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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
The Honorable William C. McMaster, III, PCR Action Judge

2024-CP-20-00020

MICHAEL SCOTT, #390207,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Michael Scott appeals to the Supreme Court of South Carolina from the Order of Dismissal with Prejudice signed on November 9, 2026, by the Honorable William C. McMaster, III, in Fairfield County Court of Common Pleas, Case No. 2024-CP-20-00020. The order denied and dismissed with prejudice his application for post-conviction relief.

/s/ Shawana Burris
Shawana Burris, Esquire
Attorney for the Applicant
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Counsel of Record for Respondent:
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STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT
Michael Scott, #390207, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–20–00020 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. William C. McMaster, III
Applicant's Attorney:	Shawana Burris, Esq.
Respondent's Attorney:	Ryan T. Kowalski, Esq.
Plea Counsel:	Geoffry M. Dunn, Esq.
Date of Hearing:	November 7, 2024
Court Reporter:	Shannon E. McGilberry

This matter comes before the Court by way of Michael Scott's (Applicant) application for post-conviction relief (PCR) filed on January 22, 2024. Subsequent to the filing of the application, the Clerk appointed Shawana Burris, Esquire, to represent Applicant on January 30, 2024. Respondent, the State of South Carolina, made its Return and Partial Motion to Dismiss on June 27, 2024, requesting an evidentiary hearing to resolve the claims as set forth in the application.

An evidentiary hearing convened on November 7, 2024, at the Lancaster County Courthouse before the Honorable William C. McMaster, III. Applicant was present and represented by Shawana Burris, Esquire. Assistant Attorney General Ryan T. Kowalski represented Respondent. At the hearing, Applicant, through counsel, proceeded primarily on his claim that he lacked the mental capacity to understand his plea, and raised several additional allegations through his testimony. Applicant testified on his own behalf and called Plea Counsel,

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Geoffry M. Dunn, Esquire, as a witness. Respondent recalled Plea Counsel and presented no other witnesses.

Before testimony began, Applicant asked that PCR counsel be relieved, stating that she did not make eye contact with him and that he believed she had been untruthful about her attempts to contact him at Kirkland Correctional Institution. (PCR Tr. pp. 6–7). PCR counsel explained her efforts to schedule a meeting, stated that she had met with Applicant for approximately an hour before the hearing, and represented that she was prepared to proceed. (PCR Tr. pp. 7–9). The Court found Applicant had not stated adequate grounds to relieve counsel, advised Applicant of his right to represent himself and the dangers of doing so, and Applicant elected to proceed with PCR counsel. (PCR Tr. pp. 9–10).

The Court also advised Applicant that post-conviction relief is not a sentence reduction and that, if successful, he would return to his pre-plea posture and could face a life sentence; Applicant confirmed he understood and wished to proceed. (PCR Tr. pp. 5–6, 11). Applicant stated that he had taken his prescribed medications other than a newly prescribed dose of Prozac he had not yet started, that he was clear-minded, and that he understood the purpose of the hearing. (PCR Tr. pp. 11–13). Applicant later complained that PCR counsel was smiling and not taking his case seriously; PCR counsel responded, and the Court found no basis for concern. (PCR Tr. pp. 37–39). Based on its colloquy with Applicant and his conduct throughout the hearing, this Court finds Applicant understood and was able to meaningfully participate in these proceedings. (See PCR Tr. pp. 40–41)

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

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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 Fairfield County Clerk of Court's orders of commitment. During the July 2021 term, the Fairfield County Grand Jury indicted Applicant for Murder (2021–GS–20–256) and Grand Larceny (2021–GS–20–257). During the December 2022 term, the Fairfield County Grand Jury indicted Applicant for Threatening Life of a Public Official (2022–GS–20–570). Applicant was represented by Geoffry M. Dunn, Esquire (Plea Counsel). Sixth Circuit Assistant Solicitor Riley J. Maxwell prosecuted the case.

On February 9, 2023, Applicant appeared before the Honorable G. D. Morgan, Jr., and pled guilty but mentally ill as indicted. Judge Morgan accepted the negotiated plea and sentenced Applicant to thirty (30) years for Murder, five (5) years for Grand Larceny, and five (5) years for Threatening the Life of a Public Official with those sentences running concurrently.

On February 23, 2023, Plea Counsel served and mailed a notice of appeal, which the Court of Appeals received on February 28, 2023. In his accompanying statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, Plea Counsel stated that he was filing the notice at Applicant's request, which he received the evening of February 22, 2023, and that he was not aware of any appealable issues from the guilty plea. The Court of Appeals dismissed Applicant's appeal (Appellate Case No. 2023-000304) on March 8, 2023, because the proof of service showed service on February 23, 2023, and the notice of appeal therefore was not served within ten days after sentencing as required by Rule 203(b)(2), SCACR. The Remittitur was issued on March 24, 2023.

