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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Jessica Salvini, PCR Action Judge
2017-CP-40-05019

AHMAD WILKINS, #290911,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Ahmad Wilkins appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Jessica Salvini, circuit court judge, on June 3-4, 2025, and was denied by written order issued filed on September 21, 2026. Applicant received notice of the judgement on September 22, 2026.

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
)

Ahmad Wilkins, #290911,)
Applicant,)
)
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v.)
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State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-40-05019

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2026 SEP 21 P 4:46
JEANNETTE W. MCBRIDE
C.C.D. & G.S.

This matter comes before this Court by way of Applicant's post-conviction relief application filed August 22, 2017. Respondent made its return filed on June 5, 2018, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 3-4, 2025, at Richland County Courthouse. Chelsey F. Marto, Esquire, represented Applicant. Senior Assistant Deputy Attorney General D. Russell Barlow II represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsels Luke Shealey, Brian Shealey, James May testified, as did Prosecutors Luck Campbell and Megan Walker. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2011, the Richland County Grand Jury indicted Applicant for murder (2011-GS-40-04656). Brian Shealey, James May, and Luke Shealey, Esquire represented Applicant. Luck Campbell, Meghan Walker, and Nicole Simpson prosecuted the case. Applicant proceeded to trial before the Honorable Clifton

Newman, circuit court judge, and a jury. On April 13, 2012, Applicant was found guilty and Judge Newman sentenced Applicant to life without parole.

Applicant filed a timely notice of appeal on that was perfected by Susan Hackett, Esquire, through filing a merits brief. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Wilkins*, Op. No. 2015-UP-365 (S.C. Ct. App. 2015). Applicant filed a petition for rehearing, which was denied. Applicant filed a petition for writ of certiorari to the South Carolina Supreme Court, which was also denied. The Remittitur was issued on September 12, 2016.

Summary of Relevant Facts

On February 3, 2009, property manager Marsha Poitier and maintenance worker Roberta Santana observed blackened windows and smoke around the door jamb. Upon opening the door, they encountered "medium smoke" and observed an object wrapped in a comforter on the floor. Both smoke detectors had been disabled. They contacted 911. (Trial Tr. 257-66; 275-79).

Members of the Columbia Fire Department arrived shortly. Although the apartment showed signs of a fire, there was no heat or active smoke, indicating the fire burned itself out. Capt. Phillip Joyner entered the apartment with a flashlight and observed a burned body under cloth. The scene was secured. (Trial Tr. 294-303). Columbia Police Department officers were dispatched and secured the apartment upon learning a body was found. (Trial Tr. 281-87; 291).

Chief Fire Investigator Richard Seel determined the fire originated in the victim's apartment. He observed heavy black sooting on the windows and around the front door edges, consistent with the use of a flammable liquid. No accidental source of ignition was found. A "line of demarcation" approximately three feet off the floor indicated a rapidly burning accelerant-driven fire. Bedding was removed from the victim's bedroom. (Trial Tr. 329-37;

337–41). There were no signs of forced entry on the front or back doors. Both smoke detectors were disabled—one wrapped to prevent smoke entry, the other with its battery removed. The victim lay face down, wrapped in a comforter, with severe burns to her back and legs. Her feet were bound with cloth, and a cloth ligature was tied around her neck. (Trial Tr. 341–45; 362–66; 358; 343). Accelerant indicators were present. Carpet samples later tested negative for accelerant, which Investigator Seel explained could occur if the accelerant was fully consumed or samples were taken from unaffected areas. (Trial Tr. 345–50; 378; 321–27; 350–56).

Crime scene investigator Tammy Moore corroborated these observations, including soot damage, disabled smoke detectors, absence of bedding, and items knocked onto the floor. She collected a pillowcase, a glove, the ligature, and the cloth binding the victim's legs. (Trial Tr. 422–54; 456; 460–61; State's Exs. 17, 19, 71, 110, 112, 114).

Resident Sean Grimes testified that he and Applicant used cocaine together in the early morning hours of February 3, 2009. Applicant stated the victim had given him \$20 to buy cocaine. Grimes obtained a "doub," but Applicant shared it with Grimes instead of delivering it to the victim. (Trial Tr. 387–96). The victim repeatedly called Applicant demanding her money. Applicant told her he was coming and instructed her to open the back door. After additional calls, Applicant requested flour from Grimes, packaged it to resemble cocaine, and stated he was going "through the back way" before leaving. (Trial Tr. 396–98; 403–04). Later that morning, Grimes informed Applicant that the victim was dead. While Grimes was speaking to police, Applicant approached, then left when Grimes mentioned Applicant was the last person to speak with the victim. (Trial Tr. 401–05).

Cynthia Jackson testified she was awakened by repeated calls from the victim seeking cocaine. She instructed the victim to call Applicant. Applicant left between 1:00–2:00 a.m. and

did not return. (Trial Tr. 34–43; 63–64; 42; 46; 49). Jackson later observed the victim’s windows were blackened and saw Nicole Jones acting nervous. The victim’s body was discovered soon after. Jackson found it unusual that Applicant, who frequently visited, did not return after that morning. (Trial Tr. 52–61).

