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S.C. SUPREME COURT

LAW OFFICE

THE HENDERSON LAW FIRM, P.C.

Carson M. Henderson

ATTORNEY AND COUNSELOR AT LAW

109-B Oak Avenue
Greenwood, South Carolina 29646

Telephone: (864) 229-8000
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September 8, 2017

Honorable Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211

Re: Erica L. Anderson (#350142) v. State of South Carolina
Laurens C/A No. 2014-CP-30-0732

Dear Clerk Shearouse:

Please file the enclosed Notice of Appeal and Proof of Service and return clocked copies of both documents to me and the S.C. Commission on Indigent Defense, Appellate Division in the enclosed envelopes provided for your convenience. Also enclosed is Circuit Judge G. Thomas Cooper, Jr.'s Order of Dismissal dated August 23, 2017.

My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

Cordially yours,

THE HENDERSON LAW FIRM, P.C.

Carson M. Henderson

CMH/lhc
Enclosures as indicated

Cc: Judah N. VanSyckel, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

Erica Leigh Anderson (#350142)
Leath Correctional Institution
2809 Airport Road
Greenwood, S.C. 29649

RECEIVED
SEP 15 2017
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Presiding Circuit Judge – Laurens County

---

C/A No. 2014-CP-30-0732

ERICA L. ANDERSON (#350142),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Erica L. Anderson appeals the Order of Dismissal issued by the Honorable G. Thomas Cooper, Jr., on August 23, 2017. This matter was heard in Greenwood County on June 7, 2017. The Appellant's trial counsel received the Order of Dismissal from the Laurens County Clerk of Court on Thursday, August 31, 2017.

THE HENDERSON LAW FIRM, P.C.
Trial Attorney for the Appellant

By: _____
Carson M. Henderson
109-B Oak Avenue
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Phone: (864) 229-8000
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Greenwood, South Carolina

September 8, 2017

Other Counsel of Record:

Judah N. VanSyckel, Esquire
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S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
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---

C/A No. 2014-CP-30-0732

ERICA L. ANDERSON (#350142),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on September 8, 2017, addressed to its attorney of record, Judah N. VanSyckel, Esquire, S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, with a copy also being mailed to S.C. Commission on Indigent Defense, Appellate Division, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.

THE HENDERSON LAW FIRM, P.C.
Trial Attorney for the Appellant

By: _____
Carson M. Henderson
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Phone: (864) 229-8000
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Greenwood, South Carolina

September 8, 2017

ALAN WILSON
ATTORNEY GENERAL

August 24, 2017

The Honorable Lynn W. Lancaster
Clerk of Court, Laurens County
Post Office Box 287
Laurens, SC 29360

Re: **Erica L. Anderson, #350142 v. State of South Carolina**
2014-CP-30-0732

Dear Ms. Lancaster:

Enclosed please find the original **Order of Dismissal** signed by the Honorable G. Thomas Cooper, Jr., in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP."

In addition, please forward **proof of service** and a **time stamped copy** back to our office for our file.

Should you have any questions, please call me at (803) 734-3737.

Sincerely,

Judah N. VanSyckel
Assistant Attorney General

JNV/jaj
Enclosure

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) EIGHTH JUDICIAL CIRCUIT
)
) CASE NO: **2016-CP-30-0732**
ERICA ANDERSON, #350142)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

LYNN W. LANCASTER
LAURENS COUNTY
CLERK OF COURT
2017 AUG 28 AM 10:23

Plaintiff's Attorney:	Defendant's Attorney:
Carson M. Henderson, Bar No. Address: The Henderson Law Firm, PC 109-B Oak Ave. Greenwood, SC 29646 Phone: _____Fax _____ E-mail: _____Other: _____	Judah N. VanSyckel, Bar No. Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax_____ E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☒ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Judah N. VanSyckel
Signature of Attorney for ☐ Plaintiff /☒ Defendant