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FACTS ADDUCED AT THE GUILTY PLEA

The facts presented are those read into the record by the Solicitor and agreed upon by the Applicant at the guilty plea:

> While Mr. Scott was locked up on murder charges, he was being housed at the Fairfield County Detention Center. On April 25, 2022 there was a disturbance involving some inmates who didn't want to go back in their cells after some free time. Our jail is operated independently of the sheriff's departments, but due to this disturbance, deputies did respond to try to maintain order. I believe when most of the deputies got there, the situation had, kind of, settled down just a little bit and they were letting inmates out, I believe two at time to get their meals. Investigator Autry, who was the lead investigator in the murder case was there in the area and was present when Mr. Scott exited his jail cell to get his food. Mr. Scott knew who Investigator Autry was, and there's body camera of other deputies that were on scene. And what I've heard and my review of the body camera was, he directed this towards Investigator Autry.
>
> "I don't like your ass."
> "I'm gonna get you."
> "I'm gonna kill you, believe that."
>
> And also, there were some things said that were not very clear on the body camera, but according to Investigator Autry, Mr. Scott also added a threat to Investigator Autry's family as well during that short time period. That's essentially the, threatening of a public official charge. Investigator Autry, I think, is a public official under the law being a sheriff's deputy.
>
> Your Honor, the murder case took place back on January 31, 2021. The victim in this case is Gabriel Brisbon. He was 22 years old. He was from Winnsboro. I believe grew up here, most, if not all of this life. You heard me talk about two codefendants in this case. Osman Shabaz, who is also 22 years old at the time of these events. Mr. Shabaz was in a relationship with Mr. Scott's sister who was 18 years old at the time. Mr. Scott who was 17 years old was residing with them at an apartment complex in Richland County. At the time, there was an ongoing DSS -- well, DSS was involved with Mr. Scott I believe for a long period of his life. But there was some kind of active investigation going on with DSS involvement that involved maybe an assault by Mr. Scott on some DSS workers during some visit that lead to him, kind of, being absconded from DSS at the time. It was unclear to me whether he was actually under DSS custody or his sister's custody at the time of these events. Nevertheless, he was residing with them, with Shabaz and Sylvia at the time this occurred.
>
> The only relationship between the parties was between Shabaz and Gabriel Brisbon. As far as we can tell, Sylvia nor Mr. Scott here, except for the date this occurred had ever encountered or met Gabriel Brisbon. On the date -- this was a Sunday afternoon. Mr. Brisbon dropped his sister off at her residence. He told her he was going to see a friend and didn't name who that friend was. He left, and was essentially not seen by any family or friends after that. About a day and-a-half goes

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by after the family had not heard from Gabriel, who kept -- from my understanding, kept in pretty good touch with his family. They had not heard from him that whole day Monday, Sunday evening into Monday. After midnight into Tuesday morning, his mother does report him missing to the sheriff's department. There's a deputy who responds. Without much information, kind of, goes around maybe some places they thought he'd might be. Of course, no luck or no leads were developed the early morning hours of Tuesday. When Investigator Autry came in that Tuesday morning, 9 o'clock or so and began working on the case, the family was able to provide him information that Gabriel's car, which was financed by J.D. Byrider had a GPS tracking device on it. And Investigator Autry was able to contact J.D. Byrider, get coordinates on where that vehicle was. So before lunchtime on Tuesday, Investigator Autry, along with some Richland County Sheriff's deputies, end up at an apartment complex in Richland County. Investigator Autry pulls into the parking lot, sees a car that matches the description of Gabriel's car. Sees that it's been spray painted black and pink. Get's out and checks the vin number, confirms that that is Gabriel Brisbon's car. It's parked in front of an apartment building. Investigator Autry is directed by another tenant to go to a specific door related to that car. The car was actually parked next to Osman Shabaz's car in the parking lot. Investigator Autry goes to the door, knocks on the door and is answered by Osman Shabaz. And Mr. Shabaz says -- well, Investigator Autry tells him or asks him about why that car is out there.

This is what I call "story number one" by Shabaz is that: He said somebody knocked on his door a night or two before, threw him the keys. Said, "Watch after my car" and he couldn't name who what that person. He is then told by Investigator Autry that that car belongs to Gabriel Brisbon, in which caused Mr. Shabaz to fain shock, indicating he knew who Mr. Brisbon was and fain in shock that he's missing or something had happened to him. And of course, at this point, we don't know what has happened to Mr. Brisbon.

Investigator Autry is allowed to go into the apartment briefly to look around, determines that Mr. Brisbon is not there. He does see that Sylvia, Michael's sister is in the apartment. Investigator Autry leaves the apartment. They make arrangements to tow the car back to Fairfield. He does see Mr. Scott outside the apartment, doesn't know who he is or his relationship to this case at the time. But Investigator Autry once, he knew who Mr. Scott was say: "Hey, I saw him outside the apartment when I was there that day."

THE COURT: Outside of Shabaz's apartment?

MR. MAXWELL: Outside the apartment, just out in the parking lot area. Again, just saw somebody there that he didn't find out who it was until later. The car is towed back to Fairfield County. Shabaz then calls Investigator Autry and gives "story number two", in which he claims that: Sylvia had bought the car off the side of the road for $600. He said, she flagged somebody down, bought the car on a whim and that's how they ended up with the car.

Based on that information, Investigator Autry then tells him to come to the sheriff's office that Tuesday evening to give a more detailed statement. When they get there, it's closer to 7:30, 8 o'clock. They end up just speaking to a patrol deputy in which they reiterate that same story.

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During the course of them giving that statement, Osman Shabaz shows text messages that he and the victim exchanged that Sunday afternoon, where they had talked about getting together, meeting up to smoke marijuana. And there's mention of Osman Shabaz's grandmother's house, which is a residence in Fairfield County. That's where they were gonna meet, but Shabaz maintained that: "I didn't see him that day."

