STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT
Ivan B. White, #394369, Applicant, v. State of South Carolina, Respondent.	)	CASE No. 2024–CP–20–00390 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Honorable David P. Caraker, Jr.
Applicant's Attorney:	Isaac L. Johnson, Esq.
Respondent's Attorney:	Sydney N. Willingham, Esq.
Plea Counsel:	Mary Kay Boulware, Esq.
Date of Hearing:	December 9, 2025
Court Reporter:	Debra Copland-Sparrow, DCRP

This matter comes before the Court pursuant to an application for post-conviction relief ("PCR") filed by Ivan B. White ("Applicant") on October 15, 2024. Respondent filed its Return, requesting that an evidentiary hearing be held on the allegations. On December 9, 2025, an evidentiary hearing was held at the Chester County Courthouse before the Honorable David P. Caraker, Jr. Applicant was present and represented by Isaac L. Johnson, Esquire. Assistant Attorney General Sydney N. Willingham represented Respondent. Applicant proceeded on the allegation in his application. This Court received testimony from Applicant and his plea counsel, Mary Kay Boulware, Esquire.

Following a thorough review of the record, along with the testimony and evidence presented at the 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 with the South Carolina Department of Corrections ("SCDC"). In the April 2023 term, the Fairfield County Grand Jury indicted Applicant for three counts of Criminal Sexual Conduct with a Minor, Second Degree (2023-GS-20-184; -185; -186). Applicant was represented by Public Defender Mary Kay Boulware of the Sixth Circuit Public Defender's Office. Sixth Circuit Deputy Solicitor Julie Gamberg Hall prosecuted the case.

On July 10–11, 2024, Applicant proceeded to a jury trial before the Honorable Roger M. Young on the indictments. Applicant was not present at the start of his trial, and the trial court found Applicant had sufficient notice of his trial date and proceeded in Applicant's absence.[1] After the trial court denied Trial Counsel's directed verdict, and after a brief recess, Applicant appeared and advised the trial court that he wished to plead guilty. (Trial Tr. pp. 227 – 231). The trial court advised Applicant of his rights and engaged in a colloquy with Applicant regarding whether his plea was knowing and voluntary. (Trial Tr. pp. 231 – 236). The trial court found that Applicant's plea was freely, voluntarily, and intelligently given. (Trial Tr. p. 235). Judge Young sentenced Applicant to thirty (30) years imprisonment, ten years on each count to run consecutively.

Applicant did not appeal his convictions or sentences.

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[1] Plea Counsel advised the trial court that she advised Applicant to be at the court at 2:00 PM for jury selection and that she had not heard back from Applicant. Plea Counsel advised the trial court that Applicant had earlier told her he was willing to waive his presence at pre-trial, and the trial court proceeded with pre-trial in Applicant's absence. (Trial Tr. p. 4). Applicant's absence continued after jury selection, at which point Plea Counsel advised the trial court that she had not heard back from Applicant. The trial court issued a bench warrant for Applicant and ordered free transportation if Applicant was located, but stated that if Applicant did not appear, he would be tried in his absence. (Trial Tr. p. 82). On June 11, 2024, Applicant was not present, and Plea Counsel advised the trial court she had not heard from him. The trial court and the parties went through the timeline of events leading to trial to ensure Applicant had received proper notice. Based on this, the trial court found that Applicant had clear and sufficient notice that his trial was to begin on June 10, 2024, and that he was to be tried in his absence. (Trial Tr. pp. 85 – 88).

Summary of the Testimony Presented at Trial

Victim testified Applicant was her uncle, and at one point, she was living in Great Falls in a residence with Applicant, her grandmother, and her brother. (Trial Tr. pp. 112 – 117). The Victim testified that at fourteen years old, something happened with Applicant that made her uncomfortable. (Trial Tr. p. 119). The Victim testified that while living in the residence in Great Falls at fourteen years old, Applicant tried to force her to do oral sex on him. (Trial Tr. pp. 119 – 120). The Victim testified that Applicant withheld her phone on the condition that she perform oral sex, and eventually he forced her. (Trial Tr. p. 120). The Victim testified that when she was fifteen years old, Applicant forcibly vaginally penetrated her in his room at the Great Falls residence. (Trial Tr. pp. 120 – 122). The Victim testified it happened several times after, the last time right before she went to see her mother. (Trial Tr. p. 122). The Victim testified that Applicant's bedroom door was always closed and locked when he raped her. (Trial Tr. p. 123). The Victim testified that she then told her mother that Applicant had been raping her, and the Victim was later tested at a medical center and had a positive pregnancy test. (Trial Tr. pp. 124 – 126). The Victim testified she decided to have an abortion, and DSS took her to get an abortion when she had just turned sixteen years old. (Trial Tr. pp. 127 – 128).

