

RECEIVED

Aug 28 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

2025-CP-23-6109

Octabio L. Wright, Appellant,

v.

The State, Respondent.

NOTICE OF APPEAL

Octabio L. Wright appeals the Honorable Grace Gilchrist Knie's Order Granting Belated Appeal and Dismissing All Other Allegations filed August 26, 2026 granting belated review pursuant to *White v. State* and dismissing all other allegations.

This 28th day of August, 2026.

s/ Susannah Ross
Susannah Ross, Bar #11205
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
susannah@rossenderlin.com
Attorney for Appellant

Other Counsel of Record:
Sydney Willingham, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

) CASE NO. 2024-CP-23-6109

)

)

)

)

ORDER GRANTING BELATED APPEAL AND DISMISSING ALL OTHER ALLEGATIONS

This matter comes before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Octabio L. Wright (“Applicant”) on October 17, 2024. Respondent filed its Return, requesting that an evidentiary hearing be held on the allegations. On June 22, 2026, an evidentiary hearing was held at the Greenville County Courthouse before the Honorable Grace Gilchrist Knie. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Sydney N. Willingham represented Respondent. Applicant proceeded on the allegations in his *amended* application. In support of his claims, Applicant testified on his own behalf. Respondent presented testimony from Michael Brown, Esquire (Trial Counsel).

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 in the South Carolina Department of Corrections. During its July 2020 term, the Greenville County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2020-GS-23-02830).

FILED: 2016-03-05

The Applicant proceeded to a joint jury trial with his co-defendant on September 11-15, 2023, in Greenville County before the Honorable Alex Kinlaw, Jr. Applicant was represented by Michael Brown, Esq., at his trial. His co-defendant proceeded pro se with stand by counsel, David Cantrell, Esq. This case was prosecuted by Assistant Solicitor Jonathan M. Gregory and Assistant Solicitor Edward W. Miller.

At the conclusion of the trial, Applicant was found guilty as indicted on all charges. He was sentenced to 47 years for murder, and 30 years for kidnapping. The sentences are to be served concurrently, with 1,299 days credit for time served.

Direct Appeal

On October 4, 2023, a notice of appeal was filed on the Applicant's behalf by Michael Brown, Esq. The Court of Appeals issued a deficiency letter on October 6, 2023, informing the parties proof of service had not been provided. On November 7, 2023, the Court of Appeals dismissed the case for failure to provide proof of service for the notice of appeal, and provide proof of filing with the trial court clerk. See State v. Wright, Appellant Case No. 2023-001569 (S.C. Ct. App. Filed November 7, 2023). The Remittitur was sent on December 5, 2023.

CURRENT APPLICATION

In his *pro se* application for post-conviction relief, Applicant alleges he is entitled to relief based on the following (excerpted verbatim):

“Counsel was ineffective for failing to file a direct appeal.”
(PCR App. 3).

Applicant requested relief in the form of “granting a direct appeal.” (PCR App. 6).

On June 11, 2026, Applicant, through counsel, filed an *amended* application alleging the following grounds of ineffective assistance of counsel:

1. Failure to appeal in a timely manner.
2. Failing to prepare a pre-trial motion for severance (Trial Tr. pp. 78-84; 906).
3. Failure to effectively communicate with the Applicant and review the discovery with him.
4. Failure to adequately prepare for trial and review the co-defendant's prior trial transcript.
5. Failure to assure his witnesses did not violate a sequestration order (Trial Tr. p. 924).

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013).

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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

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

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided

adequate assistance, and the applicant is responsible for rebutting that presumption “by proving that his attorney’s representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy.” Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, make every effort “to eliminate the distorting effects of hindsight,” and “evaluate the conduct from counsel’s perspective at the time” in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel’s performance was deficient, the applicant must demonstrate that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 687. Accordingly, counsel’s performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply “deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691. To meet this burden, counsel’s deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial

counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” Richter, 562 U.S.at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel’s trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both Strickland components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

BELATED APPEAL

Based upon its review of the records, this Court finds Applicant is entitled to a belated appeal. “Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)). Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon issues properly raised and argued as if the direct appeal had been perfected. White v. State, 263 S.C. 110, 119, 208 S.E.2d 35, 39-40 (1974).

Here, Applicant timely filed a notice of appeal, but it was dismissed for failure to provide proof of service as required by appellate court rules. Applicant had a right to counsel on appeal and was represented by counsel on appeal. Based on counsel’s failure to provide the Court of Appeals with proof of service, this Court finds Applicant was unconstitutionally deprived his statutory right to a direct appeal and is thus entitled to a belated appeal pursuant to White, *supra*.

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

I. Failure to file pre-trial motion for severance.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to file a pre-trial motion for severance. This Court finds this allegation is without merit.