He didn't show up or I wasn't able to get there. But you have very inconsistent statements of, they're talking that Sunday afternoon and they got the car through unrelated means. I certainly think it's very suspicious.

Investigator Autry has them come back the next day. So now we're into Wednesday and give another statement, at which Shabaz changes that story and now gives us "story number three" in which he claimed that the victim, Gabriel Brisbon, had been at their apartment in Richland County that Sunday night. And he sold them the car because he needed the money to get out of the state. And there's a lot of inconsistent stuff, inconsistencies throughout that statement. But still don't know at this point in time what has happened to Mr. Brisbon. They're released. They're not under arrest at that point in time. They're certainly persons of interest.

On that Thursday, Mr. Brisbon's car is processed. Inside the car they found a good bit of different types of evidence inside the car. License plate had been removed off the back of it and was placed in the front. Of course, it had been spray painted. That spray cans were inside the car. But mainly, there was a latex glove that has some paint on it, and as well also had casings, spent casings, inside the latex glove. Based on what information they have now, on that Friday morning the sheriff's office got a search warrant for the apartment down in Richland County. Essentially, while they're on their way to execute that search warrant, simultaneously almost, the family of Mr. Brisbon, who's looked at several different places of where he might be, goes to Osman Shabaz's grandmother's house, which is near the intersection of 321 and Peach Road in Fairfield County. It's kind of a rural area, but it is a heavy trafficked intersection and highway, even though there's not a whole lot around it. Next to Shabaz's grandmother's house there's a lot. I believe it's owned by a company, maybe an oil company just happens to own this lot, in which there are three or four single-wide trailers that have essentially been abandoned. Nobody's lived in them. There's no utility hookups to these trailers. And Gabriel's brother goes behind one of the trailers and finds his body faced down, covered in dirt, leaves, had been missing some clothing. He calls law enforcement. Law enforcement responds out to the scene. SLED's called out to process the scene. It's pretty evident that the actual shooting and killing of Mr. Brisbon took place inside the nearest trailer. There's blood throughout that trailer, bullet holes. There's some casings on the floor that were collected that were similar to the casings found in that latex glove in Gabriel's car. Mr. Brisbon was taken for an autopsy. He was shot seven times, five times to the head and neck area and one to the back and one to the right arm. There was a projectiles that was collected from his body at the autopsy.

And at the same time they're at the scene, the search warrant's being executed in Richland County. When investigators got there, they were able to talk to a neighbor who said, or made reference to the defendant's in this case, they had

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flown the coop sometime the night before or the early morning hours before investigators arrived that Friday morning. Inside the apartment they do find Gabriel's license inside one of the bedrooms, it is collected into evidence.

THE COURT: This is the Police Department down in Richland County?

MR. MAXWELL: Yes, sir. Some other things are collected for evidence from inside the apartment. Based on the -- now, we know what has ultimately happened to Mr. Brisbon, that he had been shot and killed and these people being the persons of interest and now, we have a wealth of evidence. The warrants already issued that Friday, simply for Shabaz and Sylvia at this point in time. It's still unknown what Michael's involvement in this case was. Even though, I think by this Friday, now they know that he is supposed to be with them or could have been with them and they know about this Richland County matter with DSS also looking for him on an unrelated matter. And I'll kind of circle back around as to why that's importance in just a second.

So there's a search for them that goes into the next week. It's publicized in the midlands media, news stations. I don't know if it made the newspapers or not. There's a pretty extensive effort to locate Sylvia and Shabaz. They search different places were they might be throughout the next week or so. They end up finding Shabaz' car, I believe, on that Tuesday at a house in Richland County that they used to live at, nobody's there. On Thursday, about less than a week goes by or right up to seven days has gone by since the discovery of Mr. Brisbon's body. Real fluid situation on that Thursday about various information coming in. Due to the Richland County DSS investigation, Shabaz had the number of a Richland County sheriff's deputy working that case, an investigator. Shabaz begins texting with that investigator saying:

I know who -- indicating, he knows who did this to Gabriel Brisbon. I think you can read those texts and infer that he's pointing the finger at Michael at the point in time.

And through those communications, the investigator ends up going to or near a motel, I think there's a McDonald's near a motel down in Richland. And Michael leaves the motel and meets up with this investigator and he's taken back to the Richland County sheriff's office.

Essentially, at the same time this was all going on, they had gotten a separate tip that they are at this motel that Michael just walked out of and they end up confirming which room they're in. Investigator's -- after Micheal has left, they met up with this Richland County investigator and other – I think SLED was involved and Richland County Deputies and Fairfield County Deputies, go to the motel room, find Sylvia and Shabaz inside this motel room along with a 9mm gun that is collected into evidence.

They are all taken back to Richland County Sheriff's Office. Shabaz does not given any further statements at that point in time. Michael and Sylvia are interviewed separately. After a lot of back and forth, they end up telling the same story. They had never meet Mr. Brisbone. It was Shabaz that was friends -- or at least one point in time was friends with Mr. Brisbon. He was the only one of the three that knew Mr. Brisbon. And that Sunday afternoon, there was some

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conversations at the apartment, according to Sylvia, Shabaz said something to Michael:

"Do you want a body?"

"Do you want to get a body?"

And initially, Michael and Sylvia thought it might have meant: Get him a girl.

