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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Lower Court Case No. 2024-CP-29-00447

Curtis W. Townsend, IV, #391439,

Applicant,

vs.

State of South Carolina,

Respondent.

Of Whom Curtis W. Townsend, IV is the Appellant

NOTICE OF APPEAL

Curtis W. Townsend, IV appeals the order of the Honorable Eugene C. Griffith, dated September 14, 2026. Appellant's attorney received written notice of the entry of this order on September 14, 2026.

October 14, 2026

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STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Curtis W. Townsend, IV, #391439,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
) CLERK OF COURT

) CASE NO. 2024-CP-29-00447
)

)
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge: Hon. Eugene C. Griffith, Jr.
Applicant's Attorney: Kimberly Y. Brooks, Esq.
Respondent's Attorney: D. Russell Barlow, II, Esq.
Plea Counsel: William P. Frick, Esq.
Date of Hearing: March 16, 2026
Court Reporter: Pamela E. Green

This matter comes before the Court by way of Curtis W. Townsend, IV's (Applicant) application for post-conviction relief (PCR) commenced April 12, 2024. Respondent, the State of South Carolina, submitted its Return on July 2, 2024, requesting an evidentiary hearing to resolve the claims outlined in the application.

On March 16, 2026, an evidentiary hearing was held at the Lancaster County Courthouse before the Honorable Eugene C. Griffith, Jr. Applicant was present and represented by Kimberly Y. Brooks, Esquire (PCR Counsel). Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his original application. (PCR Tr. p. 4). In support of these claims, Applicant testified on his behalf. Respondent presented the testimony of Sixth Circuit Public Defender William P. Frick, Esquire (Plea 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 that 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 with the South Carolina Department of Corrections (SCDC) pursuant to the Lancaster County Clerk of Court's orders of commitment. During the January 2022 term, the Lancaster County Grand Jury indicted Applicant for Murder and Possession of a Firearm During the Commission of a Violent Crime (2022-GS-29-190). Applicant was represented by William P. Frick, Esq. Sixth Circuit Assistant Solicitors K. Luck Campbell, Esquire, and Melissa McGinnis, Esquire, prosecuted the case.

On July 10 – 11, 2023, Applicant proceeded to a jury trial before the Honorable William P. McKinnon. On the morning of July 11, 2023, Applicant decided to plead guilty pursuant to N.C. v. Alford, 400 U.S. 25 (1970). In return for the guilty plea, the State dismissed the weapons charge and conceded that the State was not seeking a life sentence. Judge McKinnon sentenced Applicant to forty (40) years imprisonment.

Applicant filed a timely Notice of Appeal. On August 10, 2023, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation for a guilty plea appeal. The Remittitur was returned to the circuit court on September 7, 2023.

FACT GIVING RISE TO CONVICTION

The facts are drawn from the guilty plea transcript as read into the record by the Solicitor:

As you've already heard, this incident occurred on October 9, 2021 at 2302 Carolina Court, which is located in the city of limits of Lancaster, here in Lancaster County. Mr. Townsend, his girlfriend, Khanyja Massey, there, at the time, 19 month old daughter, Nalla, were there in that apartment. The tenant on the lease was Ms. Takeisha Massey, the victim in this case. Ms. Takeisha Massey heard Mr. Townsend speaking to his child, telling his child to hush and stop crying. She took

issue with the tone of his voice, how he was speaking to the child and an argument ensued, mainly, between Mr. Townsend and Takeisha Massey. Although, Khanyja Massey would have testified that she also did tell her mother, she thought that her mother was spoiling the child. Ultimately, the Khanyja took the baby to the back. Laid the baby down. Tried to get her to go to sleep, while Mr. Townsend and Ms. Takeisha Massey continued to argue. At one point, Mr. Townsend punched the wall in the room and then removed a gun from his waistband over his girlfriend's protest.

She screamed: "No."

"No."

"Don't."

He proceeded down the hall and shot at Ms. Massey. He fired four times hitting her three times. One shot hit her and did soft tissue damage from her shoulder through her breasts. Another shot went in her abdomen and lacerated her liver and one of her kidneys, which would have been a fatal injury. Another shot went in and ultimately hit both of her lungs, which deflated them causing an almost immediate death. So the combination of those second two shots, would have been what the pathologist would have testified to as the cause of death for Ms. Massey.

Mr. Townsend was seen on security cameras, as well as, by neighbors exiting the front door of the residence. He ran between two apartment homes and went to a dumpster located immediately adjacent to the Carolina Court Apartment Complex where he hid until, as you've heard yesterday. Deputy Cody Williams pulled up, at which time Mr. Townsend did surrender himself to law enforcement.

Your Honor was able to watch yesterday the interview that Mr. Townsend gave to Investigator Matt Snoddy, in which he did not specifically take responsibility for shooting. He claimed to have blacked out and didn't remember. He did make the very damning comment.

"If she's dead, If I did do you something, she should have kept her fucking mouth shut."