Ramoan Wilks (Wilks) testified he was the Victim's brother and shared a room with the Victim in the Great Falls residence during this time. (Trial Tr. p. 133). Wilks testified that there was a wall between Applicant's room and the room Wilks shared with the Victim, and that a hole in the wall allowed a person to see into Applicant's room, but Applicant had filled the hole. (Trial Tr. pp. 133 – 134). Wilks testified that he observed odd things, such as noises and suspicious activity, involving Applicant and the Victim. (Trial Tr. p. 134). Wilks testified Applicant's door would be locked with the Victim in the room, and when he knocked, Applicant would tell him to go away. (Trial Tr. pp. 134 – 135). Wilks testified he heard grunting noises, sexual noises, when the Victim was locked in Applicant's room. (Trial Tr. p. 135).

Brandi Fourney (Fourney), the Victim's mother, testified that her mother-in-law became the legal guardian of the Victim while she was undergoing DSS-mandated treatment. (Trial Tr. pp. 137 – 138). Fourney testified that her mother-in-law initially did not allow her to see the Victim, but later allowed the Victim to see her on weekends. (Trial Tr. p. 139). Fourney testified that in August 2022, the Victim told her that "Something had been going on at Ruthie's house," and that Fourney immediately called DSS anonymously and met with law enforcement at her residence. (Trial Tr. p. 140). Fourney testified that subsequently, the Victim returned to her mother-in-law's residence, Applicant had been kicked out, but the Victim later texted her, and she contacted law enforcement based on that text. (Trial Tr. p. 141). Fourney testified that the Victim had a positive pregnancy test a few months later. (Trial Tr. p. 142).

Dionne Boozer (Boozer), an employee at the Greenville Women's Clinic, testified that the Victim had an abortion on October 26, 2022, when the fetus was twelve weeks old and one day. (Trial Tr. pp. 156 – 158). Boozer testified that after the abortion was performed, she gave the fetus to Anna Tankersley, an investigator from Fairfield County Sheriff's Office. (Trial Tr. p. 158). Boozer testified she was present for the abortion and the collection of the fetus. (Trial Tr. pp. 158 – 159).

Investigator Anna Tankersley (Investigator Tankersley) testified that she was notified that the Victim was pregnant, and she collected the fetus after the abortion was completed from Boozer. (Trial Tr. pp. 167, 169 – 170). Investigator Tankersley testified that she also collected buccal swabs from the Victim. (Trial Tr. p. 170). Investigator Tankersley testified she took the fetus and buccal swabs directly to a pathologist at the Newberry Memorial Hospital, and she stayed in the room while they conducted DNA testing. (Trial Tr. p. 171). After testing, Investigator Tankersley took the swabs and fetus to the Fairfield County Sheriff's Office. (Trial Tr. p. 172).

Investigator Brad Truesdale (Investigator Truesdale) testified that he became involved in Applicant's case once Investigator Tankersley left. (Trial Tr. p. 181). Investigator Truesdale testified that Applicant consented to providing a DNA sample, and after obtaining it, he provided it to Chris Childers. (Trial Tr. pp. 183 – 185).

Donna Money (Money), a forensic scientist in the DNA casework department at SLED, testified to her DNA report on the Victim's buccal swabs, tissue from the fetus, and Applicant's buccal swabs. (Trial Tr. pp. 203, 216 – 222; State's Exhibit 1 – 4). Money testified that the DNA profile from the fetus is consistent with being from a biological offspring of the Victim and Applicant. (Trial Tr. p. 223). Money testified that it was fourteen billion times more likely to see these genetic results if Applicant was the true biological father than if a random man is the father. (Trial Tr. p. 223). Money testified that 99.9 percent of randomly tested men would be excluded as the biological father. (Trial Tr. p. 223).

Subsequently, the trial court took a brief recess, and upon returning, Applicant was brought into custody and expressed his wish to plead guilty. (Trial Tr. pp. 231 – 232).