What he meant was: To kill somebody.

The three of them then travel from the apartment in Osman Shabaz' car to the grandmother's house, to Osman Shabaz' grandmother's house. There's text messages from Shabaz to the victim saying:

Meet me at the grandma's house with intentions to smoke weed.

When the defendant's are there, he tells Michael to hide in the laundry room. Provides him with a gun at some point along the way. Tells Sylvia to hide on the far side of the house. And then, when Gabriel arrives, Gabriel and Shabaz go walking to the lot next door and go into one of those trailers.

There's some further text messages we got off of Michael's phone of him and Shabaz texting back and forth saying:

"Is it time for me to come out now?"

And Shabaz responds: "Five minutes. Act like you're running up on us."

But at some point, Michael leaves the laundry room at the grandmother's house, which is an exterior room. Goes into the trailer that Shabaz and Brisbon had gone into and according to Micheal's statement:

He goes in, Shabaz walks out and he pulls out the gun that had been provided by Shabaz and shoots and kills Gabriel Brisbon inside the room.

They then exit the trailer, leaving Mr. Brisbon in there. Initially Shabaz tells Michael to go back in and get Mr. Brisbon's car keys and his cellphone. Michael does so, comes back out. Shabaz leaves at that point. We believe, to kind of set up an alibi that he wasn't there, leaving the siblings there to drive the victims car back to Richland County. On the way, they stop somewhere I believe on Broad River, throw Gabriel's car (sic) into the river and proceed to
the apartment where they all end up back at the apartment that Sunday night.

Through the investigation, we were able to determine that Sylvia and Shabaz went to Lowes off Two Notch Road on that Monday and purchased latex gloves, purchased spray paint, the black and pink spray paint that was used to spray paint the car.

THE COURT: The Monday after the murder?

MR. MAXWELL: Monday afternoon. They also went to Advanced Auto and purchased some items, like a steering wheel cover that was placed on the victim's car and some other items. And according to all their -- Sylvia and Michael's statements, after they do that, they go back to the grandmother's house. That's where they spray paint the car and according Michael's statement he gave, that's when he moves Gabriel's body from the interior of the trailer out to behind the trailer. It looks like there was an attempt to dig a hole that didn't get very far. They covered the body with dirt and leaves. According to Michael, they also poured, I believe, toilet cleaner on the body. According to Michael, what he told investigator, with some understanding that that would dissolve the body and the bones within 20

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minutes. Of course that wasn't gonna happen. That's just what Michael told the investigators he thought was going to happen.

(Plea Tr. pp. 9-23). Applicant agreed under oath that this recitation was accurate. (Plea Tr. p. 23).

CURRENT APPLICATION

On January 22, 2024, Applicant filed this PCR application, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Plea Counsel
   a. Questioned without lawyer or guardian.
   b. Co-defendant housed together.
   c. Mental Capacity
   d. Failure to explain right to appeal. (liberally construed from Applicant's answer to Question 9).

Applicant requests relief as follows:

"time reduction, parole eligibility."

Before this Court are the Fairfield County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, Applicant's plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[1] (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;

[1] S.C. Code Ann. §§ 17-27-10 to -160.

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(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 by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; 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

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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, 6 (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

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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 at 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 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

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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 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 687.

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 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 competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

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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 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 circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still 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 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 'prejudice' showing 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,

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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 & 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 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.").

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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

As a matter of general impression, this Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant they rendered adequate assistance and exercised reasonable professional judgment in their representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: (1) Applicant was evaluated for competency to stand trial and privately for mitigation purposes (Plea Tr. pp. 2–5; PCR Tr. pp. 16–17); (2) by a preponderance of the evidence, the plea court determined Applicant was guilty but mentally ill (Plea Tr. pp. 4–5); (3) Applicant affirmed he understood the crimes he was charged

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with and the indictments (Plea Tr. pp. 6–7); (4) Applicant affirmed he understood the minimum and maximum sentence he could receive (Plea Tr. pp. 7–8); (5) Applicant affirmed he understood the constitutional rights he was waiving by pleading guilty (Plea Tr. pp. 8–9); (6) Applicant affirmed he was pleading guilty freely, voluntarily, and intelligently (Plea Tr. p. 9); (7) Applicant agreed with the recitation of facts (Plea Tr. p. 23); (8) Applicant indicated that no one had promised him anything to plead or that he was being forced to plead guilty (Plea Tr. p. 23); (9) Applicant affirmed he was able to speak with his lawyer and understood their conversations (Plea Tr. p. 23); (10) Applicant affirmed he was satisfied with Plea Counsel's advice and representation (Plea Tr. pp. 23–24); (11) Applicant affirmed he was pleading guilty because he was guilty (Plea Tr. p. 24); (12) the plea court accepted the plea as freely, voluntarily and intelligently entered (Plea Tr. p. 24); (13) Applicant told the plea court he was not under the influence of drugs, alcohol, or medication and had no mental or physical disability affecting his understanding of the proceeding (Plea Tr. p. 8); and (14) the plea court advised Applicant that he had ten days to appeal (Plea Tr. pp. 29–30).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation 1(a): Applicant was questioned without a lawyer or guardian present

Applicant presented no evidence concerning the circumstances of any custodial questioning, what statement resulted, or what motion Plea Counsel should have filed. Applicant's knowing and voluntary guilty plea waived any non-jurisdictional challenge to the manner in which his statement was obtained. See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975). To the extent the allegation is framed as ineffective assistance for failing to seek suppression, Applicant offered no evidence that a motion to suppress would have succeeded, or that, absent his statement, he would have rejected a negotiated plea to the statutory minimum and insisted on going to trial, particularly in light of the

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text messages recovered from his phone and the physical evidence linking him to the victim's car. (Plea Tr. pp. 15–17, 20–21). Applicant has failed to meet his burden of proof. Rule 71.1(e), SCRCP. This allegation is **DENIED and DISMISSED with PREJUDICE**.