July 20, 2017
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____

EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Erica L. Anderson, SCDC # 350142 Applicant	)	Case No.: 2014-CP-30-0732
v. State of South Carolina Respondent	)	**ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 16, 2014. An evidentiary hearing into the matter was convened on June 7, 2017, at the Laurens County Courthouse in Laurens, South Carolina. Applicant was present at the hearing and represented by Carson M. Henderson, Esquire. Judah N. VanSyckel, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on her own behalf. Applicant's plea counsel, Andrew M. Hodges, Esquire, also testified. This Court had before it a copy of Applicant's records from the Laurens County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's PCR Application, and Respondent's Return:

I. Procedural Posture

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Applicant was indicted by the March 2012 term of the Laurens County Grand Jury for Attempted Murder (2012-GS-30-0375), Kidnapping (2012-GS-30-0378), Armed Robbery (2012-GS-30-0376) and Possession of a Weapon during the Commission of a Violent Crime (2012-GS-30-0377).

The Applicant was represented by Andrew Hodges, Esquire. The State was represented by Deputy Solicitor C. Dale Scott, Esquire. On June 5, 2014, the Applicant pled guilty to Strong Arm Robbery as a lesser included offense of Armed Robbery, Attempted Murder, Kidnapping, and Possession of a Weapon during the Commission of a Violent Crime. Pleading at the same time was Applicant's co-defendant, Jason Lawson. Daniel J. Farnsworth, Esquire represented the co-defendant. The Honorable Frank R. Addy, Jr. sentenced Applicant to incarceration for fifteen years, concurrent on the Kidnapping, Strong Arm Robbery and Attempted Murder indictments and five years, concurrent, for Possession of a Weapon during the Commission of a Violent Crime.

The Sentencing sheets reflect that Applicant pled without Negotiation or Recommendation, but that the Applicant received the benefit of having the Armed Robbery reduced to a Strong Arm robbery. Additionally, the State did not object to Applicant's request that she not be put on the sex offender registry. (Plea Tr. p. 31.)

The Applicant did not appeal her conviction and sentence.

II. Facts of the Case from the factual basis for the Guilty Plea

The Applicant, Erica Anderson, and her boyfriend, Jason Lawson, brutally attacked the victim the morning of December 15, 2011 after engaging in the use of illicit drugs the night before. (Trial Tr. p. 9-13, 33.) During the early morning hours of the incident date, Applicant met the victim at a nearby Waffle House after spending the night at a hotel where she had engaged in drug use. Id. Applicant talked with the victim and rode back with the victim to the hotel at which they were both staying. Id at 11. The victim went to applicant's room at the hotel shortly thereafter where Applicant allowed him entry. Id. Shortly thereafter, Applicant's boyfriend stepped out of another room and pointed a gun at the victim and battered him with a heavy metal

flashlight on the head. Id. Applicant and her boyfriend tied up the victim with a phone cord. Id at 11-12. Applicant yelled for her boyfriend to "kill" the victim. Id at 12. When the victim tried to fight back, Applicant slashed his throat with a knife. Id. As the victim continued to struggle for his life, the Applicant's boyfriend then shot him twice with a .22 caliber pistol. Id. After the Victim was able to flee his attackers, Applicant and her boyfriend fled the scene in a stolen van. Id at 12-13.

The Court has also reviewed Plea Counsel's version of the facts set out in the plea. (Plea Tr. 31-35.)

III. Applicant's and Co-Defendant's Statements at the Guilty Plea

At the guilty plea, Applicant did not have anything to say in mitigation. (Plea Tr. p. 42). The following reflects Applicant's position as to the facts presented by the State at the guilty plea:

> **"THE COURT:** All right. Ms. Anderson, you heard what the State alleges happened. I understand Mr. Hodges explained to me that maybe there are bits and pieces of that narrative that you would disagree with or take issue with, but is that essentially what happened on that particular occasion?
>
> **DEFENDANT ANDERSON:** Yes, sir."

(Plea Tr. p. 15.)

At the plea, Applicant's co-defendant said the following in mitigation on behalf of Applicant:

> **DEFENDANT LAWSON:** Yes, sir. I want to ask you to take most of the burden off of Erica and put it on me. If I were to have done what I was supposed to do, be the man like I'm supposed to be, she wouldn't have been in the situation in the first place, she wouldn't have been there, this wouldn't have happened. So, please, take anything you can off her and put it on me.

