

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

H. Steven DeBerry, IV, Circuit Court Judge

RECEIVED

OCT 02 2026

S.C. SUPREME COURT

Case #2024-CP-43-01865

The State,

Respondent,

v.

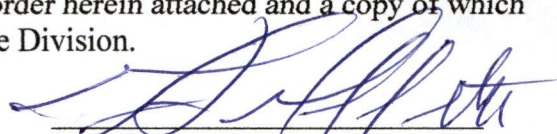
Corey Rashad Brown

Appellant.

NOTICE OF APPEAL

Corey Rashad Brown, appeals the decision of the Court, in the order dated September 18, 2026, received by counsel on September 24, 2026, where Mr. Brown was denied his request for Post-Conviction Relief. Mr. Brown was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 9/24/26



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Will not be representing on appeal

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

Corey R. Brown, #385335) Case No.: 2024-CP-43-01865

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

RECORDED
2025 SEP 18 PM 1:44
JAMES E. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Corey R. Brown ("Applicant") on October 28, 2024. The Court convened an evidentiary hearing into the matter on August 18, 2025, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy L. Griffith, Esq. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Sumter County Clerk of Court. During its March 2020 term, the Sumter County Grand Jury indicted Applicant for armed robbery, first degree burglary, first degree assault and battery, and possession of a weapon during the commission of a violent crime (2020-GS-43-0238). The case was prosecuted by Assistant Solicitor William Jason Corbett. Applicant was represented by Michael D. Routzong, Esquire ("Counsel").

On April 28-30, 2021, Applicant proceeded to a jury trial before the Honorable Kristi F. Curtis. Applicant was acquitted of possession of a weapon during the commission of a violent crime and found guilty on the remaining charges. On April 30, 2021, Judge Curtis sentenced Applicant to twenty years' imprisonment for first degree burglary, ten years for first degree assault and battery, and ten years for armed robbery, with those sentences to be served concurrently. Applicant filed a timely notice of appeal.

Sarah E. Shipe of the South Carolina Commission on Indigent Defense—Appellate Division perfected the appeal. On October 25, 2023, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion. *State v. Corey R. Brown*, Op. No. 2023-UP-344 (Ct. App. filed October 25, 2023). The Remittitur was issued on November 17, 2023.

Factual Summary

On July 22, 2019, Anselmo Lopez Martinez ("Victim") had just arrived home from work when he heard someone on the steps of his door. (R. 155). He went to close the door, but a man forcefully pushed the door open from the outside. (R. 155). This man approached Victim with a knife and said, "Give me your money." (R. 155). Victim gave the man some money, and the man demanded more. (R. 155). When Victim told the man he didn't have anymore, the man struck him in the face. (R. 157). Victim then gave the man the rest of the money he had, and the man left through the same door he came. (R. 155). Victim followed him out and observed the man run through an apartment area. (R. 156).

Willie McFadden, an Officer with the Sumter Police Department, went to the scene and spoke with the Victim through an interpreter. (R. 201). Victim told police that he could see the man who had robbed him running through the apartment area. (R. 161). McFadden learned that there was video surveillance in the Harmony Court Apartments across the street from the scene.

(R. 94). Sumter Police obtained the video surveillance from the security company that owned the cameras. (R. 94). There were four cameras in the apartments that allow a 360° view of the apartment complex. (R. 58). McFadden testified a vehicle can be seen driving back and forth numerous times past the Victim's house. (R. 97, State's Exhibit 3). On another camera, an individual can be seen walking through the apartment area towards the Victim's residence. (R. 103). The same individual is seen running back through the same apartment area towards the vehicle. (R. 107). Victim can also be seen on camera coming out of his residence to watch the man running. (R. 107). At trial, Victim, after watching the surveillance video, testified that the man running in the video was the one who had just robbed him. (R. 167).

Kaitlyn Nugawela, an expert in video enhancement, created a timeline video from the multiple cameras following the individual as he moved through the camera views. (R. 134). She was able to enhance the video and created individual pictures of the person in the video. (R. 134). Clips of the video along with the still photos were posted on the Sumter Police Department Facebook page looking for Crime Stopper tips. (R. 97). Information about Corey Brown (Applicant) was received through a tip. (R. 111). At some point Applicant was taken into custody, Mirandized, and interviewed by McFadden. (R. 112). During the interview, Applicant was shown the stills from the video and identified himself in the photos. (R. 118-119). Applicant also provided a written statement in which he identified himself in the photos and stated that he was in the area but did not see or hear anything. (R. 122, 233).

