

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
The Honorable Jane Merrill, PCR Action Judge
2022-CP-21-00717

RECEIVED

Jul 29 2026

S.C. SUPREME COURT

DEANGELO THOMAS, #358591,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Deangelo Thomas 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
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PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In April 2019, the Florence County Grand Jury indicted Applicant for the murder of Vernita Danielle White (Victim) (2019-GS-21-00581). On September 20-23, 2021, Applicant proceeded to a jury trial before the Honorable D. Craig Brown. Deputy Solicitor Todd S. Tucker and Assistant Solicitor James Ryan White represented the State. Initially, Emily M. Crayton, Esquire, represented Applicant. On January 17, 2020, a hearing was convened before Judge Brown on Applicant's motion to relieve counsel, and Judge Brown relieved Ms. Crayton as counsel for Applicant.¹

Thereafter, Scott P. Floyd, Esquire, and Christie W. Henderson, Esquire, represented Applicant. At the start of Applicant's trial, he moved to relieve counsel, but withdrew the motion after a colloquy with the trial court. However, after the State presented its fourth witness, Applicant renewed his prior motion to relieve counsel and proceed *pro se*. After advising Applicant of the dangers of proceeding *pro se*, Judge Brown granted Applicant's request. The jury convicted Applicant as indicted, and Judge Brown sentenced him to life imprisonment. Applicant did not appeal his sentence or conviction.

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he is entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to investigate case
2. White v. State² Claim
 - a. Counsel failed to file notice of appeal.
3. Trial judge biased; conflict of interest.

On May 13, 2026, Applicant filed an amended application for PCR with the following allegations:

1. Ineffective assistance of counsel for:
 - a. Failure to file a notice of appeal and inform Applicant of how to file a notice of appeal, even when asked.
 - b. Failure to investigate facts, circumstances, and potential witnesses.

¹ According to the Public Index and records Respondent possesses, Applicant was also represented by the Honorable H. Steven DeBerry, IV, prior to Ms. Crayton representing Applicant. (Trial Tr. p. 9).

² 263 S.C. 110, 208 S.E.2d 35 (1974).



- c. Failure to properly inform Applicant of motions that needed to be filed pre-trial and failure to discuss with Applicant the trial stages and proceedings.
 - d. Failure to properly communicate with Applicant, meet with him enough, and review the discovery.
 - e. Filing a speedy trial motion without conferring with Applicant first.
 - f. Failure to request a mental evaluation and to properly ensure Applicant knew what he was doing by proceeding forward *pro se*.
2. Conflict of Interest with Public Defenders Office

As requested relief, Applicant seeks to "vacate conviction."

Before this Court are the Florence County Clerk of Court records from the underlying conviction and sentence, Applicant's records from SCDC, the trial transcript, and the records of this PCR action.

STANDARD OF REVIEW

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

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

³ S.C. Code Ann. §§ 17-27-10 *et seq.*



such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; accord Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

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

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was



deficient, the applicant must demonstrate "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.

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.").



For ineffective assistance of standby counsel specifically, courts have held that there is no constitutional right to effective assistance of standby counsel. See U.S. v. Windsor, 981 F.2d 943, 947 (7th Cir. 1992); U.S. v. Morrison, 153 F.3d 34, 55 (2d Cir. 1998) (holding "without a constitutional right to standby counsel, a defendant is not entitled to relief for ineffectiveness of standby counsel").

Faretta requires that the accused be advised of their right to counsel and adequately warned of the dangers of self-representation to establish a valid waiver of counsel. Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990), citing Faretta v. California, 422 U.S. 806 (1975). "Since the matter of hybrid representation is left to the discretion of the trial judge, then, by implication, there is no Sixth Amendment right to hybrid representation." State v. Stuckey, 333 S.C. 56, 57, 508 S.E.2d 564 (1998).

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. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), 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.").

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

INITIAL FINDINGS

As an initial matter, this Court finds applicable the strong presumption that at all stages of Standby 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).