(Plea Tr. p. 41-42.)

IV. Applicant's PCR Filings

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In her original Application, Applicant alleged that she is being held in custody unlawfully for the following reasons:

1. "Ineffective Counsel"
2. "New Evidence"
3. "Failure to review all evidence."

Additionally, Applicant filed an Amended Application for Post-Conviction Relief, alleging additionally that:

1. Applicant's Counsel was ineffective in allowing Applicant "to plead guilty when her guilty plea was not voluntary, when the Petitioner did not have a complete understanding of the nature of the charges against her, and when the Petitioner did not appreciate the ramifications of the guilty plea."
2. Applicant's Counsel was ineffective because he:
    a. "failed to interview the victim and other witnesses,"
    b. "was not prepared for trial," and
    c. Failed to introduce significant and material mitigating facts at the guilty plea."
3. Applicant's counsel was ineffective because he "failed to make restitution to the victim prior to the guilty plea hearing, when doing so could have reasonably lessened the victim's animosity and ill-will toward the Petitioner.
4. Applicant's Counsel was ineffective because he "failed to request a continuance of the jury trial scheduled to begin the Monday following the Petitioner's guilty plea."

V. Statements from Hearing Testimony

A. Applicant's Testimony

At the hearing, Applicant's testimony included the following assertions. Applicant testified that she hired Counsel, Andrew Hodges, after being dissatisfied with her previous attorney. Applicant testified that she had Mr. Hodges as her attorney from May of 2014 until her plea in June of 2014. Applicant testified that her mother paid Counsel ten thousand dollars. Applicant testified that Applicant told Counsel that she would not take a plea for twenty years.

Applicant testified that after Counsel met with the plea judge to discuss her potential plea, that she had said she would not plead because the indicated sentencing range was between fifteen and twenty years. Applicant testified that Counsel told her that because she had a Mr. Burton coming in to testify on her behalf, Counsel could do better than fifteen years. Applicant testified that she thought she could do twelve years of incarceration way better than she could do fifteen years. Applicant testified that she would not be unhappy with her plea if she had gotten 12 years, but that she would not have pled if she thought she was getting 15 years.

Applicant testified that she paid a retainer fee, but that she did not pay any money for investigation and that there was no private investigator.

Applicant testified that Counsel never talked to her about testifying against Mr. Lawson. Applicant testified that there was not a lot of plea preparation. Applicant testified that the facts of the case as relayed by the victim were different from the facts she would have presented at trial.

Applicant testified that she would have gone to trial with a different attorney.

Applicant testified that she thought that the victim wouldn't show up to the trial. Applicant also testified that she thought Counsel should have done more to contact the victim about paying restitution ahead of time in order to mitigate his involvement. Applicant also testified that she thought Mr. Hodges should have done more investigation.

B. Counsel's Testimony

Counsel, Andrew Hodges, testified that he was retained on March 4, 2014 by Applicant. Counsel testified that the victim and Applicant had different versions of the facts that occurred during the incident. Counsel testified that he did not speak with the victim in this case. Counsel testified that he watched the video of Applicant's and the victim's interaction at the Waffle House.

Counsel testified that Applicant specifically did not want a trial and that she wanted to take a plea. Counsel also indicated that there were several reasons to not ask for a continuance when the case was scheduled for trial. Counsel testified that he spoke with Applicant about potentially asking for a continuance and that he believed he could get one. Counsel testified that there was an outstanding DNA test that had yet to be completed, but the State had indicated it would move forward without it.

Counsel testified that one reason to not ask for a continuance was because the co-defendant's counsel indicated that the co-defendant was willing to say something regarding Applicant's involvement at the time of the plea. Counsel testified that ultimately the co-defendant did attempt to help mitigate the sentence of the Applicant and that the Applicant received a benefit from the Plea Judge because of it. Counsel also testified that another reason to not ask for the continuance was that he was able to speak with the Plea Judge and was able to give the defendant a range of probable sentences in order to give her an idea of what kind of sentence she would likely receive. Counsel testified that this provided Applicant some assurance before entering into the plea. Counsel testified that he did not think he would have the same situation in front of a different Judge at the next term.

