

RECEIVED

Aug 03 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Walton J. McLeod, IV, Circuit Court Judge

2025-CP-42-03777

Frank Gunby, Jr..... Appellant,

v.

The State, Respondent.

NOTICE OF APPEAL

Frank Gunby, Jr. appeals the Honorable Walton J. McLeod, IV's Order of Dismissal with Prejudice filed July 29, 2026.

This 1st day of August, 2026.

s/Susannah Ross

Susannah Ross, Attorney at Law

Bar #11205

330 E. Coffee St.

Greenville, SC 29601

(864) 242-0029

susannah@rossenderlin.com

Attorney for Appellant

Other Counsel of Record:

McConnell Harrison, Assistant Attorney General

P.O. Box 11549

Columbia, SC 29211

(803) 734-3970

Attorney for Respondent

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2025-CP-42-03777

**ORDER OF DISMISSAL
WITH PREJUDICE**

V.

Respondent.

Presiding Judge:	Hon. Walton J. McLeod, IV.
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	O. McConnell Harison, Esq.
Plea Counsel:	Louei C. Nmai, Esq.
Solicitor:	Grace C. Kerley, Esq.
Court Reporter:	Bobbi Fisher
Date of Hearing:	March 3, 2026

This matter comes before the Court by way of Frank Gunby Jr.'s (Applicant) application for post-conviction relief (PCR) filed on July 22, 2025. On February 11, 2026, Respondent filed its Return requesting an evidentiary hearing on Applicant's claims. Applicant subsequently amended his application through PCR Counsel to add additional claims of ineffective assistance of counsel.

On March 3, 2026, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General O. McConnell Harison represented Respondent. Applicant proceeded on the claims in his PCR application and amended application. In support of these claims, Applicant testified on his own behalf. Respondent presented testimony from Louie C. Nmair (Plea Counsel).

Page 1 of 25

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

PROCEDURAL HISTORY

Applicant is presently confined within the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Spartanburg County Clerk of Court. During its September 2024 Term, the Spartanburg County Grand Jury indicted Applicant for trafficking methamphetamine, 28 to 100 grams (2024-GS-42-4254); trafficking methamphetamine, 10 to 28 grams, 2nd offense (2024-GS-42-4255); and trafficking methamphetamine, 10 to 28 grams, 2nd offense (2024-GS-42-4139).

On January 29, 2025, Applicant appeared before the Honorable G.D. Morgan, Jr. at the Spartanburg County Courthouse. Applicant was represented by Louei C. Nmair, Esquire. Grace C. Kerley of the Seventh Circuit Solicitor's Office prosecuted the case. Applicant pled guilty pursuant to plea negotiations with the State. Applicant pled guilty as indicted to two charges of trafficking methamphetamine, 10 to 28 grams, 2nd offense. (2024-GS-42-4255; 2024-GS-42-4139).

Upon entering his guilty plea, the State dismissed the indictment for trafficking methamphetamine, 28 to 100 grams (2024-GS-42-4254), dismissed Applicant's LWOP notice based on his criminal history, and dismissed an additional warrant for possession of methamphetamine in Cherokee County that was served on Applicant shortly before the plea hearing date. There was also an order imposed prohibiting Applicant from possessing firearms.

Applicant entered his guilty plea, violating the conditions of his supervision for a previous conviction for PWID methamphetamine (2023-GS-42-0750), for which Applicant was sentenced

to five years' incarceration, suspended to 14 months, and three years' probation. Judge Morgan revoked Applicant's probation in full and terminated it upon Applicant's entry of a guilty plea.

Judge Morgan sentenced Applicant to concurrent sentences of 15 years' imprisonment for each conviction of trafficking methamphetamine, 10 to 28 grams, 2nd offense, and imposed a fine of \$50,000 for each conviction. Applicant was given credit for 181 days' time served.