A *pro se* defendant may file a PCR application to present a "colorable claim of pretrial ineffective assistance of pretrial counsel." Lewis v. State, 439 S.C. 635, 640, 889 S.E.2d 570, 572 (2023). As in the current matter, Lewis alleged that his pretrial counsel had an obligation to inform him of his right to appeal and explain how to do so. Id. The Supreme Court did not decide whether that was a requirement of his former attorney because it remanded the matter to the trial court to consider his claims as of the time pretrial counsel represented him. Id. Because this court finds Applicant's waiver of counsel was valid, the analysis below applies to the period during which counsel represented Applicant pretrial and through trial, until the court granted Applicant's midtrial motion to proceed *pro se*.

INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATIONS

Allegation 1(a): Failure to file a notice of appeal and inform Applicant of how to file a notice of appeal, even when asked.

Applicant alleges Counsels were constitutionally ineffective for failing to file a notice of appeal and inform Applicant of how to file a notice of appeal, even when asked, and therefore, asserts he is entitled to belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). This Court finds this allegation to be without merit.

In Dearybury v. State, the South Carolina Supreme Court held that where a defendant knowingly and voluntarily waived his right to counsel, his failure to file a direct appeal is due to



his own inaction. 367 S.C. 34, 625 S.E.2d 212 (2006) (remanding to the PCR court for findings whether the applicant knowingly and voluntarily waived his right to counsel); See U.S. v. Windsor, 981 F.2d 943, 947 (7th Cir. 1992) (explaining the "court knows of no constitutional right to effective assistance of standby counsel"); U.S. v. Morrison, 153 F.3d 34, 55 (2d Cir. 1998) (holding "without a constitutional right to standby counsel, a defendant is not entitled to relief for ineffectiveness of standby counsel").

Trial

After Judge Brown sentenced Applicant, the following colloquy occurred between Judge Brown and Applicant:

THE COURT: Mr. Thomas, I fail to advise you before you exit the courtroom, so I'm advising you now. You have ten days, ten days from today to file an appeal you may have in this case.

MR. THOMAS: So how I suppose to file an appeal?

THE COURT: You your own lawyer, that's all I can tell you.

(Trial Tr. p. 460).

PCR Evidentiary hearing

On direct examination, Applicant testified that Counsels were supposed to assist him with his case and explain things to him, but he could not make a decision about appealing because they did not file an appeal or tell him how to file it. Applicant testified that the judge told him he had ten days to appeal, but when he asked how, the judge told him to talk to his lawyer.

On cross-examination, Applicant agreed that the judge told him he was his own attorney, not that he should talk to his lawyer.

On direct examination, Counsel Floyd testified that he did not recall Applicant ever asking him how to file an appeal. Counsel Floyd testified that he would have done it if Applicant asked.

On cross-examination, Counsel Floyd testified that Applicant never re-engaged Counsel Floyd as his attorney after his trial.

On direct examination, Counsel Henderson testified that Applicant did not ask her how to file a direct appeal.

Findings

As an initial matter, this Court finds Applicant **not credible** and Counsels Floyd and Henderson **credible**. While Applicant complained that Counsels did not tell him how to file an



appeal, Counsels Floyd and Henderson both testified that Applicant never asked them how to file an appeal.

Further, Counsels Floyd and Henderson did not represent Applicant at the point that Applicant would have filed an appeal, so Counsels cannot be deficient for their performance at that time. Applicant accepted the dangers of representing himself, which included knowing procedures and rules of court, and could have filed an appeal on his own behalf. The court properly advised him of his right to appeal, and the failure to timely file an appeal lies solely with Applicant's inaction. Thus, Applicant is not entitled to a belated appeal pursuant to White.

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

Allegation: **Failure to investigate facts, circumstances, and potential witnesses.**

Allegation: **Failure to properly communicate with Applicant, meet with him enough, and review the discovery.**

Applicant alleges Counsels were constitutionally ineffective for failing to investigate and failing to communicate with him and meet with him enough. Specifically, Applicant alleges he wanted Counsels to interview witnesses and go over arguments with him. 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 [on] 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)). 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)).

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. 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 would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

PCR Evidentiary hearing

On direct examination, Applicant testified that he requested that Counsel speak with witnesses and speak with people about various arguments he had. Applicant testified that Counsel



Henderson kept explaining that she called them, but Applicant was under the impression that they were not called. Applicant testified that Counsel Henderson visited him three times at most, and that Counsel Floyd told the judge he visited Applicant, but Counsel Floyd never went to see him except when Counsel Henderson went to see him.