Allegation 1(b): Applicant was housed with co-defendant

Applicant presented no evidence regarding when or where he was housed with a co-defendant, what Plea Counsel could have done about it, or how it affected the voluntariness of his plea. A complaint about pretrial housing assignments does not, without more, call into question the validity of the conviction or sentence under S.C. Code Ann. § 17-27-20(A), and any such pre-plea claim was waived by Applicant's knowing and voluntary guilty plea. See Rivers v. Strickland, 264 S.C. at 124, 213 S.E.2d at 98. Applicant has failed to meet his burden of proof. Rule 71.1(e), SCRCP. This allegation is **DENIED and DISMISSED with PREJUDICE**.

Allegation 1(c): Applicant lacked the mental capacity to plead guilty.

Applicant alleged that he did not understand the terms of his guilty plea due to his mental illness. This Court finds this allegation to be without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for plea counsel's errors, the defendant would not have pled guilty, but would have insisted on going to

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trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, a claim of an involuntary guilty plea is, in essence, a claim of ineffective assistance of counsel, and is treated as such.

"Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Indeed, admissions "made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137–38, 654 S.E.2d at 874. Surmounting Strickland's high bar is not easy, and the societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. 368-369, 137 S. Ct. at 1967.

Applicant's allegation further raises a question of mental competence. Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of his plea. Id.

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Findings

At the PCR hearing, Applicant testified that he has been diagnosed with schizophrenia, ADHD, ODD, and PTSD, and that because of his conditions and his youth he did not understand the plea and was "just saying yes just to say yes." (PCR Tr. pp. 27, 33). When asked what he did not understand, Applicant explained that the charge carried a range of thirty years to life while Plea Counsel told him he would receive thirty years. (PCR Tr. pp. 26, 28). Applicant nevertheless testified that he understood he was pleading guilty to murder, grand larceny, and threatening a public official; that he understood when he pled that he would serve thirty years; that thirty years was the minimum of the sentencing range; and that he had expected to receive more time. (PCR Tr. pp. 26, 28–29, 32, 35).

Plea Counsel testified that Applicant was evaluated by the State for competency to stand trial and criminal responsibility and was found competent and criminally responsible. (PCR Tr. p. 16). Because of his own concerns about Applicant's youth and low intellectual functioning, Plea Counsel retained Dr. Donna Maddox for a second opinion and for mitigation, reviewed Applicant's DSS records, and went over the results of the evaluations with Applicant. (PCR Tr. pp. 16–18). Plea Counsel acknowledged that Applicant was among the clients about whose intellectual capacity he had been most concerned, but testified that no evaluator found Applicant incompetent and that he had "no doubts" Applicant knew what he was doing when he pled guilty. (PCR Tr. pp. 19, 21). Plea Counsel explained that Applicant had agreed to testify against his co-defendant in exchange for a reduced charge, changed his mind, took the stand and invoked his Fifth Amendment privilege, and understood the consequences of that choice. (PCR Tr. pp. 19–21). Plea Counsel further testified that Applicant's demeanor at the plea was no different than at the PCR hearing. (PCR Tr. p. 22).

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The plea record is consistent with this testimony. Before accepting the plea, the plea court reviewed both the competency evaluation and Dr. Maddox's report, noting Dr. Maddox's opinion that, although Applicant has a learning disorder, "he has a rational and conceptual understanding of the proceeding and the capacity to assist in his defense." (Plea Tr. pp. 4–5). Both reports were made Court's exhibits. (Plea Tr. p. 6). The plea court then found by a preponderance of the evidence that Applicant was guilty but mentally ill, see S.C. Code Ann. § 17-24-20, and Applicant told the plea court he had no mental or physical disability that affected his understanding of the proceeding. (Plea Tr. pp. 5, 8).

This Court finds, based on the combination of the record and Plea Counsel's credible testimony, that Applicant knew the nature of the charges against him and the consequences of pleading guilty pursuant to the requirements of Boykin. The plea transcript and record reflect that Applicant entered his plea knowingly and voluntarily and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea. Thus, based on the plea transcript and the evidence presented at the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

This Court is not persuaded by PCR counsel's argument that the plea colloquy was inadequate because it consisted largely of questions calling for "yes" or "no" answers. (PCR Tr. pp. 22, 43). Neither Boykin nor South Carolina law prescribes a particular form of colloquy; the question is whether the record as a whole, including the plea transcript and the evidence presented at the PCR hearing, shows the plea was knowingly and voluntarily entered. Harris v. Leeke, 282 S.C. at 134, 318 S.E.2d at 361; Dover, 304 S.C. at 434, 405 S.E.2d at 392. Here, the plea court reviewed the evaluations before taking the plea; explained each indictment, the sentencing range,

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and the rights Applicant was waiving; and received appropriate answers. (Plea Tr. pp. 4–9). Applicant's own PCR testimony confirms he understood the charges and the negotiated thirty-year sentence. (PCR Tr. pp. 26, 28–29, 32). Nor has Applicant shown Plea Counsel was deficient for not requesting a more extensive colloquy. Plea Counsel testified that Applicant's responses were adequate and that his demeanor gave no indication otherwise (PCR Tr. pp. 21–22), and Applicant presented no evidence that a lengthier colloquy would have revealed any lack of understanding.