Nicole Grimes testified she and Applicant lived together. Applicant left at 1:00 a.m. after an argument, returned later, and paced saying “Oh, my God.” She denied receiving calls from him while he was gone, though phone records showed calls to her land line at 5:30 a.m. and after 6:00 a.m. (Trial Tr. 70–78; 85–86).

The jury also heard testimony from jailhouse informant Patruan Hare regarding admissions Applicant allegedly made. (Trial Tr. 99–111).

The State introduced AT&T records for the victim’s phone (State’s Ex. 111) and T-Mobile records for Applicant’s phone (State’s Ex. 115). These records undermined Applicant’s alibi and corroborated Grimes and Jackson’s testimony. Applicant’s calls began at 2:30 a.m. with a 46-second call to the victim. Between that call and the last call at 4:13:26 a.m., nine calls were made to her number. (Trial Tr. 315–17; 414–16; 419–21; 141–54). After the final call to the victim, Applicant called Jackson’s number at 4:19 and 4:20 a.m., then called Nicole Grimes at 5:30:08 a.m. and 6:18:57 a.m. All calls hit a tower consistent with being made from Bethel Bishop. (Trial Tr. 414–16; 53–60; 390–91).

DNA analyst Rachel Grant tested multiple items, including the CSC kit, glove, ligature, nail scrapings, and cloth bindings. CSC swabs were negative for semen. (Trial Tr. 206–09; 215–22). The glove contained a mixed DNA profile of at least three contributors; the victim was excluded, and Applicant could not be eliminated. (Trial Tr. 222–31; 255). Y-STR testing of the ligature revealed male DNA consistent with Applicant or someone sharing his paternal lineage.

Y-STR testing of the glove also showed a male mixture in which Applicant could not be excluded. (Trial Tr. 231–41; 251–52; 284–85). Although the CSC kit may have been misplaced temporarily, it was sealed and initialed each time Grant examined it, with no evidence of tampering. (Trial Tr. 222; 243–46; 251; 265–68; 284–87).

Dr. Bradley Marcus performed the autopsy and concluded the victim died of asphyxia by ligature strangulation. There was no soot in the larynx and no cherry-red blood coloration, indicating she was dead before the fire. Internal neck hemorrhaging and petechiae were consistent with strangulation. Blunt force trauma was present. (Trial Tr. 326–48).

Investigators learned Applicant's brother was a maintenance worker at Bethel Bishop and Applicant sometimes assisted him, giving Applicant access to maintenance areas. Applicant is left-handed, consistent with the left-handed glove found at the scene. (Trial Tr. 365–66; 502–03; 403–04). Surveillance video (State's Ex. 69) showed an individual in dark clothing walking toward the victim's apartment after 4:00 a.m. (Trial Tr. 379–86; 459; 503).

In a February 20, 2009, interview, Applicant admitted supplying cocaine to the victim but terminated the interview when asked about deliveries near the time of her death. Recorded jail calls (State's Ex. 119) captured Applicant laughing about being questioned, reacting to learning police had a picture of the glove, and refusing to discuss it over the phone. (Trial Tr. 200–02; 371; 377–78; 497–99; State's Ex. 119). In a statement (State's Ex. 144), he attempted to distance himself from Grimes and Jackson. (Trial Tr. 393–400; 504–05).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective Assistance of Counsel"
 - a. "Defendant contends that trial counsel failed to investigate both factual and

- legal matters to determine if defense could be developed.”
- b. Defendant further, contends that the state's evidence when viewed in the light most favorable to the prosecution, was so insufficient that no rational trier of fact could have found the essential elements beyond a reasonable doubt.”
 - c. “Due to defendant's illiteracy to the law he was entitled to rely upon his counsel to make a reasonable decision pursuant to U.S. v. Dewalt, without some authoritative guidance, the defendant cannot know whether he understood anything correctly at his trial.”
2. “Brady Violation”
 - a. “Prosecution failed to disclose any information to defendant of evidence in the possession and control of the Columbia Police Department for such evidence despite numerous and repeated requests for discovery by defendant.”
 - b. “The failure to disclose evidence by its very nature impairs the defendant from investigating the evidence.”
 3. “Prior Bad Act”
 - a. “The Court failed to address the state's complete failure to prove the alleged prior bad acts by clear and convincing evidence.”
 4. “Conflict of Interest”
 - a. “Counsel Brian Shealy, was representing Hare, on state court criminal charges at the time that Hare, came forward with information incriminating Wilkins in this case.”
 - b. “Wilkins waived a possible conflict.”
 5. “Due Process Clause Violation”
 - a. “The defendant was unconstitutionally deprived of a full fair trial and denied due process of law, by the acts and omissions of counsel that deprived the fourteenth and sixth amendments of the US constitution, and Article 1, Section 3 and 14 of the South Carolina Constitution.”
 6. “Chain of Custody Violation” / “DNA Tampering”
 - a. “Although Richland County placed the kit into a sealed box and delivered it to the Columbia Police Department and the box was returned to Richland County sealed, the kit was not in the same box. Clearly, the seal on the box had been broken, the kit removed and the box re-sealed.”
 - b. “Despite the obvious tampering with evidence, the Columbia Police Department denied any tampering or even that the kit had been lost.”
 7. “Subject Matter Jurisdiction”
 - a. “Territory Jurisdiction Violation”
 - b. “Indictment Violation”
 - i. “Defendant contends that his counsel failed to investigate the indictment of murder”
 - ii. “Due to defendant's illiteracy to the law he was entitled to rely upon his trial counsel to make a reasonable decision.”
 - iii. “Counsel never investigated the indictment to find out if in fact that indictment went before the grand jury.”
 - iv. “Thus, the applicant contends that the indictment does not satisfy the notice requirements of subject matter jurisdiction set forth in the South Carolina constitution and statutes.”

