

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Thomas Rode, PCR Action Judge
2024-CP-46-03517

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S.C. SUPREME COURT

JOHNNY WALKER, #393680,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Johnny Walker appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Thomas Rode, circuit court judge, on February 18, 2026, and was denied by written order issued filed on August 4, 2026. Applicant received notice of the judgement on August 4, 2026.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
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P.O. Box 11549
Columbia, SC, 29211-1549

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

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DORR COUNTY, SC
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g – 3rd or sub. (2022-GS-46-05361); Distribution, etc. of methamphetamine, 3rd or sub. (2022-GS-46-05356); and Distribution of Fentanyl 4th Offense (2022-GS-46-05362). Applicant was represented by Matthew Niemiec, Esquire (Niemiec). Austin Newman Smith of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On March 22, 2024, Applicant appeared before the Honorable William A. McKinnon, circuit court judge, and pleaded guilty to the lesser-included offense of Trafficking Methamphetamine, 10 grams or more, Second Offense (2022-GS-46-5361). The State dismissed the remaining charges as part of the plea agreement. Pursuant to negotiations, Judge Hall sentenced Applicant to fifteen (15) years' imprisonment, along with credit for time served.

On March 25, 2024, Applicant appeared before Judge McKinnon and pleaded guilty to the lesser-included offense of Trafficking Methamphetamine, 10 grams or more, Second Offense (2022-GS-46-5355). Pursuant to negotiations, Judge McKinnon sentenced Applicant to fifteen (15) years' imprisonment to run concurrent, along with credit for time served.

Applicant filed an untimely notice of appeal. Niemiec and Robert Michael Dudek, Esquire, represented Applicant on appeal. On April 25, 2024, the South Carolina Court of Appeals dismissed Applicant's appeal for being untimely. *State v. Walker*, Appellate Case No. 2024-000672 (Ct. App. filed April 25, 2024). The remittitur was returned to the circuit court on May 14, 2024.

CURRENT APPLICATION

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

1. Ineffective Assistance of Plea Counsel:
2. Involuntary Guilty Plea
 - a. "Conviction & sentence unconstitutional"
3. Fraud upon Court by Officers of Court



- a. "No Great Seal on 1993 Act No. 184; 1995 Act. No. 7"
 - b. "Hazel-Atlas Glass Co. vs. Hartford-Empire Co., 332 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944)"
4. White¹ Claim
- a. "did not know could on guilty plea"

On February 18, 2026, Applicant, through PCR counsel, filed an amended application including the following additional allegations:

- 1. Ineffective Assistance of counsel for:
 - a. Failure to investigate the great seal.
 - b. Failure to get a better plea deal.
 - c. Failure to effectively communicate and meet enough.
 - d. Scaring Applicant into pleading.
 - e. Failure to discuss trial strategy, discovery, defenses
- 2. Invalid Plea.
 - a. Applicant thought he was only pleading to one count of trafficking until the morning of the plea.
 - b. Applicant was afraid that if he did not plead, he would receive a substantially harsher sentence.

Before this Court are the York County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcripts, Applicant's records from his direct appeal, and the records of the current PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

¹ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Ineffective Assistance of Counsel, Generally

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

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty

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

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

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



Counsel's failure to effectively communicate with Applicant and discuss defenses and trial strategy

Applicant alleges Counsel was ineffective for failing to effectively communicate and meet with him enough. Applicant further alleges Counsel was ineffective for failing to discuss trial strategy, discovery, and defenses. This Court finds these allegations are without merit. There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "[B]revity of consultation time between a defendant and his counsel, alone, 'cannot support a claim of ineffective assistance of counsel.'" *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by itself establish that counsel's performance was inadequate."); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result").

At the evidentiary hearing, Applicant testified he only talked to Counsel three times. Applicant testified that Counsel never discussed with him his constitutional rights, the discovery, any defenses, and evidence pertaining to the confidential informant. Applicant testified that the



confidential informant was crucial because all the State's evidence related to the informant. Applicant testified his anticipated defense at trial was that the confidential informant broke into his house, woke him up, and gave him drugs. Applicant asserts this would have questioned the credibility of the confidential informant. Applicant further testified that there was a discrepancy between the dates listed in the affidavit and the dates to which the Solicitor stated at the plea hearing. Applicant contends that had Counsel discussed these discrepancies with him he would have insisted on proceeding to trial. Applicant also testified that the SLED analysis of the drugs was almost a gram more than the street test weight.