At end of that interview, Mr. Townsend could hear his child crying in several -- the rooms several interview rooms over. At that point, he became very irate. He then slammed his head into the wall. Busted two holes in the wall in the interview room at the sheriff's office. Ultimately, was able to be subdued by to large male officers and taken to the Municipal Justice Center at the city where he was booked. His clothes were seized and he then complained of back pain where he was taken to the hospital.

Again, you were able to see yesterday, where he did attempt to escape from Corporal Miller with Lancaster Police Department, but was ultimately subdued and taken into custody at that time.

Law enforcement processed the scene. They did collect four shell casing from the scene, a weapon. The weapon was located in the bedroom belonging to his young child. The gun was thrown into the room and landed two or three feet from the small toddler bed where his child was at the time that he went in the room and tossed the gun. It was found with a stovepipe jam. It's the State's position that he likely would have kept firing if the gun had not jammed. The gun was collected. The shell casings were collected, as well as, several --

THE COURT: -- that means the cartridge was vertical in the extraction port?

MS. MCGINNIS: That's correct. Yes, sir.

All of those evidence items were collected and sent down to SLED. Fingerprints were not able to be located on the gun. However, DNA swabs from the trigger and the slide of the gun matched Mr. Townsend. The trigger was Mr. Townsend and another unknown individual, 300 billion times more likely that it was Mr. Townsend and an unrelated individual than two unrelated individuals.

His clothes, as well as, a GSR kit were sent down for trace evidence collection. The analyst, Jennifer Nates, found gunshot residue all over his clothing, as well as, his hands. She in fact, put in her notes, said it was an extremely large amount of gunshot residue. She was surprised by the amount of GSR on Mr. Townsend. Jamie Green from the firearms department at SLED would also have testified that the shell casings at the scene, as well as, the bullet fragments matched to the gun. They did recover some fragments from autopsy and those were not able to be conclusively matched to the gun. They were consistent with the caliber of the ammunition.

The jury would have seen, again, Mr. Townsends interview in which he made that damning comment, and that would have been the extent of the evidence the State would have presented at trial in this case, your Honor.

(GP Tr. pp. 162–166).

CURRENT ACTION BEFORE THIS COURT

On April 12, 2024, Applicant timely filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

- (1) Ineffective Assistance of Plea Counsel
 - (a) Failure to investigate.

Applicant requests relief in the form of "relief from his conviction and sentence."

Before this Court are Respondent's Return, the Lancaster County Clerk of Court records regarding the subject's conviction and sentence, Applicant's records from the SCDC, Applicant's direct appeal records, and the records of the current PCR action.

STANDARD OF REVIEW

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

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

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations center on an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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 to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). 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. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it

is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.").

Thus, a fair assessment of attorney performance requires every effort to eliminate the distorting effects of hindsight, reconstruct the circumstances of counsel's challenged conduct, and evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

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 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and

finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368–369 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. 369. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Plea Counsel through the post-conviction relief action presently before this Court. In analyzing these

raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the 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. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant to present evidence satisfying two prongs: first, evidence that counsel's performance

was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision-making" and does not turn on the outcome of a defendant's actual criminal proceeding or the potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of the circumstances surrounding the plea, would have pleaded guilty—not whether counsel would still have advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in

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), SCRCP (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 Mr. Frick'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.

This Court makes the following findings from the record: (1) Applicant affirmed that he had graduated from high school (GP Tr. p. 154); (2) Applicant affirmed that he had received mental health treatment for "mood disorder, bipolar, schizophrenia, and antisocial personality disorder" (GP Tr. p. 154); (3) Applicant affirmed he was taking medications to treat his mental health (GP Tr. p. 155); (4) Applicant indicated that the drugs did not interfere with his ability to understand what was happening in court (GP Tr. 155); (5) Mr. Frick indicated he had no concerns with Applicant's competency (GP Tr. p. 155); (6) the plea court indicated that the Department of Mental Health issued a report and found Applicant competent (GP Tr. p. 155); (7) Applicant understood the maximum sentence the plea court could give him on his charge (GP Tr. p. 157); (8) Applicant affirmed that he discussed all of the charges, the possible penalties, and all of his constitutional rights with Mr. Frick (GP Tr. pp. 157–159); (9) Applicant affirmed he was waiving his constitutional rights to a trial (GP Tr. p. 158–160); (10) Applicant affirmed he had enough time to speak with his attorneys, they answered all his questions, he was completely satisfied with their services, and there was nothing else he wanted them to do for him (GP Tr. p. 160); (11) Applicant denied any promises or threats were made for him to plead guilty (GP Tr. p. 161); and (12) Applicant was pleading freely and voluntarily (GP Tr. p. 161).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation (1)(a): Plea Counsel failed to investigate.

Applicant alleges Mr. Frick was constitutionally ineffective for failing to investigate.

Specifically, Applicant wanted Mr. Frick to investigate his mental health issues further. This Court finds this allegation to be without merit.

"[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 or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show 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

As an initial matter, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR Applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Mr. Frick's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. At the evidentiary hearing, Applicant averred that Mr. Frick failed to investigate: (1) how the firearm ended up in a room that he never went into; (2) the unknown DNA on his firearm; and (3) to have a M'Naghten evaluation done on him.