This Court further finds that Applicant has failed to prove by a preponderance of the evidence that he was mentally incompetent to enter his guilty plea. Applicant was evaluated by the State and, separately, by Dr. Maddox, and each evaluation found him competent. (Plea Tr. pp. 2, 4; PCR Tr. pp. 16, 19). Evidence that Applicant suffers from mental illness and low intellectual functioning, which this Court does not discount, does not by itself establish incompetence. The finding that Applicant was guilty but mentally ill concerned his capacity to conform his conduct to the law at the time of the offense, S.C. Code Ann. § 17-24-20(A); it is not a finding that he lacked a rational and factual understanding of the proceedings or the ability to consult with counsel at the time of his plea. See Jeter, *supra*. The record before this Court refutes this allegation.

To the extent Applicant contends Plea Counsel was ineffective with respect to his mental condition, the record shows Plea Counsel obtained competency and criminal-responsibility evaluations, retained a second expert, reviewed Applicant's DSS records, made the evaluations exhibits, secured a guilty-but-mentally-ill disposition, and argued Applicant's mental health and history in mitigation. (PCR Tr. pp. 16–19; Plea Tr. pp. 4–6, 24–28). Applicant has not identified any further investigation or action Plea Counsel should have taken. Moreover, Applicant has not shown prejudice under Hill: he did not testify that, but for any error by Plea Counsel, he would

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have rejected the negotiated plea and insisted on going to trial, and he received the statutory minimum sentence for murder. S.C. Code Ann. § 16-3-20(A); (Plea Tr. pp. 3, 29).

Accordingly, this Court finds Applicant has failed to establish his guilty plea was involuntary and further failed to establish he was mentally incompetent when he pleaded guilty. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

Allegation 1(d): Plea Counsel failed to explain right to appeal

Applicant also alleges that he should be entitled to relief pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to a guilty plea:

> Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal

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given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Findings

At the evidentiary hearing on direct examination, Applicant testified that he was not informed of his right to an appeal. (PCR Tr. p. 33-34). Applicant testified that an appeal was filed, but Plea Counsel informed him that it was too late. (PCR Tr. p. 34). Applicant testified that he did not tell Plea Counsel he wanted to appeal because he was unaware of the possibility. (PCR Tr. p. 34).

On recall direct examination, Plea Counsel testified that he saw no grounds for appeal in Applicant's case and that, if Applicant had requested an appeal within the 10-day deadline, Plea Counsel would have filed one. At the hearing, Plea Counsel did not remember whether Applicant asked him to appeal or whether he filed a notice of appeal. (PCR Tr. p. 36). The appellate record, of which this Court takes judicial notice, resolves that question. See Rule 201(b), SCRE. In a statement to the Court of Appeals dated February 23, 2023, Plea Counsel represented that Applicant's request to appeal reached him the evening of February 22, 2023; that he was filing the notice of appeal at Applicant's request; and that he was not aware of any appealable issues from the guilty plea. The Court of Appeals dismissed the appeal because the notice was not served within ten days after sentencing. State v. Scott, Appellate Case No. 2023-000304 (S.C. Ct. App. Mar. 8, 2023) (order dismissing appeal); Rule 203(b)(2), SCACR.

At Applicant's plea hearing, Judge Morgan advised Applicant of his right to appeal the imposed sentence within 10 days. (Plea Tr. pp. 29-30).

This Court finds Plea Counsel credible. To the extent Applicant claims he was unaware of his right to appeal, his testimony is not credible, as the plea court expressly advised him that he

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had ten days to appeal. (Plea Tr. pp. 29–30). Applicant himself testified that he did not make clear to Plea Counsel that he wanted to appeal (PCR Tr. p. 34), and the appellate record establishes that Applicant's request did not reach Plea Counsel until the evening of February 22, 2023, after the time to serve a notice of appeal had expired. See Rule 203(b)(2), SCACR; Rule 263(a), SCACR. Applicant's vague and partially indiscernible testimony that he wrote a note in "the middle of February" (PCR Tr. p. 34) is not credible in light of Plea Counsel's contemporaneous statement to the Court of Appeals, and Applicant offered no evidence of when, or by what means, any earlier request was sent. Plea Counsel acted on the request the following day. Because Applicant did not request an appeal within the time allowed, Plea Counsel was not deficient for failing to serve a timely notice of appeal, and the untimely notice served at Applicant's request does not entitle Applicant to relief.