On cross-examination, however, Applicant testified that he had never seen Counsel Floyd until the trial. Applicant testified that he wanted Counsels to contact potential witnesses, Ms. Garner and Ms. Green, and maybe others. Applicant testified that those witnesses were not present at his PCR hearing.

On direct examination, Counsel Floyd testified that Applicant was sometimes explosive and would yell during communication, but he still felt he was able to go back and forth, relaying information to Applicant. Counsel Floyd testified that he met with Applicant five or six times in person and reviewed discovery with Applicant. Counsel Floyd testified that he was aware of two witnesses Applicant told them about, and that Counsel Henderson had contacted them. Counsel Floyd testified that he discussed the trial with Applicant beforehand and that he tried to answer any questions Applicant had. Counsel Floyd testified that he discussed the facts and discovery with Applicant, who pointed out items he believed were relevant in discovery and appeared to understand the proceedings.

On cross-examination, Counsel Floyd testified that he investigated the facts, including the statements provided in the case and the forensics. Counsel Floyd testified that Applicant was given an offer of thirty-five years for murder, which he rejected. Counsel Floyd testified that he was prepared for trial.

On direct examination, Counsel Henderson testified thoroughly regarding her meetings with Applicant. Counsel Henderson testified that she met with Applicant on June 4, 2021; June 29, 2021; July 29, 2021; August 31, 2021; September 9, 2021, which was with Counsel Floyd; and sometime in May when she got the case, as well as about two dozen phone calls. Counsel Henderson testified that she attempted to contact every name Applicant provided, but they either did not want to speak with her or did not want to assist with his defense. Counsel Henderson testified that she tried to call Parker and sent her a Facebook message, but she did not respond, and that Green did not want to cooperate or communicate with her. Counsel Henderson testified that she did talk to the individual Applicant claimed was his mentor in Florence for something called "Fatherhood Initiative" but the individual would not provide any information and said he did not

want to be involved with Applicant. Counsel Henderson testified that she met with Applicant numerous times without Counsel Floyd before trial, but then they started meeting with Applicant jointly due to safety concerns because Applicant was extremely aggressive and had behavioral issues. Counsel Henderson testified that she was prepared for trial.

Findings

This Court finds 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 further finds Applicant has failed to overcome his burden in proving Counsels' representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Counsels **credibly** testified that they both met with Applicant numerous times, had many phone calls with him, and that they were prepared for trial. Counsels discussed the case with Applicant, contacted witnesses he gave them, and reviewed discovery with him. This Court finds Counsels were not deficient in their communication with Applicant, nor in their investigation of the case. Further, Applicant did not show prejudice, because he did not present his alleged witnesses to this Court or show how their testimony would have changed the outcome of his case. See Glover, 318 S.C. at 498-99, 458 S.E.2d at 540 (holding that PCR applicants must present witness testimony at the PCR hearing to succeed on a claim that counsel failed to call witnesses).

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

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

Allegation: **Failure to properly inform Applicant of motions that needed to be filed pretrial and failure to discuss with Applicant the trial stages and proceedings.**

Allegation: **Filing a speedy trial motion without conferring with Applicant first**



Applicant alleges Counsels were constitutionally ineffective for failing to properly inform Applicant of motions that needed to be filed, and failed to discuss how the proceedings worked. Specifically, Applicant alleged they filed a speedy trial motion without first conferring with him. This Court finds these allegations to be without merit.

PCR Evidentiary hearing

On direct examination, Applicant testified that he asked for a speedy trial motion because he was actually innocent. Applicant testified that Counsel Henderson filed it. Applicant testified that Counsels did not do what he requested them to do and never explained anything.

On direct examination, Counsel Floyd testified that they discussed the trial proceedings with Applicant beforehand. Counsel Floyd testified that when Applicant had first tried to relieve Counsels, he argued they weren't making the motions that he wanted, such as a motion to suppress, but Counsel Floyd and Counsel Henderson did in fact have a Jackson v. Denno hearing.