Present Application

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

1. Ineffective Assistance of Counsel for:
 - a. failing to conduct a proper *Niel v. Biggers* hearing.

- b. "not laying the foundation to call Samuel Stewart the forensic scientist who compared my samples to the samples on the door of house to the stand which proves that I did not enter anyone's dwelling, which is a essential element of Burglary 1st Degree."
2. Inconsistent Jury Verdict
 - a. "They convicted me of Armed Robbery but found not guilty of possession of a weapon during a crime. In order to be convicted of Armed Robbery you have to be in possession of a weapon. The Judge erred when she made that decision."

Applicant requests relief as follows:

"I'm seeking for all charges to be dismissed ."

Applicant subsequently amended his application to include the following allegations of ineffective assistance:

1. Attorney did not call Samuel Stewart who was on the list and could have shown the DNA was not in the house.
2. No weapon so no armed robbery.
3. The Attorney did not have time to speak with the applicant, he only saw him 2 or 3 times before the trial.
4. The attorney did not explain the offer and the consequences of trial.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR

action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "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.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When 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 v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy

judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced Applicant such 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, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Failure to conduct a Neil v. Biggers hearing

Applicant claims Counsel was ineffective for failing to properly conduct a *Neil v. Biggers*¹ hearing to contest the victim’s identification. The Court finds this allegation is without merit.

During pretrial motions, Counsel brought to the trial court’s attention that there may be an identity issue. (R. 2). On July 27, 2019, Victim had been shown a photo lineup that included Applicant, but Victim did not pick anyone out of the lineup. (R. 129). On August 29, 2019, Victim attended Applicant’s preliminary hearing. (R. 6-7). At some point² Victim was shown the surveillance video and told the solicitor that the man running in the video was the person who

¹ 409 U.S. 188 (1972).

² It is unclear from the record whether Victim was shown the video before the preliminary hearing was held.

robbed him. (R. 11). Defense counsel asserted that the identification of Applicant in the video amounted to an out-of-court identification that triggered a *Neil v. Biggers* hearing arguing that during Applicant's preliminary hearing the Victim had a long time to look at Applicant.

The court noted that if Victim could not identify Applicant in the photo lineup and could only identify him after he had observed him at the preliminary hearing, it would be problematic. (R. 9-10). The State argued that Applicant can be seen exiting Victim's residence and within a few seconds Victim can be seen coming out of the residence while Victim has said "the person running away from my house is the person who just robbed me." (R. 9). The State further argued that whether or not Victim could sit in the courtroom and say that Appellant was the person who robbed him was not dispositive of its case. (R. 11-12). The court declared that if the State was not going to have Victim identify Applicant in court as the man who robbed him then it was not a *Biggers* issue. (R. 13).

The State ultimately decided that it was best to go ahead and have a *Biggers* hearing because Victim would be testifying through an interpreter and the solicitor was unsure how the answer would come out when questioning him about the individual in the video. (R. 63). During the hearing, Victim testified that Applicant was in his house for "just seconds." (R. 69). Victim went back and forth in his testimony about whether he picked Applicant from a photo lineup, but McFadden testified that he did not identify anyone in a photo lineup that was given shortly after the incident. (R. 64-77). Victim did testify that he recognized Applicant as the man who robbed him while he was at Applicant's preliminary hearing, but no one else could testify that he identified him there. (R. 64-77). The trial judge ruled that the in-court identification was inadmissible based on the fact that he did not identify anyone in the photo lineup and that the only person being presented at the preliminary hearing was Applicant as the perpetrator that it would be unduly

suggestive to have him testify that Applicant was the person who robbed him. (R. 81). The trial judge further ruled that Victim "looking at the video and saying that the person who ran out of the house in the video is the person who robbed me. I think that's an entirely different matter. But I would not permit testimony from Mr. Lopez that he identifies Mr. Brown in court as the person who committed the robbery." (R. 81).