Counsel testified that he did not reach out to the victim about restitution before the plea, but instead reached out to the Solicitor's office. Counsel testified that he thought it would hurt

Applicant's case if Counsel reached out to the victim and it resulted in the victim becoming angry.

Counsel also testified that one reason he did not want to wait on the outstanding DNA test was because he was worried the results could have harmed the victim's case. Had the DNA results reflected that the victim's blood was on phone cord, it could have corroborated the State's version of events. Counsel testified that he felt not having the results back was better for his client because the test could not be used to attack his clients version of events.

Counsel also testified that Applicant was focused on the State's belief that this crime was premeditated and that he was having to explain to her that regardless of if it was premeditated or not, her actions were such that they met the elements of the crime. Counsel testified that he discussed the possibility of a North Carolina v. Alford plea with Applicant. 400 U.S. 25 (1970). Counsel also discussed with her the distinction of pleading to the elements of the offense compared with fully agreeing to the State's facts.

Counsel testified that Applicant was ultimately unwilling to take the risk of trial. Counsel testified that the trial would not have gone well for Applicant. Counsel testified that Applicant told him that she had held a knife to the victim's genitals and throat.

Counsel testified that he was still getting discovery late before the scheduled trial date. Even so, Applicant had always wanted a plea and the continuance was not something they wished to pursue.

Counsel also testified that he and Applicant had met regarding her case on April 29, 2014. Counsel testified that at this April 29 meeting, well before the June 5, 2014 plea hearing, Applicant had wanted a plea.

Counsel also testified that applicant's flight after the crime would have indicated guilt to a jury. Counsel also indicated that Counsel believed that Applicant could have been convicted under a "hand of one, hand of all" theory.

Counsel indicated that he believed there was overwhelming evidence against Applicant based on the gunshot residue on her hands, the video-taped confession that she gave to her version of events, and the Waffle House video.

Counsel also testified that he believed there was no further investigation for him to do based on the evidence he had seen and the statements of Applicant.

VI. Applicable Law

A. Law as to Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was

deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have 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." Id at 117-18, 386 S.E.2d at 625.

The United States Supreme Court held that the Strickland v. Washington standard applies in guilty pleas. Hill v. Lockhart, 474 U.S. 52 (1985). The Court further held that for guilty pleas, in order to show the prejudice requirement in the second prong of Strickland, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. The test for the prejudice inquiry of the Court is dependent upon the particular facts of each claim of ineffective assistance of counsel. Claims of failing to investigate or discover evidence are subject to an analysis by the Court as to the probability that "discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial." Id. But the prejudice analysis changes "where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." Id. This is an inquiry that the trial court must make regarding the evidence presented before it as "these predictions of the outcome at a possible trial, where necessary, should be made objectively, without regard for the "idiosyncrasies of the particular decisionmaker."" Id at 59-60 (quoting Strickland v. Washington, 466 U.S. 668, 695 (1984)).

Additionally, "the reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Strickland v. Washington, 466 U.S. 668, 691 (1984)).

B. Law as to Newly Discovered Evidence after a Guilty Plea.

Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. The South Carolina Supreme Court has held that:

"A party requesting a new trial based on after-discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had;

(2) Has been discovered since the trial;

(3) Could not by the exercise of due diligence have been discovered before the trial;

(4) Is material to the issue of guilt or innocence; and,

(5) Is not merely cumulative or impeaching."

when ascertaining the test for describing newly discovered evidence. Hayden v. State, 278 S.C. 610, 611 (1978).

When a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea

to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. The Supreme Court has cautioned that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt. See Jamison v. State, 410 S.C. 456 (2014).

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976). Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007).

"The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision." Brady v. United States, 397 U.S. 742, 757 (1970). "A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Id.