Counsel testified he was appointed to represent Applicant a little over a year prior to his guilty plea. Counsel testified he met with Applicant six to ten times. Counsel explained that the first visit was routine in which he informed Applicant not to discuss the case with anyone and the attorney-client privilege. Counsel testified that at subsequent meetings he reviewed the available discovery with Applicant, potential motions to suppress, and cross examination of the CI. Counsel credibly explained that CI information is not typically provided to defendants until just prior to trial. Counsel credibly testified they had plenty of time to discuss discovery.

This Court finds the record and Counsel's credible testimony establishes that Counsel adequately communicated with Applicant, discussed defenses and trial strategy, and was prepared for trial. Applicant's claim that Counsel failed to adequately communicate with him is refuted by the record. At the time of his plea, Applicant informed the plea court that he had enough time to speak with Counsel, that Counsel answered all his questions, and he was completely satisfied with Counsel. (Plea Tr. p. 6). Counsel additionally informed the plea court that he discussed with Applicant his constitutional rights, the State's evidence, and any possible defenses. (Plea Tr. p. 7). Based on Counsel's credible testimony at the evidentiary hearing and the record of Applicant's

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plea, this Court finds Applicant's testimony that Counsel never discussed his constitutional rights, discovery, or evidence with him not credible. This Court further finds that Counsel properly reviewed the evidence, discovery, and constitutional rights with Applicant. To the extent Counsel was unable to discuss the confidential informant information with Applicant prior to the plea, Counsel credibly testified that it was standard practice for the State to withhold confidential informant information until shortly before trial. Applicant pleaded guilty to both offenses prior to trial; therefore, Counsel was not deficient for failing to review any evidence relating to the confidential informant prior to the plea. Therefore, this Court finds Counsel was not deficient in his communications with Applicant.

Furthermore, Applicant has failed to present any evidence of how additional meetings with Counsel would have affected his decision to plead guilty. Applicant claims Counsel did not review the CI evidence with him; however, this Court is not persuaded that additional review of the CI information would have affected Applicant's decision to plead guilty. Applicant has failed to meet his burden showing what could have been achieved had Counsel spent more time with him in consultation regarding the contents of his discovery. *See Smith v. State*, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief).

Additionally, Applicant has failed to prove he would have proceeded to trial had Counsel further communicated with him. At the evidentiary hearing, Counsel explained that Applicant was facing two separate trafficking charges, both carrying 25-30 year sentences. Counsel testified that during negotiations with the solicitor, she explained the State could try Applicant for one



trafficking then notice him for life without parole on the second trafficking. Applicant was offered and accepted a 15-year concurrent sentence on both charges. Although Applicant testified he would have insisted on proceeding to trial had Counsel further explored the alleged date discrepancy, this Court finds that testimony not credible and finds it was not the reason he ultimately pleaded guilty. Applicant admitted at the evidentiary hearing he accepted the plea deal to avoid a potential life without parole sentence. This Court finds Applicant chose to plead guilty to avoid a potentially much greater sentence, including the possibility of life without parole. Thus, Applicant has failed to meet his burden establishing prejudice as to this allegation. *See Goins v. State*, 397 S.C. 568, 726 S.E.2d 1 (2012) (Finding that Goins failed to show he would have proceeded to trial absent Counsel's erroneous advice because Goins chose to plead guilty after the State agreed to dismiss two charges and recommend a ten-year sentence.).

Accordingly, this Court finds this allegation is DENIED.

Counsel's Failure to Investigate Great Seal

Applicant's allegation that Counsel was ineffective for failing to investigate the Great Seal is patently frivolous. This Court summarily rejects this allegation and finds it warrants no further discussion.

Accordingly, this Court finds this allegation is DENIED.

Invalid Guilty Plea and Counsel's Alleged Failure to Obtain a Better Plea Deal

Applicant alleges he thought he was only pleading to one count of trafficking until the morning of the plea. Applicant was afraid that if he did not plead, he would receive a substantially harsher sentence. Applicant asserts this rendered his plea invalid. Applicant further alleges Counsel was ineffective for failing to obtain a better plea offer. This Court finds this is without merit.



At the evidentiary hearing, Applicant testified that he believed he would only be pleading to one trafficking and the other charges would be dismissed. Applicant testified Counsel should have obtained a plea offer where he would only plead to one trafficking. Counsel credibly testified there was no confusion about which charges Applicant was pleading to. Counsel credibly explained that he strongly advised Applicant not to plead to one charge and not the other. Counsel credibly testified that he was very clear that Applicant would be getting 15 years for both counts. Counsel testified he explained to Applicant that it was advantageous for him to plead guilty to both counts since the sentences were to run concurrent he would receive the same amount of time on both. Counsel testified that Applicant was aware he was pleading guilty to two separate trafficking charges.