The record reflects that Counsel did, in fact, move for a *Neil v. Biggers* hearing and actually succeeded in convincing the trial court to exclude any testimony that Victim specifically identified Applicant as the perpetrator. Counsel did not further object when Victim testified that the person depicted on the surveillance video was the robber; however, the trial court correctly found that testimony was "an entirely different matter" because it did not involve an identification of Applicant specifically. Rather, Applicant was the one who identified himself as the person depicted running from the house in the surveillance video, although he claimed to have nothing to do with the crime. Applicant has failed to argue that the trial court's ruling on this point was error; therefore, he has not met his burden of proving that a subsequent objection by Counsel would likely have resulted in a different outcome at trial.

Failure to call Samuel Stewart to testify about DNA

Applicant claims Counsel was ineffective for failing to call a forensic scientist named Samuel Stewart to testify that his DNA was not found at the scene of the crime. The Court finds this allegation meritless.

Samuel Stewart did not testify at the PCR hearing, nor was his opinion introduced into evidence in any other fashion. Accordingly, as a matter of law, Applicant has not met his burden of proving prejudice from Counsel's failure to present his testimony. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel

was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing). In addition, the Court notes that the State never relied on DNA evidence to put Applicant at the scene; rather, Applicant's presence was established through Victim's testimony that the person on the surveillance video was the one who robbed him and Applicant's own admission that he was the person depicted in the video. Accordingly, the Court finds that Applicant has not met his burden of proving that calling Mr. Stewart would likely have resulted in a different outcome at trial.

Failure to meet with Applicant sufficiently

In his amended PCR application, Applicant alleges Counsel only met with him "2 or 3 times" prior to trial. No evidence or testimony was offered at the PCR hearing to substantiate this allegation. Therefore, the Court finds Applicant has not met his burden of proving this assertion. In addition, mere brevity of time spent by counsel in consultation with a defendant is not, by itself, indicative of inadequate preparation. *Collins v. State*, 422 S.C. 250, 258, 810 S.E.2d 871, 875 (2018) (holding counsel's performance was not deficient, even though he represented his client for only six weeks and met with him only twice prior to trial); *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (holding counsel was not deficient, despite only meeting with applicant twice prior to his trial); *see also Harris v. State*, 377 S.C. 66, 74–75, 659 S.E.2d 140, 144–45 (2008) (holding PCR court's finding that counsel's meetings with applicant were "limited in number and duration" did not justify grant of post-conviction relief), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

In addition, to prove prejudice, the applicant must show a reasonable probability that additional time spent in preparation would have changed the outcome of his case. *Collins*, 422 S.C. at 259–60, 810 S.E.2d at 876 (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)). Applicant has not even attempted to make such a showing. Accordingly, the Court finds this allegation is meritless.

Failure to explain plea offer

Applicant also alleges Counsel failed to adequately go over the State's plea offer with him. At the PCR hearing, Applicant testified merely that he would not have gone to trial if he had possessed a more thorough understanding of his case.

Counsel, however, credibly testified that he had no notes and no recollection of ever having received a plea offer from the State. Counsel admitted that he discussed the possibility of pursuing a 10-year plea deal with Applicant, but Applicant told him he was not willing to do 10 years in prison. Counsel testified that he could not remember if the possibility of a 10-year plea was an actual offer from the solicitor or merely a number Counsel thought about proposing; in any event, Counsel testified that his notes reflected Applicant was not willing to agree to it.

This Court finds Applicant has not met his burden of proving that a plea offer ever existed, much less that Counsel deficiently failed to communicate it to him or that he would have accepted it. Accordingly, the Court finds this allegation is meritless.

Failure to contest inconsistent verdict

Finally, Applicant complains that his guilty verdict for armed robbery was inconsistent with his acquittal of the charge of possession of a weapon during the commission of a violent crime. This allegation is without merit. The record reflects that Counsel did, in fact, challenge the jury's finding of guilt on the ground that was inconsistent with the finding of not guilty on the weapon charge. The trial court rejected Counsel's argument, noting that the South Carolina Supreme Court has abolished the "inconsistent verdict" rule. *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). Applicant has not explained how the trial court erred or how Counsel's

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actions were deficient as to this issue. Therefore, he has not met his burden of proof on this allegation.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any ground 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), 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 if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 8th day of September, 2026.


H. STEVEN DEBERRY, IV
Presiding Judge
Third Judicial Circuit

Florence, South Carolina