Facts Giving Rise to Conviction

The facts of Applicant's case were articulated by the solicitor at Applicant's guilty plea hearing as follows:

As to the facts, Your Honor, on Indictment 24-4255, on May 10th of 224 sheriff's office narcotics officers responded to a location on Glenn Springs Road in Spartanburg County. The defendant was the subject of an ongoing narcotics investigation. He gave consent to search his residence. And from a shed by the residence law enforcement recovered 14.18 grams of meth. Next, Your Honor, as to Indictment 24-4139, on August 1st of 2024 the defendant was booked in the detention center at California Avenue in Spartanburg County on two outstanding drug warrants from two prior incidents. From his person 25.90 grams of meth was recovered.

(Plea Tr. p. 12).

CURRENT APPLICATION

In his application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds (excerpts verbatim¹):

- I. Ineffective Assistance of Counsel
 - a. Involuntary Guilty Plea
 - i. "The public defender told me to plead guilty".
 - ii. "I was a drug user not a sell[er], help a so called friend and he was a CI and Dallas Ham was an inform[a]nt. We was friends hav[ing] sex getting hi[gh]".

¹ Applicant's claims as currently written on his PCR application have been construed as claims of ineffective assistance of counsel resulting in an involuntary guilty plea, as well as ineffective assistance of counsel for failing to advise Applicant of his right to a direct appeal.

- iii. "I was just a drug user I have never sold drugs. Just use them looking for a free hi[gh] so I got him sell's so I get free drugs".
- iv. "I know Johnny Body brings the drugs to me I was just a user he said if I know anyone that wants to buy drugs I can [illegible] so I would get it for free".
- v. "The cop Nicholas Royal gave Johnny Body the drugs to my house Johnny [sold] the drugs to Dallas Ham".
- vi. "She gave me money I have to Johnny Body he gave Dallas Ham the drugs when she got in the Jeep".

b. White² Claim

Applicant subsequently amended his PCR application through counsel to include the following claims:

- I. Ineffective Assistance of Counsel
 - a. Failing to argue an accommodation defense.
 - b. Failing to present mitigating evidence.

Before this Court are the Spartanburg County Clerk of Court records regarding the subject convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

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

- 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2. That the court was without jurisdiction to impose sentence;
- 3. That the sentence exceeds the maximum authorized by law;
- 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

² White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

³ S.C. Code Ann. §§ 17-27-10 to -160.

ALBANY COUNTY CLERK
JUL 10 2025

62 707 9207

DE 11-2

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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

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

said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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

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

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.

Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

INITIAL FINDINGS

NO TO ANY
ALIBI EVIDENCE
INFO TO COURT
14:11:11 23 JUN 2025

05714

indicated that he understood the enhancement effect in regard to the charges being violent and serious offenses and the effect of that on his conviction. (Plea Tr. p. 11); (8) Applicant agreed with the solicitor's recitation of the facts supporting his conviction (Plea Tr. p. 14); (9) Applicant indicated that nobody had promised him anything, threatened him or forced him to plead guilty (Plea Tr. p. 14); (10) Applicant indicated that he had time to speak with Plea Counsel, understood everything Plea Counsel has told him and did not need additional time to speak with Plea Counsel. (Plea Tr. p. 14); (11) Applicant indicated that he was satisfied with Plea Counsel's representation and advice (Plea Tr. p. 15); (12) Applicant indicated that he is pleading guilty because he is guilty of the charges (Plea Tr. p. 15).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Allegation: Involuntary Guilty Plea

Applicant alleges that his guilty plea was involuntarily entered due to Plea Counsel's constitutionally ineffective representation. This Court finds this allegation to be without merit.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusive unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)). To establish that a guilty plea is voluntarily and knowingly entered into, the record must demonstrate that the applicant had a full understanding of the consequences of their plea and the charges against them. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). (Courts must make sure defendants have a full

understanding of what the plea connotes and of its consequences. When the judge discharges that function, he leaves a record adequate for any review that may be later sought ... and forestalls the spin-off of collateral proceedings that seek to probe murky memories.”)

