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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, PCR Action Judge
2024-CP-32-02696

KALEB BESANCON, #393090,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Kaleb Besancon appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Frank Addy, circuit court judge, on May 14, 2025, and was denied by written order issued filed on October 7, 2026. Applicant received notice of the judgement on October 7, 2026.

/s Chelsey F. Marto
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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2026 OCT -7) FOR THE ELEVENTH JUDICIAL CIRCUIT
2:05

Kaleb Besancon, #393090,)
Applicant,) LISA COVER, Case No.: 2024-CP-32-02696
CLERK OF COURT)
LEXINGTON SC)

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)
_____)

This matter comes before this Court by way of Applicant's post-conviction relief application filed June 24, 2024. An evidentiary hearing was held on May 14, 2025, at the Lexington County Courthouse. Chelsey Marto, Esquire, represented Applicant. Deputy Attorney General Donald Zelenka, Esquire, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Ola Johnson also testified. 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 Lexington County Clerk of Court. In February and March of 2023, the Lexington County Grand Jury indicted Applicant for armed robbery (2023-GS-32-00360) and first-degree burglary (2023-GS-32-03339). Ola Johnson, Esquire, represented Applicant. On January 24, 2024, Applicant pled before the Honorable William Keesley, circuit court judge, to armed robbery and the lesser-included offense of second-degree burglary and was sentenced to twenty years' imprisonment for armed robbery and ten years' imprisonment for



second-degree burglary, sentences running consecutively. A motion to reconsider was filed on February 9, 2024. An order granting the motion and ordering the sentence run concurrently was entered on July 5, 2024, by Judge Keesley. Applicant did not appeal.

Summary of Relevant Facts

On November 13, 2022, officers responded to an armed robbery at Circle K. (Plea Tr. 10). The door was locked and barricaded, but the victim opened the door for deputies. (Plea Tr. 10). The victim stated that a gun was put to his face and that Applicant stole some vape pens, cash, and then ran out the door. (Plea Tr. 10). He stated that the suspect was wearing a white mask and a hoodie, ran out the door to the right, and had a blue handgun. (Plea Tr. 10). Officers proceeded down Jessamine Road after a witness told them what direction the suspect went and found Applicant, who matched the description of the suspect. (Plea Tr. 10-11). Applicant was wearing a hoodie and had a blue handgun, cash, and vape cigarettes on him. (Plea Tr. 11). Applicant made phone calls when at the detention center to family members exhibiting a lack of remorse and admitting to the robbery. (Plea Tr. 11).

On June 5, 2023, Applicant and two juveniles arrived at the victim's home, where security footage showed three individuals wearing masks armed with firearms approaching the front door. (Plea Tr. 12). Applicant kicked the door in and proceeded to stick his head in. (Plea Tr. 12). Officers appeared at the home to begin their investigation when one officer saw a car matching the description given driving by slowly. (Plea Tr. 13). A deputy ran to his patrol car and attempted to initiate a traffic stop, but the suspect's car fled. (Plea Tr. 13). The car crashed near the victim's home, and Applicant was found hiding in the woods. (Plea Tr. 13).

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 for:
 - a. Failure to have a psychiatric examination done;
 - b. Failure to conduct an adequate pre-trial investigation;
 - c. Failure to provide a complete copy of the discovery; and
 - d. Failure to review discovery with Applicant.

On March 31, 2025, the Applicant through counsel filed an amended application. At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel for:
 - a. Failure to discuss a trial strategy/defense;
 - b. Failure to meet with Applicant enough;
 - c. Failure to get a continuance for the plea;
 - d. Failure to pursue mental health treatment and evaluation;
 - e. Failure to provide a copy of and review Applicant's discovery with him; and
 - f. Failure to correct multiple misstatements of facts made by the prosecutor.

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

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 Lexington County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, 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).

Summary of PCR Testimony

Testimony of Kaleb Besancon

The Applicant testified that he was charged with armed robbery and burglary. He stated



that he was represented by Ola Johnson. He testified that he felt counsel did alright, he did his job, but he wasn't the best. He claimed that he had no issues with his representation.

The Applicant felt that counsel should have met with him more frequently and claimed that he only met with him one time before he came to court. He felt he needed to meet with him one more time just to break it down because he did not know much about law and that was where he messed up.

The Applicant stated that he had talked with counsel about his case and what he should do when he got to court. He stated that this included the difference between a plea and a trial. He testified that he only got one plea offer.

The Applicant stated that he did not want to go to trial because they had too much evidence against him. He further stated that he did not want a continuance.