VII. Findings of Facts and Conclusions of Law

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. Additionally, this Court finds Applicant's testimony to lack credibility and to not be persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

A. Findings and Conclusions as to Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). The United States Supreme Court held that the Strickland v. Washington

standard applies in guilty pleas. Hill v. Lockhart, 474 U.S. 52 (1985). The Court further held that for guilty pleas, in order to show the prejudice requirement in the second prong of Strickland, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. The test for the prejudice inquiry of the Court is dependent upon the particular facts of each claim of ineffective assistance of counsel. Claims of failing to investigate or discover evidence are subject to an analysis by the Court as to the probability that "discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial." Id. But the prejudice analysis changes "where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." Id. This is an inquiry that the trial court must make regarding the evidence presented before it as "these predictions of the outcome at a possible trial, where necessary, should be made objectively, without regard for the "idiosyncrasies of the particular decisionmaker."" Id at 59-60 (quoting Strickland v. Washington, 466 U.S. 668, 695 (1984)).

Additionally, "the reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Strickland v. Washington, 466 U.S. 668, 691 (1984)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against

him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). This Court finds that Applicant has failed to prove that Counsel was ineffective.

1. Findings and Conclusions as to Claim that Counsel was ineffective for failing to review all evidence.

This Court finds that Applicant failed to prove that Counsel was ineffective for failing to review all evidence. Applicant identified no evidence that Counsel had not reviewed that he should have.

Applicant also identified no evidence that Counsel had not reviewed that Applicant had made him aware that he should review before the plea. Counsel reasonably relied upon Counsel's discussions with Applicant in his representation. Strickland v. Washington, 466 U.S. 668, 691 (1984)).

This Court finds that Counsel made the strategic decision not to contact the victim. Counsel reasonably did not want to antagonize the victim. Further, Counsel was aware of the victim's version of events.

This Court finds that Counsel did not want to wait for the DNA test results to come back as it could have further damaged his client's mitigation by showing the victim's DNA on the phone cord. Such a showing would have weakened the Applicant's factual mitigation at the plea. It also would not have been definitive proof of Applicant's innocence at a trial as the absence of DNA on the phone cord would not have been proof that it was not wrapped around the Victim's neck.

2. Findings and Conclusions as to Claim that Counsel was ineffective for allowing Applicant to plead guilty when her plea was not voluntary

This Court finds that Applicant failed to prove her allegation that Counsel was "ineffective in allowing Applicant "to plead guilty when her guilty plea was not voluntary, when the Petitioner did not have a complete understanding of the nature of the charges against her, and when the Petitioner did not appreciate the ramifications of the guilty plea."" Applicant did not testify that she did not understand the nature of the charges against her nor did she testify that she did not appreciate the ramifications of the guilty plea.

Further, at the Plea, the Applicant answered in the affirmative when asked by the Court if Applicant understood: that the Applicant had a right to a jury trial, that the State would have to prove that Applicant had committed the crime beyond a reasonable doubt to twelve jurors, that the State would have to call sworn witnesses subject to cross-examination to prove Applicant's guilt, that the State would bear the burden of proof beyond a reasonable doubt, that the Applicant would have the right to testify at the trial, that Applicant would have the right to subpoena and call witnesses, that Applicant would be presumed innocent at trial, and that Applicant would have the right to present defenses on her own behalf. (Plea Tr. 15-22.)

Counsel also testified that as to the sentence that Applicant received, that Applicant was aware that the sentencing Judge had indicated a range in which he would sentence the Applicant, and that the sentence Applicant received was at the bottom of that range.

3. Findings and Conclusions as to Claim that Counsel was ineffective for failing to interview the victim and other witnesses.

Applicant failed to prove her allegation that Counsel was ineffective for failing to interview the victim and other witnesses. The Applicant was correct that Counsel did not interview the victim Counsel had the victim's version of events as laid out in his report to law enforcement. Counsel's decision was reasonable in limiting his investigation prior to plea to

statements, particularly when the Applicant indicated to Counsel a reasonable decision to plead. Additionally, Applicant failed to identify any other witnesses whom Counsel should have identified regarding the matter. Strickland v. Washington, 466 U.S. 668, 691 (1984)).