Summary of Facts Presented at the Guilty Plea Hearing

The facts giving rise to Applicant's conviction were articulated by the State at his plea hearing, as follows:

> Your Honor, this occurred, as you know, between 2020-2021 and all the way up until August of 2022. During the time that the victim, whose date of birth is October 22, 2006 -- during the time that she was 14 or 15 years old. It happened at 7182 Wateree Road which is in Great Falls, South Carolina, which is in Fairfield County. During that time the defendant lived -- he is her uncle, he lived in the house with her. She was in the custody of her grandmother and she lived in that house with her grandmother and brother and the defendant in this case and another much older gentlemen, who I think was her grandfather. During those years, during those times

> there was oral -- Mr. White, the defendant, required her to perform oral sex on him when she was 14 years old and he had vaginal intercourse with her at least twice while she was 15 years old. On the last time, on the last indictment, what occurred around July of 2022 resulted in pregnancy and ultimately an abortion to terminate the pregnancy. That fetal tissue was collected and that was sent to SLED for analysis and it was determined that Mr. White -- and you heard the testimony from the DNA analyst -- that he was -- there was a one and 14 billion chance that he was not the father. 99.99 percent chance that he was the father of that child. So that's basically the evidence. And obviously, he's much older than she is and he was in a familial position.

(Trial Tr. pp. 236 – 237).

Current Application

In his PCR application, Applicant alleges he is being detained unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. "Uninformed plea."
   b. "I thought I was entering plea for one charge."
2. Involuntary Guilty Plea
   a. "I was intoxicated and do not remember the hearing."

Applicant raised the following additional allegations at the evidentiary hearing:

3. Failure to give Applicant notice of his trial proceedings.

Applicant requests relief in the form of, "Reverse and remand I am opening to entering plea."

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[2] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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

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), SCRCP; 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

[2] S.C. Code Ann. §§ 17-27-10 to -160.

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 FACTS 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 ~~her~~ 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 fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

Initial Findings

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

Allegations 1 &2: Involuntary Guilty Plea[3]

Applicant alleges Counsel's representation was constitutionally ineffective for failing to inform Applicant of the plea he was entering. Specifically, Applicant alleges that his plea was uninformed; Applicant believed he was entering a plea for one charge; and Applicant was intoxicated at the time of the plea and does not remember the hearing. This Court finds this allegation is without merit.

[3] This section addresses Applicant's allegations 1 (a), 1 (b), and 2(a).

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). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

To find a guilty plea has been voluntarily and knowingly entered, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he is waiving, the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin v. Alabama, 395 U.S. 238, 244 (1969). Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

Plea Colloquy

In the instant case, the colloquy at the guilty plea shows that Applicant's plea was knowingly and voluntarily entered. See Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) ("finding a guilty plea voluntary where [Applicant] admitted committing the crimes, acknowledged the potential sentences, and stated that his plea had not been induced by promises"). The colloquy establishes that Applicant had no misconceptions regarding sentencing. Judge Young informed Applicant that he was indicted for *three different charges* of criminal sexual conduct with a minor, second degree. (Trial Tr. p. 231). Judge Young informed Applicant that each offense of criminal sexual conduct with a minor, second degree, carries a maximum of 20 years. (Trial Tr. p. 231). Applicant was advised of his constitutional right to a jury trial where the State must prove its case beyond a reasonable doubt, the right to confront all witnesses, examine all the evidence presented against him, and the right to remain silent. (Trial Tr. p. 232). Applicant confirmed that he understood that he was waiving these rights by entering a guilty plea. (Trial Tr. p. 232). Judge Young informed Applicant that the offenses are considered the most serious offenses. (Trial Tr. p. 233). He explained that a most serious classification meant that the offense counted as a strike against him, and that the State could seek life without parole if he was convicted of two or more most serious charges. (Trial Tr. pp. 233-234). Applicant confirmed that he understood this information. (Trial Tr. p. 234).

Judge Young questioned Applicant whether he was under the influence of drugs or alcohol. Applicant answered, "No, *sir.*" (Trial Tr. p. 234). Applicant confirmed that it was his free and voluntary decision to plead. (Attachment 2, Plea Tr. p. 4). Applicant confirmed that he did not need any further time with his lawyer and was satisfied with his attorney's representation. (Trial Tr. p. 234). Applicant should be held to the assertions he made to the court. See generally Wolfe, 485 S.E.2d at 367 ("[Applicant's] claim he understood from counsel that the trial judge's questions at the guilty plea were only a 'polite fiction' was 'not an invitation to answer untruthfully'").