When determining guilty plea issues, it is proper to consider both the guilty plea transcript and the evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362, 426 S.E.2d 795, 797 (1993).

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

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been

afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler, 566 U.S. at 164). 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.

Guilty Plea Hearing

At Applicant's guilty plea hearing, the following colloquy occurred between Applicant and the court:

THE COURT: All right. Mr. Gunby, you heard the solicitor lay out the facts?

APPLICANT: Yes, sir.

THE COURT: Has anybody promised you anything, threatened you or forced you to come in here and plead guilty?

APPLICANT: No, sir.

THE COURT: Have you had a chance to speak with your lawyer?

APPLICANT: Yes, sir.

THE COURT: And have you understood everything he has told you?

APPLICANT: Yes, sir.

THE COURT: And do you need additional time to speak with him?

APPLICANT: No.

THE COURT: And are you satisfied with his advice and representation?

APPLICANT: Yes, sir.

THE COURT: And are you pleading guilty here today because you are guilty?

APPLICANT: Yes, sir.

THE COURT: All right. I accept the plea and find the defendant is freely, voluntarily and intelligently pleading guilty with the advice of his attorney. He is satisfied with that advice. And the state has the facts to support the plea.

(Plea Tr. pp. 14 – 15).

FILED
JUL 29 2025
CLERK OF COURT
JUL 29 2025
62 737 9202

PCR Evidentiary Hearing

On direct examination, Applicant testified that he was informed that the State was seeking to sentence Applicant to life without the possibility of parole for his charges. Applicant testified that the solicitor was unwilling to go any lower than twenty years for a sentence, but that he was approached with a fifteen-year offer if he accepted it that same day. Applicant testified that he accepted the fifteen-year offer because “it’s better than life”. (PCR Tr. p. 9). Applicant testified that he understood the solicitors were trying to help him with this plea offer, but that he didn’t understand what was happening due to being a drug user. Applicant testified that at the time of his plea, he had just “come off the street doing drugs”. Applicant testified that he was high every day at all hours of the day and would fall asleep while driving his vehicle. (PCR Tr. p. 10).

When asked what Plea Counsel should have done for him, Applicant testified, “Well, he just well – he discussed it. He said he was going to do the best he can and get me ten years and five years’ probation. I was like, ‘That’s cool.’ And then he said, ‘Well, she don’t – the solicitor don’t want to come off 20, but I can get you 15 if you take it now.’ So I was nervous. I said, ‘Okay.’ I mean, I was like, ‘Okay, well, it’s better than life.’ You know what I mean? I thought it was a good deal.” (PCR Tr. pp. 10 – 11).

On direct examination, Plea Counsel testified that Applicant initially wanted to proceed with trial. Plea Counsel testified that he advised Applicant that it was in his best interest to take a plea. Plea Counsel testified that the solicitor offered Applicant to plead guilty on all three charges to include trafficking methamphetamine, 10 to 28 grams, and trafficking amphetamine, 28 to 100 grams, to a negotiated plea deal with a fifteen-year sentence. Plea Counsel testified that he was ultimately able to get the larger trafficking charge down to trafficking 10 to 28 grams. Plea Counsel

testified that he recalls asking the solicitor about a potential offer less than fifteen years, but the solicitor would not go any lower on the negotiated sentence. (PCR Tr. pp. 19 – 20).

Plea Counsel testified that he discussed the State's notice seeking LWOP with Applicant during their meetings. Plea Counsel testified that Applicant's prior convictions resulted in the strikes that led to the LWOP notice. Plea Counsel testified that Applicant seemed to understand all of the discussions that occurred between them, and that Applicant kept reiterating to him that he was a drug user and not a drug dealer or seller. Plea Counsel testified that Applicant believes there must be intent involved in order to be convicted of trafficking drugs, and that the statute regarding trafficking only concerns the possession of a certain weight and does not address intent. (PCR Tr. pp. 18 -19).