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. Failure to effectively argue that Officer Kelly was the real suspect.
 - b. Failure to develop an effective defense.
 - c. Failure to inform Applicant of the extent of his conflict of interest with the jailhouse snitch.
 - d. Failure to sufficiently communicate with Applicant.
 - e. Failure to timely provide Applicant with the discovery.
 - f. Failure to prepare Applicant for testifying.
 - g. Failure to investigate additional witnesses to testify about Officer Kelly's involvement with the victim.
 - h. Failure to effectively cross-examine the DNA expert regarding the mixture of DNA.
 - i. Failure to effectively argue that the search warrant was invalid for the buccal swab.
2. Prosecutorial misconduct for:
 - a. Mislocating the rape kit for a period of time.
 - b. Failure to turn over the cell phone report in time.
 - c. Failure to timely disclose the jailhouse snitch information.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified that he was charged with murder and was found guilty and received a life sentence at trial. (PCR Tr. 5). He stated that he was represented by Brian and Luke Shealey and Jim May. (PCR Tr. 5). He stated that his attorneys did okay representing him, but it could have been better. (PCR Tr. 6). He stated that they discussed the case four or five times. (PCR Tr. 6). He stated that he wished his attorneys talked to him more. (PCR Tr. 17). He stated that he discussed with his attorneys that he did not commit the crime and did not know who did. (PCR Tr. 6).

He testified that the defense at trial was that Officer Kelly committed the crime. (PCR Tr. 6). He stated that they discovered information concerning that theory a couple weeks before trial

and that he wishes that they had more time to investigate that line of defense. (PCR Tr. 6-7). He stated that he thought Officer Kelly should have been interviewed and had his DNA sample collected as well. (PCR Tr. 15). He stated that evidence was presented at trial of Officer having a relationship with the victim and that there were allegations of her being pregnant which were discredited. (PCR Tr. 15). He stated that if the evidence was tested for Officer Kelly's DNA he may have been found on some of the items. (PCR Tr. 15). He voiced discontentment that the witnesses he attempted to call to testify at trial were not permitted to testify. (PCR Tr. 17).

Applicant stated that he testified at trial that he did not commit the crime though he went to the house right before. (PCR Tr. 7-8). He stated that he was not prepared to testify and that all they talked about was body language and how to sit and talk but no insight was provided. (PCR Tr. 8). He stated that he thought they led him through a mock examination but was unsure and still felt like more preparation was needed. (PCR Tr. 8). He stated that he thought additional preparation may have been helpful on cross-examination but that he felt he testified to everything he wanted to. (PCR Tr. 19).

Applicant testified that a jailhouse snitch, Patron Hare, testified at trial, who was also represented by his attorney. (PCR Tr. 8-9). He stated that he discovered the conflict at trial and did not have a chance to fully understand the conflict, though he understood what a conflict meant. (PCR Tr. 9). He stated that he would not have waived the conflict if he had been better informed. (PCR Tr. 9).

He stated that he did not know when he received discovery in his case, which he wished he had had more time to review. (PCR Tr. 9-10). He stated that his attorneys reviewed the discovery with him. (PCR Tr. 18).

He testified that there was testimony concerning a mixture of DNA being found on

certain things in the house including on a glove and something around the victim's neck that Applicant could not be excluded from. (PCR Tr. 10). He stated that he wished Counsel cross-examined the relevant witness more thoroughly, especially how the testing went from inconclusive to Applicant could not be excluded. (PCR Tr. 10-11).

He stated that he recalled Counsel moving to suppress the search warrant for the vehicle swap but wanted him to more effectively argue that and ensure it was suppressed. (PCR Tr. 11). He stated that the search warrant was obtained from the wrong magistrates jurisdiction and was trying to figure out why it was obtained from Dutch Forks not the jurisdiction he was housed in. (PCR Tr. 11). He stated that they obtained a buccal swab off him. (PCR Tr. 11).