PCR Evidentiary Hearing

Applicant testified on direct examination at the evidentiary hearing that on the first day of his trial, he was "getting high and smoking drugs." (PCR Tr. p. 10). Applicant testified that he was under the influence when he went before Judge Young. (PCR Tr. p. 14). Applicant testified that he did not tell Judge Young on the day he pled guilty that he was under the influence. (PCR Tr. p. 15).

Applicant testified that he spoke with Trial Counsel for three to five minutes prior to his plea. (PCR Tr. p. 12). Applicant testified that Trial Counsel told him that if he proceeded with the trial, he would get 60 years, or he could plead guilty and get 10 years. (PCR Tr. p. 12). Applicant testified that he wanted to plead to one charge rather than all three because he believed he would receive 10 years rather than 30. (PCR Tr. pp. 12-15).

On cross-examination, Applicant testified that he vaguely remembered Judge Young telling him he was facing three different charges of criminal sexual conduct when he decided to plead guilty. (PCR Tr. pp. 18-19). Applicant testified that he does not remember Judge Young telling him that each charge carries up to 20 years. (PCR Tr. p. 19). Further, Applicant answered in the negative when asked if he recalled telling Judge Young that he was not under the influence of drugs or alcohol at the time of his plea. (PCR Tr. p. 19).

Trial Counsel testified on direct examination that she discussed the trial date with Applicant. (PCR Tr. p. 24). Trial Counsel testified Applicant asked her if he had to be there (for his trial), and she explained to him that no one could make him come, but if he did not, a bench warrant would be issued. (PCR Tr. pp. 24-25). Trial Counsel testified when Applicant was brought in on the bench warrant, the State had already rested its case. (PCR Tr. p. 25). Trial Counsel testified that at that point, she and the Solicitor had gone into Judge Young's chambers, and the Solicitor had taken all plea offers off the table. (PCR Tr. p. 25). Trial Counsel testified that if Applicant proceeded with the trial and was found guilty, he was facing the maximum sentence of 60 years. (PCR Tr. p. 25). However, if Applicant pled the Solicitor and Judge Young would be inclined to sentence Applicant to ten years for each of the three charges. (PCR Tr. p. 25). Trial Counsel further testified that Applicant knew there were three charges. (PCR Tr. p. 26). Trial Counsel testified that she made a motion for the Solicitor to elect to proceed on only one charge; however, Judge Young denied that motion. (PCR Tr. p. 26). Trial Counsel testified that she discussed the potential sentences Applicant would face if he proceeded to trial and that he would likely receive a 60-year sentence had he proceeded. (PCR Tr. p. 27).

Trial Counsel testified that Applicant did not appear any less lucid when he was brought in for trial than he had during any other conversations they had. (PCR Tr. pp. 27-28). Trial Counsel testified that she and Applicant had a long conversation, and Applicant seemed to thoroughly understand exactly what he was doing. (PCR Tr. p. 28). Trial Counsel testified she did not get the impression that Applicant was under the influence at all. (PCR Tr. p. 28). Further, Trial Counsel testified that Applicant seemed to understand Judge Young during his plea colloquy. (PCR Tr. p. 28).

Findings

As an initial matter, this Court finds from the record that the plea court did advise Applicant he was entering a plea for *three different charges* of criminal sexual conduct with a minor, second degree. (Trial Tr. p. 231). The record supports that Judge Young informed Applicant that each offense of criminal sexual conduct with a minor, second degree, carries a maximum of 20 years.

(Trial Tr. p. 231). This Court finds from the record that Applicant understood the charges, the weight of the evidence, and the proceedings against him. Further, this Court finds Trial Counsel's testimony *credible* and Applicant's testimony on this topic *not credible*. Trial Counsel testified that she discussed the option of proceeding to trial or pleading with Applicant, and the possible sentencing outcome had he decided to proceed with the trial. Trial Counsel testified that at no point during her conversations with Applicant prior to his plea did she have concerns regarding his ability to understand, nor did she get the impression he was under the influence of any drug or alcohol. Further, Judge Young questioned Applicant whether he was under the influence of drugs or alcohol. Applicant answered, "No*, sir.*" (Trial Tr. p. 234). Moreover, to whatever extent Applicant was not entirely satisfied with the plea, he was presented an opportunity to express his dissatisfaction with the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea so that he would not have to proceed to trial.

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

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

ALLEGATION 3: TRIAL IN ABSENTIA

Applicant alleges counsel was ineffective for failing to give him notice of the trial proceeding and therefore allowing the trial to occur in Applicant's absence. This Court finds this allegation to be without merit.