The Applicant testified that he reviewed the discovery with counsel and believed that he got a copy of everything.

The Applicant testified that he had mental health concerns. He stated that he wished counsel had looked at his need for help in decision-making. He claimed that, as a child, he had been diagnosed with ADHD or autism and that his mother never looked into it.

The Applicant asserted that the prosecutor made misstatements at the plea that the gun had a bullet in the chamber,¹ but he claims that there were no bullets in the chamber and no bullets in the clip either. He stated that he wished his counsel had brought this up at the plea. He denied that there was anything else he wished counsel had done. He pointed out that he was working on bettering himself, getting educated, and trying to be a better person.

On cross-examination, the Applicant indicated that he filed his PCR because he was

¹ At the plea, the solicitor described that the Applicant had a blue handgun in his pants and "there was a bullet chambered in that fireman." Tr.p. 11, l. 5-12.



hoping to go home sooner and to become a better person. Although he contended that he was innocent, he admitted that he pled guilty and admitted that he was arrested with the blue handgun. He also admitted that he had already met a number of times with the lawyer who represented him for about 90 days prior to his plea. He indicated that he had previously been represented by Sarah Mauldin.

The Applicant stated that he had the opportunity to speak with both lawyers about why he was charged with a crime. He admitted that, when he pled guilty, he admitted he was guilty of the offenses. He further confirmed that his lawyer had gone through the matters and that he was pleading straight up with no sentence guaranteed. He asserted that the State did not give him any plea offers. He also confirmed that, when he was asked if there was anything you wanted to tell the court, he said "no sir." He admitted that his mother was there and made statements on his behalf.

Concerning the mental health issue, the Applicant acknowledged that he spoke with counsel about it, but he thought that counsel could have pressed the issue more.

The Applicant admitted that he was a little bit satisfied with counsel Johnson.

Testimony of Ola Johnson

The Applicant called plea counsel Ola Johnson. Counsel testified that the Applicant received a sentence of 20 years and 10 years consecutive. Counsel indicated that he filed a motion to reconsider, and the case was taken over by Ben Stitely. Judge Keesley then switched the consecutive sentence to concurrent. The Applicant pled to 2nd degree burglary. Counsel confirmed that this was a reduction in the original charge.

Counsel described that he initially met the Applicant three times. He indicated that his initial meeting was in late October. His next was on November 9th at the jail. He stated that they

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talked about some of the things in evidence and the discovery. He stated that he met with the Applicant a third time on January 17th. Counsel stated that the Applicant had a pending shoplifting charge. He took Applicant into a side room, and that they talked in detail. He stated that the solicitor had emailed him an offer and that they talked to him about the offer and that they were going forward the following week. Counsel testified that the Applicant told counsel that was what he wanted to do.

Counsel opined that he did not think that the Applicant would have benefitted from more time passing between case and plea. He stated that there was an armed robbery case and that there was a store clerk witness with a video and the 911 call. Counsel Johnson indicated that, to his recollection, the police put in the report there was one guy walking down the road, that they detained him, that he had a gun and cash, and that the Applicant asked them, "How'd you guys get here so fast?" Counsel also indicated that there was a recorded jail phone call of Applicant saying he should have fled.

Further, concerning the other incident, counsel recalled that there was a ring doorbell camera. Counsel summarized that when they walked in, instantly the girl said "they're coming in the door" and the mom said, "I don't know if they got in the door." The adult male said, "yes they did get in because I yelled police." They then proceeded to show officers the video on cell phone and iPad. While there, the officer on video says "hey, that looks like a dodge charger, its gray or silver" and then the teenager said "maybe that's Mikey, cause Mikey had a car like that." Eventually the vehicle comes back to scene. The officers give chase, the car flips, they find the co-defendants laying nearby in the grass, they grab Nicholas, who was the heavysset one on the door cam video, they bring the dog out, and someone yells in the distance. Counsel recalled that, on one of the videos, the officer radios and says, "description is crocs and sweatpants" and then

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you see what I believe was Mr. Besancon, wearing blue crocs. One of them falls off and officer puts it back on, and he said thank you. Counsel described that it's kind of stressful, everyone's yelling, they're arresting everyone, then Mikey making comments about not going in.

Counsel stated that the Applicant refused to give a statement. He stated that the driver, Mikey, said a few things to limit his involvement, then decided to stop talking. He stated that the heavysset guy, Nicholas, gave a detailed statement that seemed to match the video, which asserted that the Applicant and the other guy decided to go to this house because they had some connection with the girl. Counsel indicated that this statement seemed to be clear and accurate, they were seized right there, and entered the house with guns. Counsel opined that it did not seem Applicant's case would get any better as time went by unless witnesses become unavailable. With the Applicant facing a penalty of 15 to life, that's something to consider in light of the plea offer of burglary second degree.