He stated that the rape kit went missing for a probably a couple months. (PCR Tr. 11). He stated that the only explanation given for that was that sometimes things go missing and reappear. (PCR Tr. 12). He stated that the test was taken out of the sealed box then was resealed. (PCR Tr. 12). On cross-examination he did not recall testimony that the kit was still intact. (PCR Tr. 16-17).

He stated that he could not remember when he got the cell phone reports in discovery but remembered them being entered at trial. (PCR Tr. 12-13). He acknowledged they were handed over last minute. (PCR Tr. 13). He stated that he thought that was prosecutorial misconduct. (PCR Tr. 13-14).

James May Testimony

Counsel May stated that his involvement in Applicant's trial was to prepare Applicant for cross-examination, to put up Applicant's DNA expert, and to cross-examine some of the State's witnesses. (PCR Tr. 20). Counsel May testified that he visited Applicant in jail multiple times and walked him through his direct and cross-examinations. (PCR Tr. 20-21). He stated that he

would be surprised if they had not met at least ten times. (PCR Tr. 21).

Counsel May testified that the defense at trial was that Applicant did not commit the crime and in preparation they hired a private investigator. (PCR Tr. 21). He stated that the private investigator found some people in the community suggesting Officer Kelly was involved with the victim, that he was allegedly going to go be with her that night, that the victim feared him and that the officer was spotted on the scene. (PCR Tr. 21-22). Counsel testified that the jury ultimately believed Officer Kelly not Applicant. (PCR Tr. 22-23). He testified that the Court was hostile to the defense's approach, but it was the only defense they had. (PCR Tr. 23). He stated that only one of three witnesses were permitted to testify and the Court held a sanction hearing afterwards. (PCR Tr. 23-24).

Counsel testified that he had no memory regarding being involved in the buccal swab search warrant motion but that he believed he was arrested before he was swabbed. (PCR Tr. 24). He stated that he was not involved in the motion regarding the rape kit or the jailhouse snitch. (PCR Tr. 24).

Upon refreshing his recollection, Counsel testified that he handled an issue regarding cell phone reports and stated that with that prosecutor damming evidence was usually handled over last minute. (PCR Tr. 25). He stated that he did not think that made a difference because the linchpin of the case was whether Applicant or Officer Kelly was more credible and the jury went with Officer Kelly. (PCR Tr. 26).

Luke Shealey Testimony

Counsel testified that he directed Applicant and may have also handled other witnesses at the trial. (PCR Tr. 27). Counsel testified that the defense strategy was to argue that Applicant did not commit the crime and the State did not meet their burden of proof. (PCR Tr. 27). He stated

that they had an investigator who tracked down witnesses who said that the victim was afraid of Officer Kelly, that she may have had an ongoing relationship with him, and that she might be pregnant and Office Kelly may be looking to kill her consequently. (PCR Tr. 27). He stated that they created a full defense but that the Court was unhappy with the defense strategy and only let the State present one of their witnesses. (PCR Tr. 27-28). Counsel testified that he did not believe this to be a common defense at trial and that he thought that the witnesses were credible. (PCR Tr. 28). Counsel testified that the officer was a narcotics agent in the area, that he was on the scene the next morning when he should not have been because he had no business investigating a homicide. (PCR Tr. 29). He stated that there was a City of Columbia police car parked right outside the apartment at the time of the killing. He stated that the officer claimed to have found her bedding in a dumpster that the officer said he was certain it was her bedding, even though surveillance footage showed the dumpster was emptied twenty minutes prior, indicating it was in his possession the whole time. (PCR Tr. 29). Counsel testified that he believed the theory enough to start carrying a gun daily. (PCR Tr. 29).

Counsel testified that Counsel Brian Shealey primarily reviewed the discovery with Applicant but as they got closer to trial everyone reviewed it and that he likely met with Applicant at least ten times. (PCR Tr. 30).

He stated that in preparing Applicant to testify he focused on trying to get Applicant to tell his story organically without being evasive and while maintaining open body language. (PCR Tr. 30). He stated that the focus was on explaining how Applicant was present but when he left her apartment she was alive and he did not kill her. (PCR Tr. 31). They also wanted to convey how Applicant's brother was a janitor at the complex. (PCR Tr. 31).

He testified that the jailhouse snitch testimony was a last-minute surprise. (PCR Tr. 31).

He stated that the State moved to have Brian Shealy removed as counsel first day of trial based on the conflict of interest concerning the jailhouse snitch, who Brian also represented. (PCR Tr. 32). He stated that the conflict was not known to the defense until the day of trial. (PCR Tr. 33). Counsel testified that he was angry to find out about a jailhouse snitch last minute who would likely testify that Applicant confessed to the murder, but also how the person ready to testify against Applicant was one of Brian's own clients. (PCR Tr. 33). He stated that they did not want to get kicked off the case and that the decision was left up to Applicant in the moment. (PCR Tr. 33-34). He stated that he thought that if Applicant did not waive the conflict the Court would have kicked Brian Shealey off the case and the case would have still proceeded to trial. (PCR Tr. 34). He testified that he discussed with Applicant how to respond to that testimony. (PCR Tr. 31). He stated that he believed that the snitch was charismatic, greatly benefited by testifying, and was believable to the jurors. (PCR Tr. 34-35).