In a post-conviction relief action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. In evaluating allegations of ineffective assistance of counsel, courts apply the two-pronged test in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment, and an applicant must overcome this presumption to receive relief. Id. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Procedural due process requires "adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review." State v. Dukes, 404 S.C. 553, 558, 745 S.E.2d 137, 140 (Ct. App. 2013).

Trial

Prior to jury selection on June 10, 2024, the trial court inquired as to why Applicant was not present. (Trial Tr. p. 4). Counsel informed the trial court she told Applicant to be back at 2:00 for jury selection. (Trial Tr. p. 4). At the conclusion of jury selection, Applicant was still absent, and the court inquired again as to Applicant's whereabouts. (Trial Tr. p. 82). The trial court found that Applicant had proper notice to be at his trial at 2:00, beginning on June 10, 2024. (Trial Tr. p. 82). The following day, June 11, 2024, Applicant was still not present at the beginning of the proceedings. (Trial Tr. pp. 85-86). The trial court had Trial Counsel put on the record her communications with Applicant again to ensure he had proper notice. (Trial Tr. pp. 86-87). Trial Counsel confirmed Applicant was notified that he was on the 45-day trial docket for a date certain in June. (Trial Tr. pp. 86-87). Solicitor Maxwell also confirmed Applicant's case was on the 45-day list. (Trial Tr. p. 86). Further, Trial Counsel indicated to the trial court that Applicant was contacted by her office several times to no avail, including for an appointment the morning of June 11th at 8:00, to which Applicant did not appear. (Trial Tr. p. 87). The trial court found Applicant had clear and sufficient notice that his trial was to begin the day prior and therefore proceeded to try him in his absence. (Trial Tr. p. 88).

PCR Evidentiary Hearing

At the evidentiary hearing, Applicant testified he did not attend his trial—because he was out on bond and his attorney did not give him notice. (PCR Tr. pp. 7-8). However, Trial Counsel testified on direct examination she gave Applicant notice of his trial. (PCR Tr. pp. 24-25). Trial Counsel further testified Applicant was present on Monday, June 10, 2024, the first day of trial prior to jury selection. (PCR Tr. p. 24). Trial Counsel testified she informed Applicant to return to court after they broke for lunch at 2:00. (PCR Tr. p. 24). She further testified that she informed Applicant that no one could force him to attend the trial since he was out on bond; however, it was in his best interest to do so, or the court would issue a bench warrant. (PCR Tr. pp. 24-25). Counsel testified she had her paralegal attempt to contact Applicant on June 10, 2024, to attend the jury selections to no avail. (PCR Tr. 24-25).

Findings

As an initial matter, this Court finds Counsel's testimony *credible* and Applicant's testimony on this topic *not credible*. This Court relies on the record and testimony provided and finds Applicant had proper notice of when jury selection and his trial were to begin. Further, Applicant has not met his burden in showing that Trial Counsel was deficient—especially when the trial court considered both whether Applicant had notice of the trial date and whether Applicant had been informed that trial could proceed in his absence.

Trial Counsel *credibly* testified she informed Applicant of his trial date and that he needed to return to jury selection. In fact, Applicant was present on the first day of trial prior to jury selection. Therefore, it is presumed Applicant had notice of when his trial was to occur. Trial Counsel testified on redirect she was scheduled to meet with Applicant the week prior to and the Tuesday of trial; however, Applicant canceled the meetings. (PCR TR. p. 43). Despite this, Applicant did not return to the trial until he was picked up on the bench warrant.

Based on the record before this Court, Applicant was informed of both (1) his trial date and (2) that the trial would proceed in his absence if he did not attend. It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence."); Id. at 455, 692 S.E.2d at 557-58 ("A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence."); Id. at 456, 692 S.E.2d at 558 ("The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend."). Ultimately, Applicant had notice of his trial date and that it would proceed in his absence if he did not attend.

Based on the foregoing, Applicant had both adequate notice and an opportunity to be heard. Further, Trial Counsel was present at trial to confront adverse witnesses and introduce any evidence that may have been admissible and favorable to Applicant. Finally, Applicant was afforded a jury trial, and the State maintained the burden of proof. Thus, Applicant was not denied due process.

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

|CONCLUSION & SIGNATURE PAGE FOLLOWS|

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

IT IS THEREFORE ORDERED:

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

DAVID P. CARAKER, JR.
Presiding Judge
Sixth Judicial Circuit

Chester County, South Carolina

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