

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Rasheem K. Thomas, 380567,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2022-CP-21-01085

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Milton G. Kimpson
Steven W. Fowler, Esq.
O. McConnell Harison, Esq.
Matthew S. Swilley, Esq.
February 24, 2026
Cynthia D. Weaver

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2026 SEP 21 P 2:14

FILED

This matter comes before the Court by way of Rasheem K. Thomas's (Applicant) application for post-conviction relief (PCR) filed on May 31, 2022. Respondent, the State of South Carolina, made its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on October 31, 2022. On November 8, 2022, the Honorable D. Craig Brown granted Respondent's Partial Motion to Dismiss and Motion for a More Definite Statement by filed order. On January 5, 2023, Applicant filed his amended application for PCR through then-PCR counsel Michael H. Lifsey. On October 8, 2024, Mr. Lifsey was relieved as PCR counsel, and Steven W. Fowler was appointed to represent Applicant.

On February 24, 2026, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Milton G. Kimpson. Applicant was present and represented by Steven W. Fowler, Esquire (PCR Counsel). Assistant Attorney General O. McConnell Harison represented Respondent. Applicant proceeded forward on the claims set forth in his

original and amended applications. In support of these claims, Applicant testified on his behalf. Respondent presented the testimony of Matthew S. Swilley, Esquire (Trial Counsel).

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

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections, serving a twenty-five-year sentence. In June 2018, the Florence County Grand Jury indicted Applicant on an Armed Robbery charge (2018-GS-21-01032). On June 24-26, 2019, Applicant proceeded to a jury trial before the Honorable Thomas A. Russo. Trial Counsel represented Applicant, and Twelfth Circuit Assistant Solicitor J. Ryan White represented the State. The jury convicted Applicant as indicted, and Judge Russo sentenced him to twenty-five years' imprisonment.

Applicant timely filed a notice of appeal. Appellate Defender Adam Sinclair Ruffin submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). On July 14, 2021, the South Carolina Court of Appeals dismissed the appeal pursuant to Anders. The Remittitur was returned on August 5, 2021.

SUMMARY OF TRIAL TESTIMONY

At trial, Anastacia Kauth testified that her fiancé, William Brookins, sold convenience-store items from their trailer. She recalled someone stopping by on the morning of May 28, 2016, to purchase beer. Brookins's friend, Carson McArthur, made the sale. While McArthur was getting change, two men with bandanas over their faces entered the home; they and the person who initially knocked on the door pulled out guns and proceeded to rob the home. According to Kauth,

the men stole several guns and nearly \$3,000. Kauth testified that one of the men pointed a gun at Kauth and her daughter during the robbery. Kauth stated that the following February, she saw a picture of Applicant on Facebook and immediately recognized him as the man who threatened to kill her and her daughter. Kauth notified law enforcement.

Brookins testified about the home invasion. He stated he provided the combination to his safe after one of the men held a gun to his daughter's head and threatened to kill her. Brookins averred that the man who threatened to kill his daughter was instructing the other two men involved in the robbery. When Brookins saw him, his face was exposed. Brookins recalled seeing the picture of Applicant that Kauth found on Facebook and "instantly" recognized him as the man who held a gun to his daughter. During his testimony, Brookins identified a gun magazine and a guard rail that law enforcement had recovered from Applicant's house as items that were stolen from his safe.

McArthur also testified about the home invasion and identified Applicant as the man who threatened Kauth and Brookins's daughter. Applicant did not testify or present a defense. The jury convicted him of armed robbery, and the court sentenced him to twenty-five years' imprisonment.

CURRENT ACTION BEFORE THIS COURT

Applicant timely commenced this PCR action on May 31, 2022. In his application, Applicant asserts he is being held in custody unlawfully for the following reasons¹:

- 1) Prosecutorial misconduct: using inadmissible evidence
- 2) Ineffective assistance of counsel: failure to make proper objections and motions
- 3) Due process violation: improper and limited investigation by FCSO

In his January 5, 2023, amended PCR application, Applicant asserts he is being held in

¹ Allegations 1 and 3 from the original PCR application were summarily dismissed by Judge Brown in his November 8, 2022, filed order.

custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Trial Counsel
 - a) Applicant's trial counsel did not meet with Applicant a sufficient number of times prior to his trial, did not review discovery with him fully, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged.
 - b) Trial counsel did not ask for a continuance of the State's proposed trial despite the facts referenced in (a) above.
 - c) In a pretrial hearing, trial counsel objected to the admission of certain photographs of ammunition, purportedly capable of being identified by a witness for the state, as being more prejudicial than probative. The trial judge ruled against the objections of trial counsel in this pretrial hearing. However, trial counsel did not renew his objection to the admissibility of this evidence at the time they were formally admitted into evidence during the trial, thereby not preserving this error for appellate review.
 - d) In addition to the Rule 403, SCRE argument described in (c) above, trial counsel also should have objected to the photographs as not being provided to him in a timely fashion under the rules of discovery and should therefore have been excluded from evidence or, in the alternative, a continuance be granted so the Applicant could consider the impact of this evidence on his trial.
- 2) Cumulative error and prejudice.

As relief, Applicant requests a "new trial and/or a time consideration."

Before this Court are the Florence County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the record on appeal (which includes the entire trial transcript), the records from Applicant's direct appeal, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (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 S.C. Code Ann. §§ 17-27-10 to -160.

- 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). 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), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. at 687. 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 "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 that 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 Trial 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 also heard the testimony presented at the evidentiary hearing and observed the witnesses, allowing the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

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 further 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, 308 S.C. at 122, 417 S.E.2d at 531.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation (1)(a): Trial Counsel did not meet with Applicant a sufficient number of times prior to his trial, did not review discovery with him fully, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to meet with Applicant a sufficient number of times prior to his trial, for failing to review discovery with him fully, for failing to fully explain the strengths and weaknesses of the State's case, and for failing to explain the elements of the crimes of which he was charged.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare for trial, 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)). Furthermore, an applicant must present evidence showing how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Additionally, federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy the competency requirement. 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 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 Trial 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) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence demonstrating that additional time spent in consultation would have resulted in a different outcome; mere speculation about how the alleged lack of preparation prejudiced the applicant is insufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

Findings

At the PCR evidentiary hearing, Applicant testified that after he obtained a bond and was out for approximately 120 days, he "might have seen [Trial Counsel] twice," both in the two weeks before trial, and that Trial Counsel did not write or call. Applicant described the armed-robbery discovery as "four pages." Applicant did not identify any trial exhibit other than the search-warrant ammunition photographs that he claims were unknown to him. Applicant further testified that Trial Counsel treated the armed-robbery case as less serious than the pending murder charge.

Trial Counsel testified that he was appointed not long after Applicant was charged and represented Applicant on both this armed-robbery indictment and a separate murder indictment that was later nolle prosequi. Trial Counsel testified that he received discovery in the armed-robbery file, including the incident report, Investigator Thomas McFadden's supplemental report, forensic technician Andrew Clendenin's diagram, and, subsequently, SLED DNA analysis of a cap recovered from the alleged victims' residence. That analysis did not identify Applicant as a contributor. Trial Counsel testified that Florence County discovery is often slower than the rules contemplate, but that he received "most everything before the trial" and that the file was not dumped on him the day before trial. Trial Counsel testified that had the entire file arrived the day before trial, he "would have certainly made an issue about that."

Trial Counsel testified that he reviewed the discovery with Applicant. Trial Counsel could not recall whether he left Applicant a paper copy and could not reconstruct exact meeting dates years later, but he testified that he does not keep a contemporaneous log of every discovery conference. Trial Counsel testified that he met with Applicant "multiple times" and that his investigator also spent "a fair amount of time" with Applicant. Trial Counsel testified that he believed he explained the elements of armed robbery and the strengths and weaknesses of the

State's case. Trial Counsel testified that the trial theory was misidentification: the State's case rested on delayed identifications after a media photograph circulated, there was no forensic link tying Applicant to the robbery scene, and the identifying witnesses were not credible. Trial Counsel testified that Applicant was aware of that theory.

Turning to the trial record, this Court finds Trial Counsel's action to be inconsistent with a claim of an unprepared lawyer. Trial Counsel litigated pretrial identification and evidentiary issues; delivered an opening; cross-examined every State witness—Anastacia Kauth, Michael Brumbles, Andrew Clendenin, William Brookins, Carson McArthur, and Thomas McFadden; moved for a directed verdict when the State rested; and closed to the jury.