Counsel testified that he did not recall being involved in questioning the DNA expert. (PCR Tr. 35). He testified that concerning the search warrant of the vehicle swab the issue was "low hanging fruit for probably cause purposes" but does not have independent recollection. (PCR Tr. 35). Counsel testified that he recalled the rape kit going missing for several months, which was bizarre and there were concerns about it being tampered with. (PCR Tr. 36-37).

He testified that he recalled issues concerning the CSLI report being turned over last minute. (PCR Tr. 37). He stated that in a situation with that they would normally object and be overruled. (PCR Tr. 37). He stated that he believed the withholding was intentional. (PCR Tr. 38). He stated that this withholding coupled with the withholding of the snitch testimony was intentional and thought if it had been timely disclosed it could have changed the outcome of trial. (PCR Tr. 38-40). He also testified that he was unable to appropriately cross-examine the cell

phone expert due to the late disclosure of the witness. (PCR Tr. 40). Counsel testified that he thought that the late disclosure may constitute prosecutorial misconduct, as did the late disclosure of the conflict of interest and Kelly filing an internal affairs report that was not revealed until cross-examination. (PCR Tr. 40-41). Counsel testified that this was addressed on direct appeal where the court affirmed the convictions despite Counsels' objections. (PCR Tr. 41).

He stated that there were unfavorable jail recordings where Applicant was not taking things seriously and was acting "very laughy, very jokey". (PCR Tr. 31). He stated that they had to get Applicant to address this on the stand and show how that was just his personality. (PCR Tr. 32).

Brian Shealey Testimony

Counsel testified that he was lead counsel in Applicant's general sessions case and that they met probably ten to fifteen times. (PCR Tr. 42). Counsel testified that they reviewed discovery, which came in incrementally. (PCR Tr. 42).

Counsel reaffirmed that the defense at trial was that Officer Kelly committed the murder, not Applicant, which was supported by three proposed witnesses. (PCR Tr. 43). The information received by the defense reflected that Officer Kelly impregnated the victim who was about to leak the affair to his wife and that Officer Kelly wanted to kill her as a result. (PCR Tr. 43). Counsel testified that in support of the defense they had three proposed witnesses and surveillance footage evidence. (PCR Tr. 43). He stated that the video showed that a Columbia Police Department vehicle showed up an hour before the apartment was set on fire despite no service calls being sent out that night. (PCR Tr. 44). He stated that the video was so choppy they were unable to determine who exited the vehicle. (PCR Tr. 44). He stated that Officer Kelly

showed up immediately as the homicide was being investigated with the bedding that he claimed he got out of the dumpster despite the dumpster being emptied immediately before law enforcement arrived on the scene. (PCR Tr. 44). Counsel testified that the bedding was never tested. (PCR Tr. 44).

He testified that the rape kit was collected and that they believed there was a sexual relationship between the victim and Officer Kelly at the time. (PCR Tr. 44). He stated that he filed a motion to compel that the rape kit be tested but when the motion was filed it was discovered that the rape kit was missing. (PCR Tr. 45). He stated that the kit was missing for three or four months and that it inexplicably was received back into evidence thereafter. (PCR Tr. 46). He stated that it was then tested but that the way it was tested was only to see if there were male chromosomes present but there was no test to even determine if it was the victim's own DNA. (PCR Tr. 46). He stated that he had information to believe that the victim was pregnant at the time. (PCR Tr. 46). He stated that the pathologist did not test the uterus and could not explain why he did not test it in this case when he agreed he always tests it otherwise. (PCR Tr. 47). He stated that he never saw a rape kit go missing for several months before which he found suspicious. (PCR Tr. 55). He stated that he did not know if it going missing was intentional but that he was disappointed that even when it was returned it was only half tested. (PCR Tr. 55).

He stated that he believed that the apartment was set on fire to cover up evidentiary value. (PCR Tr. 44). Counsel testified that Judge Newman strongly shut the defense down when it came to presenting a third-party guilt defense. (PCR Tr. 45).

He stated that he found out about the conflict of interest the day of trial in the courtroom. (PCR Tr. 47). He stated that the State pursued a motion to relieve lead counsel on the spot, but

that Judge Newman ultimately decided it was Applicant's to waive. (PCR Tr. 48). He stated that Judge Newman was not willing to consider continuances and so Applicant on the spot had to determine if he wanted to waive the conflict or lose his lead attorney. (PCR Tr. 49). He stated that they discussed the decision with Applicant at the counsel table, but they were only able to talk to him briefly before he had to decide after roughly five minutes of consideration. (PCR Tr. 50). He stated that he did not believe that Applicant had enough time to consider the issue. (PCR Tr. 51). He stated that the jury found the jailhouse snitch to be charismatic and believable. (PCR Tr. 50). He believed this late disclosure was intentional. (PCR Tr. 53).

