offer, he would have told Applicant, and he assumed there was one in this case and that it had been communicated to Applicant. Trial Counsel testified that he remembered on the day of trial, Applicant asked if it was



too late to accept the plea offer, and Trial Counsel said it was too late to accept on the prior terms, but they might be able to on new terms. Trial Counsel testified that he had ample time to prepare for trial and did not want to seek a continuance, and that a continuance would not have helped. Trial Counsel testified that if his clients tell him they are innocent, the client's testimony is better if it comes naturally rather than rehearsed, assuming they are telling the truth.

On cross-examination, Trial Counsel testified that it was Applicant's decision to testify.

Findings

Trial Counsel **credibly** testified that he communicated plea offers to Applicant and that Applicant wanted more time to decide, but never made a decision. Trial Counsel **credibly** testified that he met with Applicant over five times, where they discussed the discovery, and he mailed the discovery to Applicant.¹³ This Court finds Trial Counsel communicated with Applicant, prepared for trial, discussed the plea offers, and reviewed discovery. Further, Applicant failed to show how additional preparation, discussion, or review of discovery would have changed the outcome of his trial; rather, Applicant vaguely alleges that he would have been better prepared. Thus, Applicant failed to show prejudice.

This Court also finds Applicant failed to show how further preparation of his testimony would have changed the outcome of his trial. Applicant himself stated that he would have been convicted regardless, but he felt he would have received less time. See Strickland at 697 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed."). There was overwhelming evidence of guilt in Applicant's case, including DNA results and corroborating testimony. Thus, Applicant failed to show prejudice.

Accordingly, this Court finds Applicant has failed to establish any prejudice flowing from Trial Counsel's alleged deficiency. Thus, this allegation must be **DENIED** and **DISMISSED**.

¹³ This Court also notes that, regarding Applicant's motion to relieve counsel at trial, the trial court had a colloquy with both Trial Counsel and Applicant regarding Trial Counsel's preparation of the case, and the trial court found Applicant did not show that Trial Counsel should be relieved for lack of preparation. (Trial Tr. pp. 36-43).



Allegation 1(i): Failure to request a continuance

Allegation 1(l): Failure to get the plea offer back on the table.

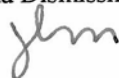
Applicant alleges Trial Counsel's representation was constitutionally deficient for failing to request a continuance. Additionally, Applicant alleges Trial Counsel failed to get the plea offer back on the table. This Court finds these allegations to be without merit.

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.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he had sufficient time to prepare for trial, but he wanted Trial Counsel to request a continuance because he could have weighed his plea options after receiving an offer. Applicant testified that he would have gotten convicted regardless, but he thought he would have gotten less time. Applicant testified that Trial Counsel should have requested a continuance if he was not prepared for trial. Applicant testified that there was a plea offer of fifteen years, and he told Trial Counsel he would think it over, but then he came back with twenty-five years, and Applicant did not want that.

On direct examination, Trial Counsel testified that he had ample time to prepare for trial, did not want to seek a continuance, and that a continuance would not have helped Applicant's case. Trial Counsel testified that he did not recall the exact offers; he thought there was an offer for CSC 3rd with a cap, and he advised Applicant to take it. Trial Counsel testified that Applicant had to think about it but ultimately would not make a decision. Trial Counsel testified that if there were an expiration date on the offer, he would have told Applicant, and he assumed there was one in this case and that it had been communicated to Applicant. Trial Counsel testified that he



remembered on the day of trial, Applicant asked if it was too late to accept the plea offer, and Trial Counsel said it was too late to accept on the prior terms, but they might be able to on new terms.

On direct examination, Solicitor Richardson testified that there was an initial plea offer of CSC 3rd with a fifteen year sentence, which was rejected. Solicitor Richardson testified that there may have been an increased offer of twenty years the day of trial, but that was the best he was willing to do, and it may have actually been twenty-five years like Applicant said. Solicitor Richardson testified there was no chance he would offer fifteen years at that point.

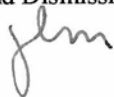
Findings

This Court finds through the combination of the record and Trial Counsel's credible 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 Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to allege or present any evidence of how a continuance would have impacted his case. Applicant himself testified that Trial Counsel should have requested a continuance "if he was not prepared," and Trial Counsel testified that he was prepared. Thus, Applicant failed to meet his burden of deficiency or prejudice on this allegation.

Applicant additionally fails on his allegation that Trial Counsel was ineffective for failing to get the plea offer back on the table. Trial Counsel communicated the offer; Applicant did not accept it, and Applicant later declined the twenty-year offer. Applicant did not meet his burden that 1) he would have accepted the initial plea offer, and 2) the prosecution would still offer that deal and the trial court would accept it at that point. See 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)).

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 Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial



counsel or any prejudice flowing therefrom. Thus, this allegation must **be DENIED** and **DISMISSED**.

Allegation 1(k): Failure to follow through on Applicant's request to relieve himself.

Applicant alleges Trial Counsel's representation was constitutionally deficient for failing to follow through on Applicant's request to relieve Trial Counsel. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he requested that Trial Counsel be relieved twice: once before trial, at a hearing, and once on the day of trial.

On cross-examination, Applicant testified that a motion to relieve counsel had been filed, and the judge ruled on it. Applicant testified that at that point, Trial Counsel should have moved for a continuance.

On direct examination, Trial Counsel testified that a motion to relieve counsel was filed, but when the hearing was scheduled, Applicant refused to be transported, so the motion was abandoned. Trial Counsel testified that he filed a motion to relieve on Applicant's behalf before trial, but he believed it was not taken up because the motion was withdrawn when Applicant refused transport to the hearing.

On direct examination, Solicitor Richardson testified that he believed the motion to relieve hearing was set for September 8, 2023, but Applicant refused to be transported, so the motion was waived.

Findings

This Court finds through the combination of the record and 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 Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel *did* follow through on Applicant's request to relieve counsel by appearing for the initial hearing and again raising it with the court at trial. This issue



was fully discussed before the trial court, where Solicitor Richardson and Trial Counsel informed Judge McIntosh of what occurred with respect to the motion to relieve. Judge McIntosh heard from Applicant before ruling that Applicant had waived his right to a hearing on the motion by refusing to attend the previously scheduled hearing, and further determined that there was no good cause to prevent the case from going forward.¹⁴ The trial court properly found that Applicant waived his right to a hearing on his motion to relieve; therefore, Trial Counsel was not deficient.

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant is entitled to a belated appeal, but is not entitled to relief on any of his other allegations. Therefore, this application for post-conviction relief must be **GRANTED** regarding the belated appeal, and all other allegations are **DENIED and DISMISSED WITH PREJUDICE**.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be granted on Applicant's request for a belated appeal;
2. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice on all other allegations; and

¹⁴ Trial Tr. pp. 34-43.



3. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21st day of July, 2026.

Jane H Merrill
JANE H. MERRILL
Presiding Judge
Twelfth Judicial Circuit

Greenwood, South Carolina

alm