This Court finds Applicant's testimony on the first matter of how the firearm ended up in a room he never went into was not credible. Applicant was insistent throughout the hearing that he had no memory of what happened until he broke out of the front screen door. Yet, Applicant directly testified that he never went into the backroom. (PCR Tr. p. 10). Applicant also testified

directly that he "r[a]n past the victim to put the firearm and, you know" Id. Applicant's testimony began in first-person and pivoted quickly into what a witness may or may not have said in a statement. Applicant's testimony on this matter raises the question of how Applicant could testify directly that he never went into a room while also testifying that he had no memory of the event. Nevertheless, Applicant failed to present any credible evidence that further investigation into how the firearm ended up where it did by Mr. Frick would have resulted in his continuing with trial and not pleading guilty.

Turning to the allegation that Mr. Frick failed to investigate the unknown DNA on the firearm. From the record, the major contributor of the DNA on the trigger and slide of the firearm that killed the victim was Applicant. Moreover, Applicant agreed with the facts as presented by the prosecutor, and the testimony that would have been presented at trial is that Applicant's clothing was covered in GSR. This Court finds Applicant failed to present any credible evidence of how further investigation into the DNA would have resulted in his continuing with trial and not pleading guilty.

Lastly, turning to Applicant's assertion that Mr. Frick's representation was constitutionally ineffective for failing to have a M'Naghten evaluation done on him. In order to prevail on a claim that Mr. Frick's representation was constitutionally ineffective for failing to have a M'Naghten evaluation done on Applicant, Applicant must present evidence that (1) Mr. Frick's request to obtain a M'Naghten evaluation would have been granted; and (2) a M'Naghten evaluation would have proven that he did not understand criminal responsibility.

A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In every criminal case, it is presumed the defendant is sane. State v. Milian-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985). Insanity is an affirmative

defense to a prosecution for a crime. Id. South Carolina has adopted the M'Naghten test to determine insanity. State v. Lewis, 328 S.C. 273, 277-78, 494 S.E.2d 115, 117 (1997). A defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. Id.; see S.C. Code Ann. § 17-24-10(A) (Supp.1996).

Here, Applicant has not met his burden in presenting any credible evidence that he would have received funding for an M'Naghten evaluation had Mr. Frick requested it. Funding is not a relevant issue because the Applicant was evaluated for competency. At the evidentiary hearing, Mr. Frick credibly testified that he had a private doctor evaluate the Applicant for competency and the Applicant was found competent. Mr. Frick further credibly testified that the doctor he hired for the evaluation informed him that she would be a better witness for the State than for Applicant. Significantly, Mr. Frick credibly testified that Applicant's actions directly after the shooting would be a hard sell for an M'Naghten evaluation to show that Applicant did not know the difference between right and wrong, where Applicant ran and hid in a trash can directly following the shooting. While this portion of Mr. Frick's testimony goes to prejudice, as discussed *infra*, it is also relevant to the deficiency evaluation. This Court finds that Applicant has failed to prove that Mr. Frick's strategic decision not to request an M'Naghten evaluation was deficient.

Turning to prejudice, South Carolina courts have repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice for the failure to present that testimony at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself,

satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995).

"Under this second prong of Strickland, the petitioner need only demonstrate a 'reasonable probability' that he was either insane at the time of the [crime] or incompetent at the time of the plea. Jeter v. State, 308 S.C.230, 233-34, 417 S.E.2d 594, 596 (1992). "For an insanity defense, the accused must be unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong." Id. (citing S.C. Code Ann. 17-24-10 (Supp. 1991)). "To show prejudice for failing to pursue this defense, the petitioner must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed." Id. (citing State v. Vickers, 306 N.C. 90, 291 S.E.2d 599 (1982), accord Daniel v. State, 282 S.C. 155, 317 S.E.2d 746 (1984)).

Here, Applicant has presented no credible evidence of his incompetency or lack of criminal responsibility. Applicant presented no expert witness testimony to explain what the results of the M'Naghten evaluation would have been. Further, Applicant has provided no affidavits, evaluation results, or any other form of testimony to meet his burden of proof. Therefore, it is improper for this Court to speculate as to the results of an evaluation and to assume prejudice. Criminal defendants are presumed sane in every criminal case. Milian-Hernandez, supra. Based on the foregoing, this Court finds Applicant has failed to meet his burden of proving prejudice.

Moreover, to whatever extent Applicant was not entirely satisfied with Mr. Frick's representation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

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 Mr. Frick failed to render reasonably

effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Mr. Frick committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Mr. Frick's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

|CONCLUSION & SIGNATURE PAGE FOLLOWS|

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**.

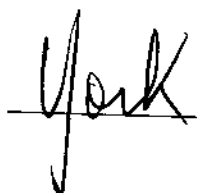
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), 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 14 day of September, 2026.


EUGENE C. GRIFFITH, JR.
Presiding Judge
Sixth Judicial Circuit


_____, South Carolina