He stated that he recalled finding out about the cell phone report and graphics until the expert was testifying and that they did not find out about cell phone data until last minute or during trial. (PCR Tr. 52). He stated that his standard practice is to hire a cell phone expert in a murder case so they can be prepared for the phone records and dispute another expert especially since the prosecutor in this case would "dumb [scientific evidence] down to its most common denominator that wasn't always accurate in front of a jury. (PCR Tr. 52). Counsel testified that he believed this was intentionally handed over last minute. (PCR Tr. 53).

Counsel testified that he asked his brother Luke to handle the direct examination of Applicant so he could prepare for closing argument. (PCR Tr. 53-54).

Counsel testified that he recalled testimony concerning a mixture of DNA on a glove and around the victim's neck and how the DNA was shown to be linked to Applicant or any other paternal member of his family. (PCR Tr. 54). He stated that the defense attempted to show how Applicant's brother serviced the bathroom prior to the incident and how he could not have been ruled out as a contributor as a result. (PCR Tr. 54).

Counsel testified that he did not recall who argued the search warrant suppression

motion. (PCR Tr. 55).

Luck Campbell Testimony

Prosecutor Campbell testified that she has been practicing law since 1990 and the bulk of it has been in criminal law. (PCR Tr. 59-60). Prosecutor testified that third-party defense arguments come up often in murder trials. (PCR Tr. 61). She testified that the defense's theory was that there was a conspiracy to protect Officer Kelly from being exposed as the perpetrator. (PCR Tr. 61).

Prosecutor testified that she did not intentionally withhold cell phone records and that cell phone records were referenced as far back as the preliminary hearing. (PCR Tr. 62). She stated that cell phone records were discussed in advance, that Counsel Brian acknowledged he would be getting his records and that there were multiple meetings and motions to compel thereafter, along with a request for additional DNA testing. (PCR Tr. 63). She also stated that cell phone records were referenced in the State's opening and that had the defense not known of them at that point they would have objected or brought it to the Court's attention. (PCR Tr. 63). She stated that they objected to pretty much everything the State attempted to enter into evidence and had they not known of the cell phone records they would have objected. (PCR Tr. 63-64). Prosecutor also testified that the records were entered into evidence before McDonald ever testified with no objection. (PCR Tr. 64). She testified that what Counsels objected to was a PowerPoint synthesizing and highlighting portions of the records themselves. (PCR Tr. 65). She acknowledged that the PowerPoint was not turned over until the day of trial. (PCR Tr. 67). She also testified that Counsels did not object to part of that evidence being inconsistent with the records themselves. (PCR Tr. 65). She stated that the records only showed that nine calls were made between Applicant and the victim which was corroborated by his cell phone records. (PCR

Tr. 65-66). She stated that the only other thing McDonald testified to was cell phone tower configurations at the apartment complex, which was not a contention in the case. (PCR Tr. 66).

Prosecutor testified that the defense had the statement from the jailhouse snitch for at least a month prior to trial. (PCR Tr. 67). She testified that the defense admitted that after they found out about the snitch, they sent their investigator out to speak with him and spoke with others in their office about the issue. (PCR Tr. 68, 70). Prosecutor testified that they did not find out about Brian representing the snitch until the Thursday before trial. (PCR Tr. 68). Prosecutor testified that Applicant was questioned and waived the conflict. (PCR Tr. 69). She stated that she turned the information over when she got it and there was no intentional delay in disclosure. (PCR Tr. 69). Prosecutor testified that she thought that the snitch being cross-examined by his lawyer would have a chilling effect on his testimony and was afraid the conflict would become a PCR issue. (PCR Tr. 69-70). She stated that she thought Applicant discussed this with Counsels and during his colloquy with the judge told the Court he discussed the decision with his lawyers. (PCR Tr. 81). She stated that the statement was provided at least a month in advance but that there may have been impeachment material or prior convictions withheld until the last minute. (PCR Tr. 82). She stated that the defense's complaint about last-minute information being disclosed had to do with the State's motion, not the discovery itself. (PCR Tr. 82-83).

Prosecutor testified that the rape kit went missing at some point but that she was not the evidence custodian. (PCR Tr. 71). She stated that one witness testified that the kit was placed in a different box than expected and that the witnesses testified that when they tested on the kit it was sealed and properly stored. (PCR Tr. 71). She stated that the kit tested negative for semen and then subjected to additional tests but there was no evidence of a man involved. (PCR Tr. 71-72). The defense asked for additional testing but at that point there were concerns that it was not

the victim's kit. (PCR Tr. 72-73). She stated that DNA testing on the ligature around the victim's neck and the glove were conducted. (PCR Tr. 73).