This Court further finds Applicant is not entitled to an appeal pursuant to White v. State. Applicant has failed to prove Plea Counsel was ineffective for not informing Applicant of his right to an appeal after Applicant's guilty plea and sentencing. Plea Counsel testified there were no viable issues Plea Counsel could have appealed to. This Court finds Plea Counsel credible. Further, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008). Applicant received the negotiated, statutory-minimum sentence on a plea this Court has found knowing and voluntary, and he has identified no nonfrivolous issue for appeal. Applicant has failed to present any evidence of extraordinary circumstances that would have required Applicant to be informed of his right to appeal after pleading guilty. Nor has Applicant shown a reasonable probability that, but for any failure by Plea Counsel to consult with him, he would have timely appealed. Flores-Ortega, 528 U.S. at 484.

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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 with PREJUDICE.**

ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING

Allegation 2: Plea Counsel failed to review discovery

Applicant alleged Plea Counsel's representation was constitutionally ineffective for failing to review discovery. (PCR Tr. p. 25). This Court finds this allegation to be without merit.

In order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008). Furthermore, an applicant must present evidence showing how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is insufficient to support a relief grant. Harris, 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

On direct examination, Plea Counsel testified that he met with Applicant numerous times and went through discovery with him. (PCR Tr. pp. 15-16). Specifically, Plea Counsel testified that they went over Applicant's confession, as well as his mental health records. (PCR Tr. pp. 16-18).

Applicant acknowledged that he received his discovery and that it was possible Plea Counsel reviewed it with him, and he simply did not remember. (PCR Tr. p. 25). He also acknowledged that Plea Counsel visited him and asked whether he had questions, and that he did

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not. (PCR Tr. pp. 30–31). Although Applicant testified he did not recall receiving the results of his mental evaluation (PCR Tr. p. 27), Plea Counsel testified he went over the results of the evaluations with Applicant (PCR Tr. pp. 16–17), and Applicant has not shown how receiving the written reports would have changed his decision to plead guilty. To the extent Applicant suggested at the hearing that there was "no confession" or that he never saw the evidence against him (PCR Tr. p. 29), he admitted at his plea that the State's recitation, including the account of his statement to investigators, was accurate (Plea Tr. pp. 21–23), and he presented no evidence to the contrary.

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. Also, this Court finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Plea Counsel testified that he went over discovery with Applicant. This Court finds Plea Counsel credible. Furthermore, Applicant has failed to present what evidence or defenses could have been discovered had Plea Counsel further reviewed discovery with Applicant.

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 with PREJUDICE.**

Allegation 3: Plea Counsel failed to advise about plea offer and sentencing.

Applicant alleges Plea Counsel's representation was constitutionally ineffective for failing to advise about a plea offer and sentencing. (PCR Tr. p. 23; 28-29). This Court finds this allegation to be without merit.

Plea counsel has a duty to communicate formal plea offers from the prosecution to the defendant. Missouri v. Frye, 566 U.S. 134, 145 (2012). Where an applicant claims a favorable

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offer was lost because of counsel's deficient performance, he must show a reasonable probability that he would have accepted the offer, that the plea would have been entered without the prosecution canceling it or the court refusing to accept it, and that the end result would have been more favorable. Id. at 147; Lafler v. Cooper, 566 U.S. 156, 164 (2012).

Findings

Applicant testified that Plea Counsel never told him that, if he testified against his co-defendant, he would receive no more than twenty years. (PCR Tr. pp. 23–25). Applicant's own testimony, however, establishes that he knew he was being asked to testify in exchange for a benefit, that he initially agreed, and that he then chose not to testify because he wanted the benefits of a deal but did not want to "tell or snitch on anyone." (PCR Tr. pp. 24–25). Plea Counsel testified that the cooperation arrangement, under which the murder charge would be reduced to something "significantly less than murder" with a sentence likely not much worse than twenty years, was discussed with Applicant; that Applicant met with the Solicitor and the investigator one to two weeks before his co-defendant's trial and agreed to testify; and that, after Applicant changed his mind, Plea Counsel and the investigator spent hours with him trying to understand why. (PCR Tr. pp. 19–20). Applicant then took the stand at his co-defendant's trial and invoked his Fifth Amendment privilege, after which the offer was withdrawn. (PCR Tr. p. 20; Plea Tr. p. 23).

This Court finds Plea Counsel credible and finds that Plea Counsel communicated the cooperation offer to Applicant. Applicant has also failed to show prejudice. By his own account, he declined to testify because he did not want to implicate his co-defendant, not because he was unaware of the benefit, and he has not shown a reasonable probability that, with any additional advice, he would have testified and obtained the benefit of the agreement. As to sentencing, the plea court informed Applicant that murder carried a range of thirty years to life, the negotiated

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thirty-year sentence was placed on the record, and Applicant confirmed at the PCR hearing that he understood he would receive thirty years. (Plea Tr. pp. 3, 7–8, 24; PCR Tr. pp. 26, 32). Any confusion arising from a sentencing sheet reflecting the statutory range did not prejudice Applicant, who received the minimum sentence and testified that he expected to receive more. (PCR Tr. pp. 26, 28, 35).

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." This Court further finds the record refutes this allegation. The plea court

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 with PREJUDICE.**

Allegation 4: Applicant was coerced into testifying.

Applicant alleged Plea Counsel's representation was constitutionally ineffective because Plea Counsel repeatedly pressured him to testify against his co-defendant and, ultimately, to plead guilty. (PCR Tr. pp. 24–25). This Court finds this allegation to be without merit.