In South Carolina, criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972). “A motion for severance is addressed to the sound

discretion of the trial court.” State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct.App.2002). “Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant’s substantive rights would not be prejudiced.” Simmons, 352 S.C. at 350, 573 S.E.2d at 860. “Offenses are considered to be of the same general nature where they are interconnected.” State v. Jones, 325 S.C. 310, 315, 479 S.E.2d 517, 519 (Ct. App. 1966). “A severance should be granted only when there is a serious risk that a joint trial would compromise *a specific trial right* of a codefendant or prevent the jury from making a reliable judgment about a codefendant’s guilt.” State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct.App.2005) (emphasis added).

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified he typically does not file a pre-trial motion for severance. Trial Counsel testified if Applicant had been tried separately from his co-defendant, then there would have been an additional person to “point the finger” at Applicant.

On cross examination, Trial Counsel testified he only made a motion to sever at trial to preserve the record. Trial Counsel further testified that he did not believe a severance would have been helpful to Applicant because of the possibility of his co-defendant testifying against him.

Findings

This Court finds that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” Ard v. Catoe, *supra*. This Court finds Trial Counsel’s testimony *credible* in that he made a strategic choice not to file a pre-trial motion for severance. Applicant failed to present any competent evidence that Trial Counsel was ineffective for failing to file a pre-

trial motion for severance and how it would have resulted in a different outcome. Applicant and his co-defendant were tried under hand of one/conspiracy. Trial Counsel *credibly* testified that if Applicant was tried separately from his co-defendant, there was the possibility that Applicant's co-defendant would have been an additional witness to testify against him.

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.

II. Failure to effectively communicate with the Applicant and review the discovery with him.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively communicate and review discovery with him. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective," Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding that it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate

defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding “Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.”), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, “brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” Id.; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel

did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that he was retained by Applicant two years prior to trial. Trial Counsel testified that he had represented Applicant before. Trial Counsel testified that he met with Applicant occasionally at the jail and talked to Applicant's mother by telephone. Trial Counsel testified he went over discovery with Applicant and typically presents his clients with a physical copy of discovery. Trial Counsel testified he conducted an independent investigation into the facts of the case. Trial Counsel testified he kept Applicant reasonably informed about his case and discussed the elements of the charges with Applicant.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012). Applicant has not suggested any evidence that could have been discovered or what other defenses could have been pursued, resulting in mere speculation. Trial Counsel *credibly* testified he was retained by Applicant approximately two years before trial and had previously represented Applicant on other charges. Trial Counsel *credibly* testified he met with Applicant occasionally at the jail and went over discovery with him.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to 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.

III. Failure to adequately prepare for trial and review the co-defendant’s prior trial transcript.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to adequately prepare for trial and review the co-defendant’s prior trial transcript. This Court finds this allegation is without merit.

“No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” Strickland 466 U.S. at 688-89. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” Id. at 691. Therefore, “[j]udicial scrutiny of counsel’s performance must be highly deferential.” Id. at 689. Strickland therefore established the rule that in proving a claim of ineffectiveness, “the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” Id.

Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). “Courts must be wary of second-guessing counsel’s trial tactics; and where

counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that he was retained by Applicant two years prior to trial. Trial Counsel testified that he had represented Applicant before. Trial Counsel testified that he met with Applicant occasionally at the jail and talked to Applicant’s mother by telephone. Trial Counsel testified that the trial strategy was for Applicant not to testify. Trial Counsel testified he conducted an independent investigation into the facts of the case. Trial Counsel testified the co-defendant’s transcript was shared with him during the trial.

Findings

This Court finds that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case.” Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel’s representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to present “any evidence of how additional preparation or communication would have resulted in a different outcome.” Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012). Applicant has not suggested how Trial Counsel failed to adequately prepare for trial, resulting in mere speculation. Applicant has failed in his burden to demonstrate how his co-defendant’s prior trial transcript would have changed the outcome of trial – Applicant has not shown what from his codefendant’s trial should have been reviewed or how it would change the outcome of this trial.

Trial Counsel *credibly* testified that Applicant’s co-defendant’s prior trial transcript was given to him by standby counsel during the actual trial.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to 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.

IV. Failure to assure his witnesses did not violate a sequestration order.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to assure his witnesses did not violate a sequestration order. This Court finds this allegation is without merit.

In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). The applicant’s mere speculation as to what a witnesses’ testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Findings

This Court finds that Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case.” Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel’s representation was deficient and any resulting prejudice from that alleged deficiency. *See* Butler, *supra*. The record reflects Trial Counsel informed the witnesses not to be present in the courtroom. (Trial Tr. p 924 l. 13-17; p.

935 l. 17-23). The witnesses were not present at the PCR evidentiary hearing to testify to what they would have testified to at trial. Therefore, Applicant has not met his burden of proof.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to 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.

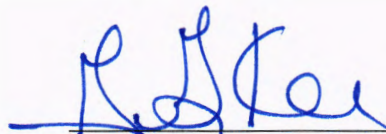
CONCLUSION

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 for post-conviction relief with a finding under White v. State that he is entitled to belated appellate review. 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 in regard to all allegations except the appeal issue addressed below;
2. Applicant is granted a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.; and
3. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.



THE HONORABLE GRACE GILCHRIST KNIE
Presiding Judge
Thirteenth Judicial Circuit

August 24, 2024, South Carolina