When asked what his strategy would have been if Applicant decided to proceed with trial, Plea Counsel testified that there were many issues they would have had to overcome. Plea Counsel testified that the confidential informant and related police reports would certainly be an issue, in addition to a constructive possession issue concerning the drugs found at Applicant's home. Plea Counsel testified that Applicant's address matched a confidential informant buy that officers ultimately responded to. Plea Counsel testified that with all of this evidence against them, it would have been difficult to argue that Applicant had no knowledge of the drugs in the home. (PCR Tr. pp. 20 -21). Plea Counsel testified that he would have attempted to "muddy the waters" a bit to the jury and had Applicant take the stand at trial to testify as to being a drug user and not a trafficker. Plea Counsel testified that they ran into the issue of Applicant planning to testify, considering he has a prior drug trafficking conviction, which "blows the whole thing up". (PCR Tr. p. 21).

On cross-examination, Plea Counsel testified that he and Applicant discussed the fact that the police searched Applicant multiple times prior to finding the drugs in his shoe. Plea Counsel

testified that the search would have been part of their defense at trial. Plea Counsel testified that he explained the jury's role to Applicant and their obligation as the fact finder, and additionally how the fact finder has to determine who is more credible at trial, highlighting to Applicant that it would be his words against the officer's words. Plea Counsel testified that he has this conversation with most clients, especially clients facing convictions for drug charges. (PCR Tr. pp. 24).

Plea Counsel testified that Applicant told him he wanted a sentence of less than fifteen years as part of the negotiated plea. Plea Counsel testified that he reached out to the solicitor to discuss a shorter negotiated sentence, but the solicitor would not budge, stating that fifteen was the lowest she would offer Applicant. Plea Counsel testified that he informed Applicant of the great risk they faced with LWOP at trial, especially considering his history and prior convictions. When asked if Applicant ever wanted an open plea, Plea Counsel testified that Applicant wanted a negotiated sentence so that he wouldn't have to gamble with a range of sentencing. (PCR Tr. pp. 25 – 26).

Findings

As an initial matter, this Court finds that the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the potential sentence he could receive, which he knew was not capped at thirty years. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73–74 (1977). Statements made during a guilty plea should be considered conclusive unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 U.S. 28 (2000).

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

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362, 426 S.E.2d 795, 797 (1993). Plea Counsel credibly testified that, while Applicant initially wanted to proceed to trial, he informed Applicant that it would be in his best interest to plead guilty and get the negotiated sentence of fifteen years. Plea Counsel further credibly testified that he engaged in plea negotiations with the State, attempting to get an offer for a sentence of less than fifteen years at Applicant's request. However, the solicitor was unwilling to go below a negotiated fifteen years.

Plea Counsel testified that he informed Applicant that it would be the police officers' word against Applicant's at trial, and that they would have many issues to overcome in crafting a defense. Plea Counsel testified that while Applicant asserted that he was only a drug user and not a drug trafficker, this would not be a successful defense at trial, considering the trafficking statute considers weight and amount, not intent to traffic or distribute. Plea Counsel also testified to the issue of Applicant's prior convictions for trafficking. Further, Applicant testified that they accepted the offer of a negotiated fifteen-year sentence because that outcome was preferable to a life sentence. Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has

failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Plea Counsel's performance.

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: White Claim / Failure to File Direct Appeal

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to file a direct appeal on his behalf following his guilty plea. This Court finds this allegation to be without merit.

Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to a guilty plea:

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

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also

Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason

to think either that a rational defendant would want to appeal or that the particular defendant

reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th

Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client

regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea,

the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant

relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders⁴ 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)).

Guilty Plea Hearing

At the end of Applicant's plea hearing, the Court informed Applicant and Plea Counsel that Applicant was given 181 days' time served credit and that he has ten days to file a direct appeal. (Plea Tr. p. 18).