She stated that they turned over all video evidence. (PCR Tr. 73). She stated that there was information in Investigator Thomas's report stating that Kelly found a comforter and sheet in a dumpster that was turned over before trial. (PCR Tr. 74). She testified that the sheets were not tested because there was no evidence of sexual assault at the time. (PCR Tr. 75). She testified that this information was disclosed in the initial investigation report so if they wanted it tested, they had time to do so. (PCR Tr. 75).

She testified that there were multiple officers involved in the case because it was a murder and that this item was taken into evidence. (PCR Tr. 74). She stated that it was not uncommon for multiple officers to investigate a murder case. (PCR Tr. 76). She stated that Officer Kelly being on scene would have been standard procedure. (PCR Tr. 76-77).

She stated that the defense found multiple witnesses supporting a third-party guilt defense that implicated Officer Kelly. (PCR Tr. 77). She stated that most of what was proposed was hearsay and no witnesses reported to police initially at all. (PCR Tr. 77). She stated that Kelly self-reported the rumor. (PCR Tr. 77).

She stated that the Court suggested a hearing to address Rule 3.3 of the Rules of Professional Conduct regarding the defense's chosen defense, but nothing came of the hearing. (PCR Tr. 79).

She reiterated she was not involved in any discovery withholdings or non-disclosures until the last minute. (PCR Tr. 79-80).

Megan Walker Testimony

Prosecutor Walker testified that she agreed with Prosecutor Campbell's testimony and

that she never intentionally withheld evidence until the last minute to win the case. (PCR Tr. 85). She testified that she did not intentionally fail to disclose a conflict with the jailhouse snitch to get the head defense attorney off the case. (PCR Tr. 86).

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 and arguments presented at the PCR hearing. Before this Court are the Richland County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d

624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S.

at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Investigate, Officer Kelly, and Develop Defense

Applicant alleges Counsels were constitutionally ineffective for failure to investigate additional witnesses to support the defense, failure to develop a proper defense, and effectively establish Officer Kelly as the real suspect.

Strickland makes clear that Defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* That said, counsel is required to, at minimum, "interview potential witnesses and make an independent investigation of the facts and circumstances of the case", *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff'd*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government's forensic evidence and conducting analyses of all other available forensic evidence." *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard. v. Catoe*, 372 S.C. 318, 642

S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

“In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* “[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial.” *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Counsels were clearly not deficient on these grounds. Despite stating that Counsels

should have investigated potential additional witnesses to support the chosen defense, none were named by Applicant much less present to testify at the PCR hearing. Whether additional witnesses existed that could corroborate the defense is purely speculative. Counsels established an effective defense and sent an investigator out who found multiple witnesses to support the defense that Officer Kelly was the real suspect in support of a third-party guilt defense. Counsels prepared this defense thoroughly. The Court blocked most of that testimony from being entered. Counsels are not responsible for evidence admissibility decisions made by the Court. Applicant has also failed to establish what, if anything, Counsels could have put forward but did not that would have been admitted by the Court and would have changed the outcome at trial. Thus, Applicant has failed to establish deficiency or prejudice on these three claims and relief is denied accordingly.

Conflict of Interest

Applicant claims Counsel was ineffective for failure to fully communicate to Applicant the extend of Counsel Brian's conflict with the jailhouse snitch. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the applicant's. *Fuller v. State*, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where an applicant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance, prejudice is presumed. *Gonzales v. State*, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing *Strickland*, 466 U.S. at

692) (emphasis added). However, “[t]he mere possibility of a conflict of interest is insufficient to impugn a criminal conviction.” *Fuller*, 347 S.C. at 634, 557 S.E.2d at 665.

“The Sixth Amendment right to conflict-free representation, like the right to counsel itself, may be the subject of a waiver.” *United States v. Swartz*, 975 F.2d 1042, 1048 (4th Cir. 1992). “The state can establish a waiver only by proving an intentional relinquishment or abandonment of the right.” *Hoffman v. Leake*, 903 F.2d 280, 288 (4th Cir. 1990). “To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently.” *Thomas v. State*, 346 S.C. 140, 144, 551 S.E.2d 254, 256 (2001) (citing *Swartz* at 1048-49). “Whether there has been a waiver depends on the particular facts of each case and the court must make as thorough and long an inquiry as necessary to determine whether the accused is voluntarily, knowingly[,] and intelligently waiving his right.” *Hoffman*, 903 F.2d at 288.

Applicant was engaged in a thorough colloquy with the Court concerning the alleged conflict and waived the conflict of his own volition. (Partial Trial Tr. 20-22). Based on the record, this waiver was done knowingly, intelligently, and voluntarily. Nothing was produced at the PCR hearing that counted as new information that would have undermined the fact that this waiver was done knowingly, intelligently, and voluntarily. Thus, relief is denied on this ground.

Communicate, Review Discovery, Prepare to Testify

Applicant claims Counsels were ineffective for failure to properly communicate with Applicant, to properly review discovery, and to prepare Applicant for testifying. “[B]revity 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).