This Court further finds Trial Counsel's account of multiple meetings, discovery review, and advice on the elements and the State's proof more credible than Applicant's "twice after bond /four pages" account. This Court finds Trial Counsel met with Applicant more than once, reviewed the discovery that existed, employed an investigator, explained the elements of armed robbery, and tried the case on a coherent misidentification theory consistent with the SLED DNA result and the delayed Facebook identification. That performance was within the wide range of reasonable professional assistance. Strickland, 466 U.S. at 689. Applicant offered no evidence of what further meetings or a line-by-line rereading of the "four pages" would have changed. He identified no uncalled defense witness with admissible, non-speculative testimony on this specification, no undiscovered exhibit, and no misunderstanding of the elements that affected a plea or trial decision.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably 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 must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(b): Trial Counsel failed to request a continuance of the State's proposed trial despite the facts referenced in (a) above.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to request a continuance of the State's proposed trial date in light of the facts alleged in allegation 1(a). At the PCR evidentiary hearing, Applicant tied the continuance allegation to the late surfacing of Brookins's claim that search-warrant photographs depicted property stolen in the robbery.

Findings

At the PCR evidentiary hearing, Applicant testified that he asked about a five-year nonviolent offer after the photographs surfaced, and that Trial Counsel said he did not think the offer was still on the table. Applicant did not present the solicitor or any other witness to establish that an offer was still open, that a continuance would have revived it, or that Applicant would have accepted it.

Trial Counsel testified that he had adequate time to prepare for the trial as originally scheduled and that the setting was not a next-day surprise. After learning that William Brookins was going to identify property photographed during the murder-case search warrant as property stolen in the robbery, Trial Counsel testified that he "would have liked" more time. Trial Counsel

candidly could not recall asking for a continuance. Trial Counsel testified that the identification of the magazine and quad rail was disclosed to Trial Counsel the week of trial, after the jury was sworn or immediately before testimony, when Solicitor White reported Brookins's identification.

At trial, Solicitor White apologized on the record for the late notice and stated Brookins had "just told it to me." Trial Counsel did not respond to that development by asking to continue the term. Trial Counsel did object to admissibility on Rule 403, Rule 404, late-notice, and inventory grounds, and by later cross-examining Brookins on the identification.

Whether to seek a continuance is a classic exercise of professional judgment. Strickland, 466 U.S. at 690. This Court finds Trial Counsel was not ineffective for proceeding to trial where he had investigated the case, knew the setting in advance, and elected to meet new evidence with objection and cross-examination rather than with a motion that the trial court has broad discretion to deny. Trial Counsel immediately placed the late notice, the inventory discrepancy, and the Rule 403/404 problems on the record. That is a reasonable response under prevailing professional norms.

Furthermore, even if the omission were deficient, Applicant failed to prove prejudice. Applicant offered no evidence that a continuance would have been granted, that additional time would have produced admissible defense evidence, or that the verdict would have been different. See Harris, Jackson, Skeen, and Glover, *supra*.

Turning to the plea offer, a lost or withdrawn plea offer cannot supply prejudice without proof that the offer was available and would have been accepted; Applicant supplied neither.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably 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 must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(c): Failure to renew the pretrial Rule 403 objection and preserve it for appellate review.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to renew the Rule 403 objection when the photographs were formally admitted, thereby failing to preserve the issue for appellate review.

To show prejudice where counsel fails to preserve an issue, the applicant must show that the trial court would have sustained an objection and that the unpreserved issue would have been successful on appeal. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018). A PCR court must view the trial court's ruling of an issue through the same lens applied on appeal, giving appropriate deference to the trial court's findings. Milledge, 422 S.C. at 380, 811 S.E.2d 804. Furthermore, an applicant must present evidence showing how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