PCR Evidentiary Hearing

On direct examination, when asked whether he had requested that Plea Counsel file a direct appeal following his guilty plea, Applicant testified that he didn't really know what to ask Plea Counsel. Applicant testified that, when he got to prison, an inmate informed him about post-conviction relief applications and taught him how to fill out the application. Applicant testified that he had done so by spending time in the law library at Kirkland Correctional. (PCR Tr. pp. 11 – 12).

⁴ Anders v. California, 386 U.S. 738 (1967).

CLERK OF COURT
JULY 10 2025
JUL 10 2025

2025 JUL 10 14:11

65714

On direct examination, Plea Counsel testified that he does not recall Applicant ever requesting a direct appeal be filed on his behalf. Plea Counsel testified that he did not know of any circumstances that would have caused him to pursue a direct appeal. Plea Counsel testified that he was not present during the initial qualification of Applicant at Applicant's guilty plea hearing because he was first up in a separate trial that morning. Plea Counsel testified that he recalls Judge Morgan going back through the colloquy again with Applicant with Plea Counsel present. Plea Counsel reiterated that he does not recall anything in Applicant's case that would be a basis for a direct appeal. (PCR Tr. p. 23).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome her burden in proving Plea 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 Plea Counsel 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").

Plea Counsel credibly testified that he does not recall Applicant ever requesting that he file a direct appeal on his behalf, and that he does not recall anything with Applicant's guilty plea that would have made Plea Counsel pursue a direct appeal. A combination of the record and Plea

Counsel's testimony establishes that Applicant did not request a direct appeal be filed on his behalf, and that Plea Counsel did not see any appealable issues to raise concerning Applicant's guilty plea. In a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective for failing to file a direct appeal on his behalf following a guilty plea.

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

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Failure to argue accommodation defense

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to present an accommodation defense. This Court finds this allegation to be without merit.

South Carolina Code § 44-53-460 states:

Any person who enters a plea of guilty to or is found guilty of a violation of Section 44-53-370(a) or (c) may move for and the court shall grant a further hearing at which evidence may be presented by the person, and by the prosecution if it so desires, relating to the nature of the act on the basis of which the person has been

convicted. If the convicted person establishes by clear and convincing evidence that he delivered or possessed with intent to deliver a controlled substance, except a controlled substance classified in Schedule I (B) and (C) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug, only as an accommodation to another individual and not with intent to profit thereby nor to induce the recipient or intended recipient of the controlled or counterfeit substance to use or become addicted to or dependent upon the substance, the court shall sentence the person as if he had been convicted of a violation of Section 44-53-370(c).

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that he saw no basis to raise an accommodation defense in Applicant's case. Plea Counsel testified that the charge, where Applicant may have had the opportunity to raise an accommodation defense, was ultimately dismissed. Plea Counsel testified that regarding the two trafficking charges Applicant pled to, Applicant never alleged that he was in possession of those drugs for Johnny Boyd. Plea Counsel testified that Applicant was adamant that he would not have told the officers to search his home or given them permission to do so if he was aware the drugs were present at the home. Plea Counsel testified that Applicant's position regarding the drugs found in his shoe was that twenty-something grams of meth would not fit inside somebody's shoe, and that the officers planted the drugs on Applicant. (PCR Tr. p. 21).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome her burden in proving Plea 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 Plea Counsel 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").

Plea Counsel credibly testified that raising an accommodation defense would not have been helpful in Applicant's case, as the case they had the opportunity to raise this defense for was ultimately dismissed. Plea Counsel credibly testified that Applicant's position was that he was unaware of being in possession of the drugs he was charged with, which were found in his home. Plea Counsel credibly testified that Applicant informed him the police planted the other drugs in his shoe. Applicant did not offer any testimony regarding this claim.

An accommodation defense would not have been proper for Applicant's case, considering Applicant cannot have the intent to accommodate another individual with drugs if he contends that he was unaware of the drugs being in his possession. A combination of the record and Plea Counsel's testimony establishes that Plea Counsel did explore the possibility of an accommodation defense for Applicant's other charge that was ultimately dismissed and determined that the defense would not be applicable to Applicant's other charges. Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective for failing to raise an accommodation defense. Applicant also cannot establish that, but for this alleged deficiency, he would have proceeded to trial, as he testified to the court that he took the plea to avoid a life sentence.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has

failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Plea Counsel's performance.