Applicant acknowledged that Counsels did meet with him and review discovery with him, he just wished that they had met and reviewed the discovery more thoroughly. He has failed to show what do further communication or discovery review would have changed at trial. Concerning testimony preparation, Counsels credibly noted that they thoroughly prepared Applicant for testifying. Applicant failed to establish what, if anything, could have come about through further preparation that would have changed the results at trial. Applicant has failed to establish deficiency or prejudice. Accordingly, relief is denied on these grounds.

Failure to Cross-Examine DNA Expert

Applicant claims Counsels were ineffective for failing to thoroughly cross-examine the DNA expert, specifically about how the testing went from inconclusive to Applicant could not be excluded. "Where trial counsel articulates a valid reason for employing a certain trial strategy, counsel will not be deemed ineffective." *McKnight v. State*, 378 S.C. 33, 43, 661 S.E.2d 354, 359 (2008) (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). Counsel can be deficient when examining witnesses if they fail to elicit testimony key to a petitioner's defense. *Miller v. State*, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (finding counsel was deficient in failing to elicit testimony about similarities between armed robberies from a witness who

could corroborate where the applicant's key defense was third party guilt).

Counsel Brian credibly testified that the focus of this examination was on how the DNA only showed that it matched Applicant or someone on the paternal side of his lineage and attempted to demonstrate how the DNA found could be linked to Applicant's brother, who was an employee of the apartment complex. This was a reasonable strategic angle for Counsel to take during cross-examination. Applicant has failed to establish how further cross-examination or different cross-examination approached would have changed the outcome of trial. Accordingly, Applicant has failed to establish deficiency or prejudice and relief is denied.

Failure to Argue Search Warrant

Applicant claims Counsel should have more effectively argued the search warrant motion. Applicant himself acknowledged that Counsels did argue the motion, he just wished it was argued more thoroughly and effectively. Applicant failed to establish what, if anything, could have been argued that would have produced a different outcome. Applicant's disappointment seemingly rests with the Court's decision on Counsels' arguments, not on Counsels performance itself. Applicant has failed to establish deficiency or prejudice and relief is denied accordingly.

Prosecutorial Misconduct

Prosecutorial misconduct is most commonly found within the confines of a *Brady*¹ violation. *Brady* violations occur if four conditions are met: "the evidence was favorable to the accused", "it was in the possession of or known to the prosecution", "it was suppressed by the prosecution", and "it was material to guilt or punishment." *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Whether a *Brady* violation is material and, thus, sufficient to

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

warrant relief, is contingent on where there is a “reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial.” *Id.* at 325. Further, whether a mistrial is warranted remains contingent on ““(1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court.”” *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) (quoting *United States v. Anwar*, 428 F.3d 1102, 1112 (8th Cir. 2005)).

Rape Kit

Applicant claims prosecutorial misconduct for misplacing the rape kit for an extended period. Prosecutor Campbell testified that she was never in possession of the kit herself but that the kit was simply misplaced by law enforcement in the wrong box and was otherwise properly handled and sealed by anyone else who tested or handled it. Applicant has failed to establish that the prosecutor had anything to do with the rape kit going missing or that the misplacement was intentional or negatively affected Applicant. Thus, relief is denied on this ground.

Jailhouse Snitch Disclosure

Applicant claims prosecutorial misconduct for failure to timely convey information concerning the jailhouse snitch. Prosecutor Campbell credibly testified that this information was conveyed over a month in advance of trial and that the only late disclosure was the conflict-of-interest motion itself. Prosecutor Campbell testified that the defense reportedly, by what they told the Court, had sufficient notice to speak with others in their office about the situation and utilize an investigator. By disclosing the snitch information ahead of time, Counsels were effectively put on notice of the conflict prior to a motion being filed, whether they made the connection or not. Prosecutor Campbell credibly testified that she found out about the conflict

the Thursday or Friday before trial and pursued the motion immediately. Thus, there is no prosecutorial misconduct found on this ground and relief denied accordingly.

Cell Phone Report

Applicant claims prosecutorial misconduct for failure to timely provide the cell phone report. Prosecutor Campbell credibly testified that all cell phone data was provided in advance of trial and that the only thing withheld until the trial was the PowerPoint which contained no new information. Thus, the allegedly withheld evidence was duplicative, and no misconduct is found flowing therefrom.

(Conclusion and Signature Line on Following Page)

Conclusion

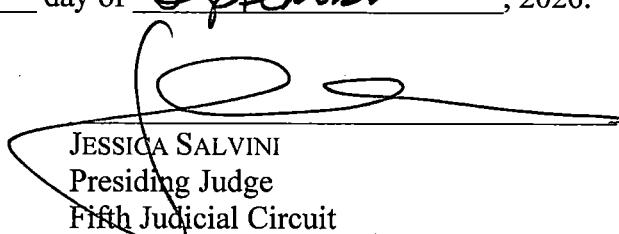
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 9 day of September, 2026.


JESSICA SALVINI
Presiding Judge
Fifth Judicial Circuit

Green, South Carolina.