Pretrial, the State announced its intent to offer State's Exhibits 11 through 21 (photographs of ammunition and related items recovered during a February 23, 2017 search of a residence associated with Applicant), Exhibit 24 (a bag of ammunition), and Exhibit 25 (a quad rail in a box). Trial Counsel objected and told the trial court: (a) Brookins's identification of the magazine and quad rail was "the first I've heard about any of this stuff being identified by Mr. Brookins"; (b) the written inventory of stolen property listed five firearms and did not list ammunition, ammunition boxes, a quad rail, or a bag; (c) the search warrant was executed in the murder investigation, before Applicant was charged with this robbery and before Anastacia Kauth contacted law enforcement, and placing that warrant before the jury would communicate that Applicant was under investigation for something else, in violation of Rule 404(a), SCRE; (d) introduction of the material was "substantially more prejudicial than probative,"); (e) "this is kind of the first I've heard about ... anything that was found in the course of this search warrant being pertinent to this case"; and (f) other items from the search (marijuana, fake currency) were irrelevant.

Solicitor White apologized for the late notice. He agreed that the presentation could be limited so that the murder charge, the date of the warrant, and unrelated contraband would not come before the jury.

Judge Russo ruled that the photographs and items could be admitted if a foundation was laid and the presentation was sanitized: no mention of "the other accusation," no marijuana or counterfeit currency in the pictures shown, and questions limited in scope to whether the items were found as a result of a search warrant. The ruling was expressly made subject to cross-examination.

When the photographs were offered through Sergeant Andrew Clendenin, the following exchange occurred:

MR. WHITE: Judge, I'd move State's Exhibit 11 through 21 into evidence, if I could, please.
MR. SWILLEY: Just briefly?
THE COURT: Yeah.
MR. SWILLEY: No objection.
THE COURT: All right. Without objection, those items are in evidence without objection."

Clendenin then described Speer Gold Dot .40 ammunition, a storage can, a Glock magazine, a 5.56 PMAG with marring on the top-right corner, and a front handrail/quad rail, recovered from Applicant's residence, hallway dresser, and backyard shed. When the physical bag of ammunition (Exhibit 24) was offered, Trial Counsel objected that "the proper foundation hasn't been laid," and after additional foundation, renewed: "Same objection and on the basis of relevance." The court overruled the objection. When the quad rail (Exhibit 25) was offered, Trial Counsel stated, "Same objection." The trial court overruled Trial Counsel's objection.

Brookins later identified the marked PMAG and the quad rail, including the original rail left in the box after he installed an aftermarket rail purchased from Doc's Gun Exchange.

At the PCR evidentiary hearing, Applicant testified that the photographs were "unrelated" and not reported stolen; that he tapped Trial Counsel and told him to "say something"; that Trial Counsel objected "probably one time" and was overruled; that the State "kept bringing it up"; and that Trial Counsel "should have renewed his objection." Trial Counsel, without the transcript in front of him on direct and cross, testified that he thought he had objected and that Judge Russo's ruling was a 404 sanitization, not a blanket exclusion of the photographs. On redirect examination, Trial Counsel was shown Trial Tr. p. 84 and he correctly distinguished Exhibits 1 through 9 (crime-scene photographs of the victims' residence) from the search-warrant series. Applicant's PCR

counsel then read a "no objection" passage; that passage at Trial Tr. p. 84 concerns Exhibits 1 through 9, not Exhibits 11 through 21. The "no objection" that is material to this allegation is Trial Tr. p. 176.

The Court finds, based on the record, that Trial Counsel made a detailed pretrial objection on Rule 403, Rule 404, SCRE, based on late notice and inventory grounds; that the trial court issued a definitive in-limine ruling allowing a sanitized presentation; that Trial Counsel did not restate the Rule 403 objection at the moment Exhibits 11 through 21 were moved into evidence; and that Trial Counsel did object to the physical ammunition and quad rail on foundation and relevance when those exhibits were offered.

Under South Carolina's preservation doctrine, a ruling on an in-limine motion is not a final ruling on the admissibility of evidence, and a contemporaneous objection is generally required when the evidence is offered. Failure to renew can leave an evidentiary issue unpreserved for direct appeal. That preservation rule, standing alone, does not establish ineffective assistance. The applicant must still prove deficient performance and Strickland prejudice. Strickland, 466 U.S. at 687–94; Rivers v. State, 446 S.C. 1, 916 S.E.2d 335 (2025) (even assuming deficiency in failing to renew a pretrial objection to collateral evidence, PCR fails where the applicant does not show a reasonable probability of a different verdict).