4. Findings and Conclusions as to Claim that Counsel was ineffective for failing to prepare for trial.

Applicant failed to prove her allegation that Counsel was ineffective for failing to prepare for trial. Applicant never testified that she felt like Counsel was unprepared for a trial and that it caused her to plead guilty. Counsel also testified that Applicant expressly instructed him to pursue a plea. Counsel and Applicant also testified that they pled when they did based Counsel's perspective of the scheduling of General Sessions Terms of Court. In addition, Counsel judged that even though Applicant's case was on the docket, Applicant was likely to be granted a continuance due to the missing DNA test. In short, Counsel never was placed in a position to try this case or to prepare for an actual trial. This Court also finds, based on Counsel's testimony and his notes from his case file, that Counsel was very familiar with the case and was well prepared for the potential trial and guilty plea.

5. Findings and Conclusions as to Claim that Counsel was ineffective for failing to introduce certain facts.

Applicant failed to prove her allegation that Counsel was ineffective for failing to introduce significant and material mitigating facts at the guilty plea. Applicant failed to identify any significant and material mitigating facts at the guilty plea which could have affected her plea which were not presented. Additionally, Counsel did make a significant presentation on behalf of Applicant for mitigation purposes. (Plea Tr. 31-40.) Counsel pointed out that Applicant had cooperated by giving a statement after being apprehended. Id at 35. Counsel made the court

aware that Applicant's only prior record was for misdemeanors and that she had no prior crimes of violence on her record. Id. Counsel brought Applicant's participation in a substance abuse program to the courts attention as well. Id at 36-37. In addition, Counsel made sure that Applicant had numerous individuals in the courtroom to show her community support. Id at 37-39.

6. Findings and Conclusions as to Claim that Counsel was ineffective for failing to make restitution to the victim.

Applicant failed to prove her allegation that Counsel was ineffective for failing to make restitution to the victim prior to the guilty plea hearing, when doing so could have reasonable lessened the victim's animosity and ill will towards the petitioner. This Court finds, based on Counsel's testimony, that he did contact the Solicitor regarding this issue and that the Solicitor's office rebuffed him. This Court finds that Counsel made a strategic decision not to reach out directly to the victim in order to avoid further irritating the victim which could have further harmed Applicant at the plea.

7. Findings and Conclusions as to Claim that Counsel was ineffective for failing to request a continuance of the scheduled Jury Trial.

Applicant failed to prove her allegation that Counsel was ineffective for failing to request a continuance of the Jury Trial that was scheduled for the week after the guilty plea. Applicant and Counsel both testified that the continuance would have hindered their opportunity to plead in front of the Judge whom they had decided was their best option for sentencing. Additionally, this Court finds, based on Counsel's testimony, that Applicant was emphatic that she wanted a plea. This Court finds that Counsel made a strategic decision to not request a continuance based on that directive from Applicant..

B. Findings and Conclusions as to Newly Discovered Evidence

Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. The South Carolina Supreme Court has held that:

"A party requesting a new trial based on after-discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had;

(2) Has been discovered since the trial;

(3) Could not by the exercise of due diligence have been discovered before the trial;

(4) Is material to the issue of guilt or innocence; and,

(5) Is not merely cumulative or impeaching."

when ascertaining the test for describing newly discovered evidence. Hayden v. State, 278 S.C. 610, 611 (1978).

When a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. Jamison v. State, 410 S.C. 456, 470 (2014). This Court finds that Applicant has

failed to prove the existence of newly discovered evidence. Specifically, this Court finds that Applicant has failed to show or even offer any evidence discovered after the entry of the plea.

VIII. Conclusion

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). In addition, Applicant has failed to prove the existence of any newly discovered evidence. Hayden v. State, 278 S.C. 610, 611 (1978); Jamison v. State, 410 S.C. 456, 470 (2014). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of Applicant's sentence.

AND IT IS SO ORDERED this 23 **day of** August **, 2017.**

G. Thomas Cooper, Jr.
Presiding Judge
Eighth Judicial Circuit

Chesterfield, South Carolina

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