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Failure to present mitigating evidence

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to present mitigating evidence following his guilty plea. This Court finds this allegation to be without merit.

Guilty Plea Hearing

At Applicant's guilty plea hearing, Plea Counsel stated the following during mitigation:

Thank you, Your Honor. Respectfully, what we're asking the Court is accept the negotiation. We are asking the Court to just terminate the probation. Even if ran concurrent that 15 years is going to hold him for about 12 with the minimum amount of time he has. He is a drug addict. I've had conversations with him and I know one of his bigger points is I'm not selling drugs. And the trafficking statute doesn't care. The trafficking statute only cares if you're in possession of a certain amount. There was a situation. It has been ultimately dismissed, but I think it's important Your Honor understands that on the case where the C.I. was dismissed, in my conversations with Mr. Gunby essentially he was acting as a mule for another individual who essentially ends up taking the brunt as he has here where the individual promises him, hey, you help me here, I'll give you drugs. And that's how he paid for it. He paid for it in work. And he's paying the price for it. He was LWOP'd. This at least gives him an opportunity, obviously, to hope to still have a chance to get out of the Department of Corrections. He is 55 years old. So that makes 12 years a long time. He's looking at 67 if he's able to make it through and get out. As dark as that is, Judge, we are asking the Court to just terminate the probation and accept the negotiation.

(Plea Tr. pp. 17 – 18).

CLERK OF COURT
JUL 23 11:47
2025

00714

PCR Evidentiary Hearing

On direct examination, Plea Counsel testified that the biggest point Applicant always made to him was the assertion that Applicant is a drug user and not a drug dealer or seller. Plea Counsel testified that he highlighted this to the court and wanted to impress upon the court that Applicant acknowledges his drug addiction problems. When asked if there was any additional mitigation evidence he could have presented, Plea Counsel testified that there was not much mitigation that could have been done considering Applicant's guilty plea was negotiated. Plea Counsel testified that he did raise other mitigating factors at Applicant's bond hearing, including the fact that Applicant is a high school graduate and had a career in landscaping and construction. (PCR Tr. pp. 22 – 23).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court additionally finds that Applicant has failed to overcome her burden in proving Plea 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 Plea Counsel 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").

RECEIVED
JUL 29 2025
CLERK OF COURT

The record and Plea Counsel's testimony establish that Plea Counsel did present mitigating evidence on Applicant's behalf at his guilty plea hearing. Plea Counsel credibly testified that the main point he wanted to highlight to the court was the fact that Applicant was a drug addict, and that Applicant acknowledged his drug problem. Plea Counsel credibly testified that due to the plea offer having a negotiated sentence, further mitigation at this point would not have made much, if any, of a difference considering Applicant's sentence was already negotiated. Plea Counsel credibly testified that, at prior hearings, he highlighted to the court that Applicant was a high school graduate and maintained employment in construction and landscaping. Additionally, Applicant offered no testimony regarding this claim. Therefore, Applicant cannot establish that Plea Counsel was constitutionally ineffective for failing to present mitigating evidence on his behalf, as the record shows Plea Counsel did present mitigating evidence to the court. Further, Applicant's sentence was negotiated and therefore would not have been affected much, if at all, by presenting further mitigation.

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

This Court finds through the combination of the record and Plea Counsel's testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

CONCLUSION

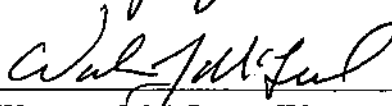
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

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 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 Applicant's behalf if Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for the appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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


WALTON J. MCLEOD, IV
Presiding Judge
Seventh Judicial Circuit

Greenville, South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
JUL 29 2026
637809377