This Court finds that Applicant has failed in his burden of proving Trial Counsel's performance was deficient. Trial Counsel placed every meritorious ground, Rule 403 balancing, Rule 404 other-crimes risk, late notice, and the inventory gap, before the trial court, before a jury heard anything. The trial court understood the objection and ruled. Restating "more prejudicial than probative" a few hours later, after that ruling, would have been the same argument the trial court had just rejected. Trial Counsel did not abandon the issue: he objected to Exhibits 24 and 25

on foundation and relevance. Objecting to the physical items, while not repeating the Rule 403 objection to photographs of those same items, does not constitute a breakdown of the adversarial process. Furthermore, the trial court only permitted a sanitized version of the photographs.

Even if the failure to object on the same pretrial basis was deficient because it left the issue unpreserved, Applicant has not proved prejudice. First, there is no reasonable probability that the trial court would have excluded the sanitized photographs on a renewed objection; the court had just held that they could be admitted with limitations, and the presentation that followed stayed within those limitations. Second, there is no reasonable probability the Court of Appeals would have reversed on this record. The photographs were relevant to identity and to whether the robbery occurred as Brookins described. Rule 401, SCRE. Third, the State's case did not rise or fall on boxes of ammunition. The jury heard Kauth's identification after seeing Applicant's photograph in a media post, Brookins's account of the robbery and of the marked magazine and quad rail, and the testimony of McArthur and McFadden. Trial Counsel cross-examined each of them and closed on misidentification and the absence of DNA. Applicant has failed in his burden of showing a reasonable probability of a different verdict had Trial Counsel said "same 403 objection" at Trial.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably 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 must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(d): Trial Counsel failed to object to the photographs as not being provided to him in a timely fashion under the rules of discovery and should therefore have been excluded from evidence or, in the alternative, a continuance be granted so the Applicant could consider the impact of this evidence on his trial.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to the photographs as not being provided to him in a timely fashion under the rules of discovery and should therefore have been excluded from evidence or, in the alternative, a continuance be granted so the Applicant could consider the impact of this evidence on his trial.

Findings

As an initial matter, the photographs themselves were not a mid-trial surprise in the sense that they had never been disclosed. Trial Counsel received them as part of discovery in Applicant's unrelated murder case. What was new the week of the trial was Brookins's claim that items depicted in those photographs were property stolen in this robbery.

Trial Counsel placed that late-notice problem on the record. See Allegation (1)(c) Findings, *supra*. Trial Counsel did not move to exclude the photographs as a Rule 5, SCRCrimP, sanction, nor did he move to continue the term on that ground. Instead, Trial Counsel sought exclusion under Rules 403 and 404, SCRE, and on relevance, and later tested Brookins's identification on cross-examination.

At the PCR evidentiary hearing, Applicant testified that he first saw the photographs the day of the pretrial discussion. Applicant testified that the photographs "changed the whole course" of the case and that Trial Counsel should have objected because they "wasn't submitted in a timely

fashion." However, Applicant presented no expert, no additional witness, and no exhibit at the PCR evidentiary hearing demonstrating what a continuance would have uncovered about the PMAG mark or the quad rail.

Rule 5, SCRCrimP, requires disclosure of documents and photographs the State intends to use. The remedy for late disclosure is within the trial court's discretion and may include exclusion, a continuance, or other relief sufficient to prevent prejudice. The constitutional question on PCR is not whether a different lawyer might have styled the objection as a Rule 5, SCRCrimP, motion rather than as a Rule 403/404/relevance objection; it is whether Trial Counsel's actual response fell below professional norms and changed the result. Strickland, 466 U.S. at 687–94.

This Court finds Trial Counsel's performance on this matter was not deficient. Trial Counsel immediately told the trial court he had just learned of Brookins's identification, that the inventory did not list the items, and that using murder-warrant photographs in this trial was unfairly prejudicial. That is a discovery objection in substance. The trial court elected to admit the evidence with limitations rather than to exclude it or stop the trial. Trial Counsel then used cross-examination, the tool the trial court expressly left him.