On direct examination, Counsel Henderson testified that Applicant sent her a couple of messages and left a voicemail in July of 2021 saying, "I'm not trying to aggravate you but did you file the speedy trial motion" and she told him she would file it that week, and then sent him a copy of the filed motion. Counsel Henderson testified that she attempted to communicate with Applicant numerous times about motions and strategy, but that Applicant did not want to talk about his defense and would not participate. Counsel Henderson testified that she tried to advise him, and Applicant made it very difficult. Counsel Henderson testified that in addition to the Jackson v. Denno hearing, there were other pretrial matters dealing with evidentiary issues with evidence obtained in the jail.

Findings

This Court finds 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 further finds Applicant has failed to overcome his burden in proving Counsels' representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Counsels **credibly** testified that they advised Applicant about the procedures and his rights and attempted to discuss defenses with Applicant, but that he made it difficult due to his behavioral issues. Although Applicant alleged in his amended application that Counsel filed a speedy trial motion without first consulting him, his testimony indicated that he wanted the speedy trial motion.



Additionally, the trial transcript reflects that Applicant took issue with Counsels not doing a motion to suppress, but Counsel Floyd pointed out on the record that they had not reached that stage yet,⁴ and Counsels later did make a motion to suppress.⁵ The trial court also thoroughly questioned Applicant about his knowledge of the types of motions to be made during trial and the procedures he had to follow, and asked Applicant if he still wanted to go forward with representing himself despite his lack of knowledge about those motions and procedures.⁶

Further, Applicant failed to provide how other motions would have changed the outcome of his proceeding. Applicant merely asserted that the outcome of his case would have been different if Counsels had achieved the desired result without offering to this Court what other motions could have been made or defenses presented. See Harris, 377 S.C. at 75-76, 659 S.E.2d at 145-46 (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (An applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome.)). There was overwhelming evidence against Applicant, and he waived his right to have Counsels effectively present a defense at trial when he relieved them during the State's presentation of the evidence. Thus, this Court finds Counsels were not deficient during the time they represented Applicant, nor was there any prejudice to Applicant.

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

Allegation 4: Failure to request a mental evaluation and to properly ensure Applicant knew what he was doing by proceeding forward *pro se*.

Applicant alleges Standby Counsel was constitutionally ineffective for failing to request a mental evaluation and to properly ensure Applicant knew what he was doing by proceeding forward *pro se*. This Court finds this allegation to be without merit.

"This Court has held that to be competent to stand trial or continue trial, a defendant must have 'a rational, as well as factual, understanding of the proceedings against him' and the 'ability to consult with his lawyer with a reasonable degree of rational understanding.'" Hall v. Catoe, 360

⁴ Trial Tr. pp. 24-25.

⁵ Trial Tr. p. 67.

⁶ Trial Tr. pp. 172-178.



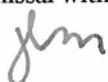
S.C. 353,359,601 S.E.2d 335,338 (2004) (citing State v. Bell, 293 S.C. 391, 395-96, 360 S.E.2d 706, 708 (1987) and Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960)).

"It is well-established that a defendant may waive the right to counsel and proceed *pro se*." Dearybury v. State, 367 S.C. 34, 39, 625 S.E.2d 212, 215 (2006) (citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)). "Although a defendant's decision to proceed *pro se* may be to the defendant's own detriment, it 'must be honored out of that respect for the individual which is the lifeblood of the law.'" Id. (quoting Faretta, 422 U.S. at 834). The Defendant must clearly assert his right to proceed *pro se*. Id. (citing State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)). A trial judge must inform the defendant of the "dangers and disadvantages of self-representation" and ensure the Defendant makes a "knowing and intelligent waiver of the right to counsel." Id. at 39-40; 405 S.E.2d at 277 (citing Faretta, 422 U.S. 806).