This Court finds Counsel's testimony to be credible, and Applicant's testimony not credible. The record corroborates Counsel's testimony as Applicant was required to return the following Monday to enter a plea to the second trafficking offense. At the outset of that hearing, the plea court engaged in the following colloquy with Applicant:

The Court: Okay. So, Mr. Walker, does that make sense? I mean, basically, the intent of the State and what - - you were going to plead to two charges on Friday. They went through the facts on both charges, but I thought you were only pleading to one. I only had one sentencing sheet, so I sentenced you to one charge. This charge today is the - - the State says they meant for you to plead guilty to it last week. It would not add any additional time. It is another 15 years, but it is concurrent. It is to be run at the same time. Mr. Niemiec, do you have any objection to me doing this today?

Mr. Niemiec: I do not, Your Honor.

The Court: Mr. Walker, do you have any questions or any objection?

Mr. Walker: No, sir. I mean, *I thought I did pled to it*, because she read off...Sleepy Hollow Road and Chesapeake Bay.

The Court: Yes, sir. And I think that's what the State - - Mr. Niemiec didn't realize it only had one sentencing sheet, and I thought you were just pleading to one. So



this is - - Mr. Walker, I'm not going to go through the whole colloquy again, but I'm just going to ask you: Has anything changed since you pled guilty to these charges on Friday?

Mr. Walker: No, sir.

(Plea Tr., dated March 25, 2024, p. 4) (emphasis added).

This colloquy plainly reflects that Applicant understood he was pleading to two separate trafficking offenses, affirmatively acknowledged that understanding to the plea court, and indicated he had no objection to proceeding with the plea. Thus, based on Counsel's credible testimony and the record of Applicant's plea, this Court finds Applicant was aware that he was pleading to two separate trafficking offenses. This Court further finds Counsel was not deficient in negotiating Applicant's plea agreement. As Counsel credibly testified to, it was far more favorable for Applicant to plead guilty to both trafficking charges and receive concurrent sentences than to plead guilty to one charge while leaving the other pending. Counsel testified to his efforts during plea negotiations and this Court finds those efforts to be reasonable and competent.

Furthermore, this Court finds Applicant cannot demonstrate prejudice, as he received concurrent sentences for both offenses. Applicant also presented no credible evidence that a more favorable plea offer was available. Therefore, Applicant has failed to establish a reasonable probability that, but for the alleged misunderstanding regarding the charges to which he was pleading, he would have rejected the plea and proceeded to trial, where he faced the risk of a substantially greater sentence.

Applicant additionally alleges his plea was invalid because he feared that, if he did not plead guilty, he would receive a substantially harsher sentence. This Court finds this allegation is without merit. The prospect of receiving a harsher sentence after trial does not render a guilty plea invalid; in fact, avoiding the risk of a greater sentence is often a primary reason defendants choose



to plead guilty. Here, Applicant was facing a substantially greater sentencing exposure if convicted at trial, and this Court has already found that his decision to plead guilty was based on avoiding that risk. Therefore, this Court finds that Applicant's decision to accept the plea offer because he faced a substantially higher sentence at trial does not render his plea invalid.

Accordingly, this allegation is DENIED.

CONCLUSION

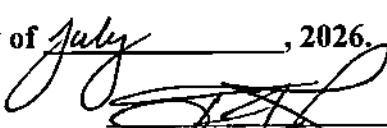
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCR, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must remain in the custody of the State.

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


THOMAS J. RODE
Presiding Judge
Sixteenth Judicial Circuit

Charleston, South Carolina

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2026 AUG -4 AM 11:55
ANGIE M. BRYANT
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ALAN WILSON
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July 31, 2026

The Honorable Angie Bryant
York County Clerk of Court
Post Office Box 649
York, SC 29745-0649

Re: Johnny L. Walker #393680 v. State of South Carolina
Case No.: 2024-CP-46-03517

Dear Ms. Bryant:

Enclosed for filing please find the original Order of Dismissal signed by the Honorable Thomas J. Rode, in the above-captioned cases. Please forward a time-stamped copy to our office.

Sincerely,

Jordan B. Killough
Assistant Attorney General

JBK/bw
Enclosures