Furthermore, Applicant also failed in his burden of proving any prejudice flowing from the alleged deficient performance. Applicant failed to show that a formal Rule 5 motion would have produced exclusion. The photographs had been in Trial Counsel's file from the murder discovery; the late event was a witness's interpretation of them. Trial courts routinely allow mid-trial identifications of previously disclosed physical evidence, subject to cross-examination. Applicant has not shown what additional investigation a continuance would have yielded, and he called no witness at PCR who could have undermined Brookins's identification of the distinctive mark on the PMAG or of the quad rail and original rail in the box. Speculation that more time would have

mattered is not Strickland prejudice. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (mere speculation and conjecture on the part of a defendant in PCR is insufficient).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably 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 must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (2): Cumulative Error

Applicant alleges that the specified instances of ineffective assistance of Trial Counsel, individually and in cumulative effect, prejudiced him and that, absent that assistance, the result of his trial would have been different

Findings

This Court has found no deficient performance on Allegations 1(a) through 1(d). Even assuming *arguendo* that this Court found any arguable deficiency in the renewal and discovery specifications, it did not affect the verdict. The trial record shows a prepared defense of misidentification, thorough cross-examination, a directed-verdict motion, and a closing argument that highlighted gaps in the State's proof, including the SLED result on the cap.

Because Applicant has not established deficient performance on any allegation, there is nothing to cumulate. Even considering the allegations together, there is no reasonable probability

of a different result. South Carolina does not convert a series of non-prejudicial decisions into a constitutional violation by addition. See State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (holding no reversible cumulative error where individual issues do not require reversal).

ISSUES MENTIONED AT THE EVIDENTIARY HEARING

Out of an abundance of caution, and to comply with Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019), this Court addresses matters mentioned at the PCR evidentiary hearing that were not specified in the amended application.

Applicant's original application alleged prosecutorial misconduct and a due process / Neil v. Biggers identification claim. Those claims were dismissed before the hearing as not cognizable. This Court does not reopen them. To the extent Applicant recast the same facts as ineffective assistance for failing to obtain a Biggers hearing, he presented no evidence that the identification procedure was so suggestive that a hearing would have suppressed Kauth's in-court identification, and Trial Counsel, in fact, litigated identification throughout the trial.

Applicant mentioned a desire to subpoena the owner of the searched residence or a neighbor to say the residence and items were not his. Trial Counsel did not recall any discussion about subpoenaing a neighbor or receiving names; he typically sends his investigator to locate fact witnesses. Applicant did not produce the neighbor or owner at the PCR evidentiary hearing and offered no admissible testimony that those persons would have given. Failure to call a witness is not ineffective assistance unless the applicant produces the witness at the PCR evidentiary hearing or otherwise proves the substance of the testimony and shows a reasonable probability that the testimony would have changed the result. See Glover, supra. Applicant did neither.

Applicant mentioned a mug shot. Trial Counsel explained the photograph at issue was the media photograph Anastacia Kauth saw on Facebook, which is how she identified Applicant. That photograph was part of the State's identification theory.

Trial Counsel advised Applicant to remain silent at sentencing because statements could be used against him later and could do more harm than good. Trial Counsel presented mitigation. That is a reasonable sentencing strategy. See McLaughlin v. State, 352 S.C. 476, 483–484, 575 S.E.2d 841, 844–845 (2003) (holding that where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel); see also Whitehead, supra.

This Court finds that no additional meritorious claim of ineffective assistance was established by the evidence at the hearing.

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.

AND IT IS SO ORDERED this 11 day of September, 2026.


MILTON G. KIMPSON
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

FILED
2026 SEP 21 P 2:14
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2022CP2101085**

Rasheem Kevin Thomas		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

9/22/2026

Date

For Clerk of Court Office Use Only

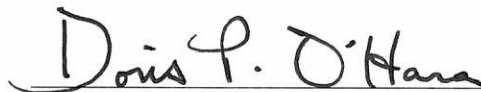
This judgment was entered on **September 21, 2026**, and a copy mailed first class or placed in the appropriate attorney's box on **September 22, 2026**, to attorneys of record or to parties (when appearing pro se) as follows:

Steven Willard Fowler 730 Main Street Unit # 237 North
Myrtle Beach, SC 29582

D. Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.