Trial

At trial, Applicant indicated to Judge Brown that he wished to represent himself. (Trial Tr. pp. 9-35). Based on this, Judge Brown began questioning Applicant about his level of education and knowledge of the law, warned Applicant of the dangers of self-representation, and advised him against it due to his limited knowledge of the law and court procedure. (Trial Tr. pp. 9-35, 160-189). Applicant elected not to proceed *pro se*, but later, after the trial began, he renewed his motion to relieve counsel and proceed *pro se* because he felt like it would be better for him to represent himself. (Trial Tr. p. 160). Applicant represented to the court that he had not completed tenth grade, that he could read and write, that he worked at American Luxury Coach for about six months in 2018, and he had never been treated for alcohol/drug abuse or mental illness. (Trial Tr. pp. 165-166). Applicant told the court that he ordered several law books on criminal procedures in South Carolina about a year and a half earlier, but said he was not familiar with the rules of evidence. (Trial Tr. pp. 167-169). Applicant told the court he understood he would be required to follow the rules if he represented himself, even though he was not familiar with the rules. (Trial Tr. p. 169). Ultimately, after a thorough colloquy with Applicant, Judge Brown granted Applicant's request to represent himself, and Applicant proceeded *pro se*. (Trial Tr. pp. 181-187).

PCR Evidentiary hearing



On direct examination, Applicant testified that he did not understand what was happening at trial because he was incompetent and lacked experience. Applicant testified that Counsels never explained the risks of going *pro se*, just sent him out there on purpose to make a fool of himself.

On cross-examination, Applicant testified that his choice to represent himself was voluntary.

On direct examination, Counsel Floyd testified that he saw nothing that would require them to request a mental evaluation, especially because Applicant pointed out things in discovery that he thought were relevant and seemed to understand the proceedings. Counsel Floyd testified that he had no concerns about competence.

On direct examination, Counsel Henderson testified that there were no competency issues, just behavioral issues. Counsel Henderson testified that when Applicant wanted to proceed *pro se*, she was not concerned about his competency to do so, other than that it was a poor decision.

Findings

This Court finds 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 further finds Applicant has failed to overcome his burden in proving Counsels' representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Counsels both **credibly** testified that they were not concerned about Applicant's competency. Applicant himself testified that the choice to proceed *pro se* was voluntary. Nothing in the record indicates that Applicant's rights were violated when he elected to represent himself. Applicant clearly asserted his desire to represent himself, the trial court thoroughly informed him of the dangers of self-representation, and the trial court found he "knowingly, voluntarily, and intelligently" waived his right to counsel.⁷ The trial court asked Applicant if he had ever been examined for competency; Applicant answered he had not, and did not request any such exam at that time.⁸ Applicant presented no evidence to this Court to demonstrate he was incompetent, or even that there was some concern such that Counsels should have sought a competency exam.

⁷ Trial Tr. p. 186.

⁸ Trial Tr. p. 166.

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

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

CONFLICT OF INTEREST ALLEGATION

Allegation 5: Conflict of Interest with Public Defender's Office

Applicant alleges there was a conflict of interest with the Public Defender's Office. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Counsel Floyd testified that, although he was not present at the proceedings before his representation, he saw the order sending the case back to the office, which he attributed to a personality conflict with Applicant and his former counsel. Counsel Floyd testified that they had not represented a co-defendant, any witness, or anything, and that no conflict of interest existed in this case.

Findings

The record before this Court makes clear that Applicant's previous attorney was relieved because Applicant did not cooperate with that attorney, and that no conflict existed once the case was reassigned to the Public Defender's Office.⁹ Having different public defenders in the office appointed to Applicant later is not a conflict of interest.

Accordingly, this Court finds Applicant has failed to meet his burden that any conflict of interest existed in his case. Thus, this allegation must be **DENIED** and **DISMISSED**.

⁹ Trial Tr. pp. 12-13 ("There was a subsequent order signed by me dated February 3rd of 2020, wherein Mrs. Crayton was relieved as counsel for Mr. Thomas and the bases of that order the Court does not believe the defendant will -- the Court does believe that the defendant will not cooperate in his defense with current counsel, so obviously there was a -- some conflict going on there in pursuant to that order is when Mr. Deberry was evidently appointed. The defendant appeared in front of me again on June 25th of 2020, wherein I denied his bond then. Mr. Deberry was appointed February 11, 2000 -- Mr. Deberry was appointed sometime thereafter, and then I signed an order which in turn assign the case back to the public defender's office dated February 11, 2021, indicating that no such conflict or no conflict existed any further.").

CONCLUSION

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

This Court notifies 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 to 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 the 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 Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

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

Greenwood, South Carolina

John