Counsel indicated that his defense at trial on the armed robbery charge would have been to challenge the stop. If that didn't work, the officer put in the report that, when Applicant was speaking to him, he told him he had a gun in his crotch. He did not think the cash was specifically identified as cash from the store. Counsel stated that he would have to try to exclude that evidence. He noted that the video of the person at the store had his face partially covered, but it was still a pretty good video. He indicated if he could not get that excluded, he would have to argue it was someone else who committed the crime and that Applicant just happened to have a gun and cash on him.

For the burglary, counsel indicated that everyone made statements pointing to the Applicant and even said he was the one kicking the door.

Counsel stated that he did not think that there was any issue about the Applicant's

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competence to stand trial. He indicated that he did not have any issues communicating with him. He stated that he told him what the options were, but as far as trial strategy, to try to suppress anything they can. Counsel stated that he thought that there were videos outlining everything that happened, and if the defense would try to suppress them. However, he did not think they would have been successful. Counsel stated with the body cam videos, it would be difficult to suggest that the co-defendants were forced to indicate that Applicant was involved. Counsel indicated that they didn't fully develop a strategy because, when he met with the Applicant in January, he made it very clear he wanted to enter a guilty plea.

On cross-examination by the State concerning mental status, counsel indicated that when he talked with the Applicant he thought that he mentioned ADHD. Counsel stated that he had personal experience with family members with ADHD so he wasn't concerned about competence. Counsel stated that he also had school records which were provided by the Public Defender's Office. Counsel indicated that he never had any trouble communicating with Applicant. Counsel stated that he was able to talk about his defense. Counsel noted that it was a tough conversation given the charges, but he was able to talk about it. Counsel stated that his records seemed to contain standard ADHD symptoms, references to sitting still, paying attention, etc., so he didn't see anything indicating a need for further evaluation.

Concerning any history of drug use, counsel stated that he talked to him about drug use. He also recalled on the body cam interview that they mentioned something about alcohol use, so they may have been drinking that night.

Concerning a continuance issue, he recalled the jail calls. Counsel stated that he reviewed them a couple of weeks before the plea. He felt that the jail calls were unfortunate to have in a case like this. He stated that he discussed it with the Applicant because the solicitor said it

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showed a lack of remorse. Counsel indicated that he told the judge he was trying to downplay it to make his family feel better because they were scared because potential penalties were so severe. However, counsel indicated that part of the calls included the Applicant saying they wouldn't punish him too much because he's young and he'd be ok. In addition, he made these comments about the armed robbery, which would be admissible at trial.

Counsel further indicated that he had access to former counsel Mauldin's file. He was not aware of any other indications suggesting competency concerns.

Concerning plea offers, counsel indicated that the offer made was made in November. The offer provided a deadline was for armed robbery, dismissed kidnapping, and straight up with reduction in burglary from first degree to second degree from Ashley Wellman. Counsel stated that he advised the Applicant about punishment, specifically that it could be concurrent or consecutive and about mandatory 10 years for armed robbery. He was confident that his client understood the punishment he was facing. He felt confident after he received his sentence that he did not want to appeal. He noted that it was taken over by Ben Stitely after counsel filed a motion to reconsider

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), SCRPC ("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.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the



prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Failure to Meet Enough and to Discuss Trial Strategies and Defenses

This Court finds that the Applicant failed to prove either deficient performance or prejudice concerning counsel's discussion with the Applicant and his meetings prior to the entry of the guilty plea. Applicant claims Counsel was constitutionally ineffective for failure to meet enough, properly communicate, and discuss trial strategies and defenses. "[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).

This Court finds that counsel Johnson's testimony was credible related to the number of meetings and breadth of their discussions as summarized above and adopted herein. The Applicant has failed to prove any deficiency in counsel's communications or strategic concerns related to the risk or advantage of a trial under the facts of the cases. He further failed to show prejudice, specifically that had counsel done something different, there was a reasonable probability that the Applicant would have chosen to go to trial rather than pled guilty and accept the results of the negotiation.

Even if the Applicant's testimony was found to be accurate, Applicant testified that the case was not complex, that he did not want to proceed to trial, and that he met with Counsel a couple times before pleading, including the day of the plea. This Court finds that extensive preparation was not necessary prior to resolving Applicant's cases. Applicant failed to show what would have been uncovered through additional conversation or why discussing trial defenses was necessary when Applicant credibly testified he did not want a trial. Thus, Applicant has failed to meet his burden of proof and relief is denied accordingly.