Findings

Applicant testified that Plea Counsel asked him "multiple times" to testify, that he initially refused, and that he eventually agreed. (PCR Tr. p. 24). PCR counsel characterized Applicant as having accepted the plea because he was pressured. (PCR Tr. p. 25). Applicant did not, however, testify against his co-defendant; he invoked his Fifth Amendment privilege. (PCR Tr. p. 20; Plea Tr. p. 23). Plea Counsel testified that he repeatedly advised Applicant that he would lose at trial and that cooperating, and then pleading guilty, were his best options. (PCR Tr. p. 20). Candid advice about the strength of the State's case and the benefits of cooperation or a negotiated plea is

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not coercion. See Brady v. United States, 397 U.S. 742, 750–55 (1970). At the plea, Applicant stated under oath that no one had forced him to plead guilty and that he was satisfied with Plea Counsel's advice and representation (Plea Tr. pp. 23–24), and he has offered no valid reason to depart from those statements. Dalton, 376 S.C. at 137–38, 654 S.E.2d at 874. Because Applicant never testified, he suffered no prejudice from any alleged pressure to do so, and he has not shown that, absent the alleged pressure, he would have rejected a plea to the statutory minimum and insisted on going to trial.

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 with PREJUDICE.**

Allegation 5: Plea Counsel failed to meet a sufficient number of times.

Applicant alleged Plea Counsel's representation was constitutionally ineffective for failing to meet with him a sufficient number of times. (PCR Tr. p. 30). This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients required to satisfy the competency requirement. Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005); see also Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become

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thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence showing how additional time spent in consultation would have resulted in a different outcome; mere speculation about how the alleged lack of preparation prejudiced the applicant is insufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997)).

Findings

Applicant testified that Plea Counsel visited him but "didn't go over the case," though he acknowledged that Plea Counsel asked whether he had questions and he said he did not. (PCR Tr. pp. 30–31). Plea Counsel testified that he met with Applicant "numerous times." (PCR Tr. p. 15). The record also reflects that Plea Counsel and Applicant met with the Solicitor and the investigator regarding cooperation, and that Plea Counsel spent hours with Applicant during his co-defendant's trial. (PCR Tr. pp. 19–20). This Court finds Plea Counsel credible. Applicant has not identified anything additional meetings would have revealed or shown how more consultation would have changed his decision to plead guilty.

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This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case."

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 with PREJUDICE.**

Allegation 6: Plea Counsel failed to Applicant alleged Plea Counsel's representation was constitutionally ineffective for failing to explain to the plea court why he was mentally ill. (PCR Tr. p. 33). This Court finds this allegation to be without merit.

Findings

This Court finds that the record refutes Applicant's claim that Plea Counsel did not inform the plea court that he was mentally ill. At the beginning of his plea, the plea court found that Applicant was guilty but mentally ill. That finding was based on the evaluations Plea Counsel submitted, including Dr. Maddox's report, which Plea Counsel obtained and made Court's exhibits. (Plea Tr. pp. 3–6). Plea Counsel then argued at length in mitigation about Applicant's low cognitive and social functioning, his history of abuse and neglect, Dr. Maddox's findings, and his susceptibility to manipulation by his co-defendant, and asked that Applicant receive mental health treatment in SCDC. (Plea Tr. pp. 24–28). Applicant received the negotiated statutory-minimum sentence. (Plea Tr. p. 29). Thus, Applicant's allegation is refuted by the record, and he has shown no prejudice.

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 with PREJUDICE.**

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Allegation 7: Plea Counsel failed to have Applicant evaluated at a psychiatric hospital.

Applicant testified that he "was supposed to go to the psychiatric hospital and be evaluated," but was not. (PCR Tr. pp. 33–34). This Court finds this allegation to be without merit.

Findings

The record establishes that Applicant was evaluated by the State for competency and criminal responsibility, and separately by Dr. Maddox at Plea Counsel's request. (PCR Tr. pp. 16–17; Plea Tr. pp. 2–5). Applicant presented no evidence of who ordered a hospital evaluation, what such an evaluation would have shown, or how it would have changed his decision to plead guilty. Mere speculation is insufficient to establish prejudice. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

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 with PREJUDICE.**

Allegation 8: Plea Counsel failed to explain the grand larceny charge.

Applicant testified that he asked Plea Counsel what grand larceny was and that Plea Counsel did not explain it. (PCR Tr. p. 31). This Court finds this allegation to be without merit.

Findings

At the plea, the plea court described the grand larceny indictment, the January 31, 2021 taking of the victim's 2010 Honda Accord valued at more than $2,000 but less than $10,000, and Applicant confirmed he understood it. (Plea Tr. p. 7). Plea Counsel confirmed on the record that he had advised Applicant of the elements of each charge and the sentencing ranges. (Plea Tr. p. 7). The State's factual recitation, which Applicant agreed was accurate, described Applicant retrieving the victim's keys and the siblings driving away in the victim's car. (Plea Tr. pp. 21–23).

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At the PCR hearing, Applicant correctly identified grand larceny as one of the charges to which he pled. (PCR Tr. p. 28). Applicant received a concurrent five-year sentence on this charge and has not shown that any further explanation would have caused him to reject the plea and proceed to trial.

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 with PREJUDICE.**

[SIGNATURE AND CONCLUSION ON FOLLOWING PAGE]

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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 9th **day of** November**, 2026.**

WILLIAM C. MCMASTER, III
Presiding Judge
Sixth Judicial Circuit

Fairfield, South Carolina

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