Failure to Get a Continuance

This Court finds that the Applicant failed to show that counsel's failure to request a continuance from the scheduled trial or prior to the entry of the guilty plea was either deficient performance or prejudice. The Applicant alleged in his amended application that Counsel was ineffective for failure to obtain a continuance. However, Applicant himself testified that he did not desire a continuance of his plea. Further, counsel credibly testified that a continuance would



not have benefited the Applicant since there was no risk in the loss of evidence due to the videos surrounding the incidents and evidence recovered at the arrests. Applicant has failed to prove that counsel did not act as reasonable counsel in failing to seek a continuance. Thus, this claim lacks evidentiary support and relief is denied accordingly.

Failure to Pursue Mental Health Treatment and Evaluation

This Court finds that the Applicant failed to prove Counsel was deficient in his investigation related to potential mental health matters. Applicant claims Counsel was ineffective for failure to pursue mental health treatment and an evaluation. “Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea.” *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). “In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea.” *Id.* at 458-59, 596 S.E.2d at 50. “In order to find that petitioner’s trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner’s competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner’s proceedings.” *Id.* at 459, 596 S.E.2d 50-51. Prejudice is found when the petitioner shows a “‘reasonable probability’ that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.” *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

Though Applicant testified that he was diagnosed with ADHD, autism had an IEP in school, there was no evidence presented that he suffered from a major mental illness or intellectual disability that would have affected his understanding of the proceedings or his ability to communicate with Counsel. Counsel credibly testified that he had no difficulty communicating



with Applicant. Counsel further credibly testified that he was aware of the ADHD concerns of the Applicant and reviewed his school records which indicated the presence of ADHD symptoms. However, Counsel was also aware that the presence of ADHD in his experience does not necessarily equate with incompetence to stand trial. Further the facts of each of the alleged incidents did not reflect issues of mental treatment that would require a reasonable counsel to seek a mental evaluation for competency or criminal responsibility. Thus, no legal or factual basis existed for why Counsel should have requested a competency evaluation. The Applicant failed in his burden to prove 6th Amendment prejudice of a “‘reasonable probability’ that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.” *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)). It must be dismissed.

Failure to Provide and Review Discovery

This Court finds Application failed to prove Counsel was deficient in providing and reviewing discovery. Applicant claims Counsel was constitutionally ineffective for failure to provide and review discovery. However, Applicant testified at the PCR hearing that he had a chance to review the discovery with Counsel prior to the plea hearing. Thus, this claim lacks a proven factual basis of deficient performance and relief is denied accordingly.

Failure to Correct Multiple Misstatements of Facts

This Court finds Applicant failed to prove Counsel was deficient at the time of the guilty plea concerning the prosecution’s statements. Applicant claimed that Counsel was ineffective for failure to correct multiple misstatements of facts by the prosecutor. The only statement he pointed out in his testimony was the solicitor’s comment that at the time of his arrest for the robbery that the Applicant had a blue handgun in his pants and “there was a bullet chambered in that fireman.” Tr.p. 11, l. 5-12. In this proceeding, he claimed that there was no bullet in the



chamber. He failed to present any other alleged misstatements or how it would have impacted the decision to plea or sentence. This Court finds that the Applicant has failed to prove, other than his own testimony, that the prosecutor was inaccurate in her statement that there was a bullet in the chamber. However, even after that was stated, the Applicant personally did not correct it in pleading to armed robbery and chose to plead. Tr.p. 14, 16-21. He stated he was satisfied with Counsel and that there was nothing further that he wanted him to do and had no complaints against law enforcement or anyone else who has dealt with his case. Tr.p. 20, ll. 5-9, 21-24. However, the Applicant did acknowledge, even in this proceeding, that he possessed the handgun at the time the robbery occurred. This Court further finds that he failed to show prejudice because he failed to show that had counsel pointed this out, there was a reasonable probability that he would have withdrawn the plea and gone to trial. Accordingly, Applicant failed to meet his burden of proof and relief is denied on this ground.

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.

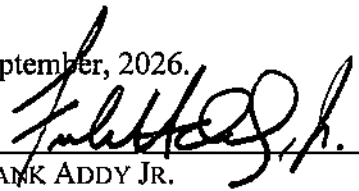
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC 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.

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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 29th day of September, 2026.



FRANK ADDY JR.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina.