LAW OFFICE OF

Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

May 22, 2018

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Kendal Sudduth, SCDC # 356184, vs. State of South Carolina
Appeal of Case No. 2013-C_-41-236

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they may begin representation of Mr. Sudduth as I was appointed in this matter. I am also hereby requesting that Appellate Defense obtain a copy of the court transcript within the time required by this court.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,

Kristy Goldberg

CC: Melody Brown
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

1720 MAIN STREET • SUITE 303 • COLUMBIA, SOUTH CAROLINA 29201
PHONE (803) 667-6633 • FACSIMILE (803) 799-4059

Kendal Sudduth, SCDC # 356184
Allendale Correctional Institution
P. O. Box 1151
Fairfax, South Carolina 29827

The Honorable Sheri Coleman
Clerk of Court
100 East Church Street
Saluda, South Carolina 29138

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

RECEIVED
MAY 24 2018
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2013-CP-41-236

Kendal Sudduth, SCDC # 356184, ... Appellant

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant Kendal Sudduth hereby appeals from the Order of the Honorable R. Keith Kelly presiding Judge for the 11th Judicial Circuit, filed May 14, 2018 and received by counsel for the Applicant on May 22, 2018 in the matter of Kendal Sudduth, SCDC # 356184 v. State of South Carolina, Case No. 2013-CP-41-236.

May 22, 2018

Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldberglaw.com

Other Counsel of Record:
Assistant Attorney General, Melody Brown
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SALUDA COUNTY
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v.

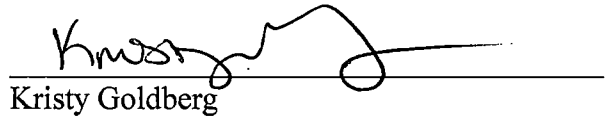
State of South Carolina, ... Respondent.

PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes and states:

She is the counsel of record for Applicant;
Service by mail is proper in this instance; and
She has served the NOTICE OF APPEAL on the following party on May 22, 2018 by depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Melody Brown
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.

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Phone (803) 667-6633
kristy@kristygoldberglaw.com

Other Counsel of Record:
Assistant Attorney General, Melody Brown
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ALAN WILSON
ATTORNEY GENERAL

May 17, 2018

Kristy Grafton Goldberg
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29211

Re: Kendal Sudduth v. State of South Carolina
2013-CP-41-00236 (PCR Action)

Dear Ms. Goldberg:

Enclosed please find a copy of the Order of Dismissal filed May 14, 2018 in the Saluda County Clerk of Court office in the above mentioned post-conviction relief case.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB:trb
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA
IN THE COURT OF COMMON PLEAS

Kendal Sudduth, Applicant,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Kristy Grafton Goldberg
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29211

This 17th day of May, 2018.

Melody J. Brown
Attorney for the Respondent

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Kendal Sudduth, SCDC No. 356184, Applicant, v. State of South Carolina, Respondent.	)	C/A No. 2013-CP-41-00236 **ORDER OF DISMISSAL**

Applicant, Kendal Sudduth, filed a *pro se* application for post-conviction relief with the Saluda County Clerk of Court on November 18, 2013. On November 8, 2016, pursuant to S.C. Code Ann. § 17-27-80, the action came before this Court for an evidentiary hearing at the Lexington County Courthouse. Applicant was present and represented by appointed counsel Kristy Goldberg, Esquire. Senior Assistant Deputy Attorney General Johanna Valenzuela appeared on behalf of Respondent. This Court concludes relief must be denied and sets forth the following in support of its decision:

I. Procedural History

Applicant is presently confined in the Allendale Correctional Institution pursuant to orders of commitment of the Saluda County Clerk of Court.

a. The Underlying Prosecution

On July 9, 2013, the Saluda County Grand Jury indicted Applicant for criminal sexual conduct with a minor, first degree (2011-GS-41-317A); criminal sexual conduct with a minor, second degree (2011-GS-41-313A); committing or attempting a lewd act upon a child (2013-GS-41-216A); sexual exploitation of a minor, second degree (2013-GS-41-205A); sexual exploitation of a minor, third degree (2013-GS-41-206A); and contributing to the delinquency of a minor (2013-GS-41-217A). Applicant was called to trial on these charges on July 15, 2013,

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before the Honorable J. Michael Baxley. Applicant retained the representation of P. Andrew ("Andy") Anderson, Esquire. Assistant Solicitors Suzanne Mayes and Kate Usry of the Eleventh Circuit Solicitor's Office prosecuted the case.

The State presented its case over two days of trial, then Applicant changed his plea to guilty, accepting a plea bargain from the State to the following charges: sexual exploitation of a minor, second degree (2013-GS-41-205A); sexual exploitation of a minor, third degree (2013-GS-41-206A); and contributing to the delinquency of a minor (2013-GS-41-217A). The State dismissed the criminal sexual conduct and lewd act charges. Also as part of the plea agreement, the State recommended and the court accepted a sentencing cap of fifteen years. (Plea Tr. p. 4).

Judge Baxley accepted Applicant's plea and sentenced him to a total of fifteen years' imprisonment –ten years for the second degree exploitation charge; five years, consecutive, for third degree exploitation charge; and, three years, concurrent, for contributing to the delinquency of a minor. (Plea Tr. p. 58).

Applicant did not appeal his convictions and sentence.

b. The Instant PCR Action

Applicant presented the following initial claims for PCR, supporting each claim with additional facts alleged in the *pro se* application:

(a) Ineffective Assistance of Counsel
1) failure to conduct an adequate pretrial investigation and a lack of preparation;
2) failure to challenge the chain of custody of alleged evidence;
3) failure to challenge the sufficiency and the manifest weight of the evidence;
4) failure to provide information to the applicant that is essential to a knowing and voluntary plea;
5) allowed applicant to plea under a "Sham Legal Process";
6) failure to challenge the court on the Proportionality Doctrine during sentencing; applicant's sentence is cruel and unusual punishment;

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7) failure to advise the applicant of his right to appeal.

Following the *pro se* PCR application, Respondent filed its Return on April 30, 2014, requesting an evidentiary hearing.

Applicant was appointed Kristy Goldberg, Esquire, as counsel. Counsel Goldberg filed an amended application on May 19, 2014. In accord with Rule 71.1, SCRCP, the amended application included the following claims which were pursued at the evidentiary hearing before the undersigned:

Ineffective assistance of trial counsel--

(a) failure to object when the Applicant received improper and inadequate notice of the charges he would be facing at trial;
(b) failure to object pre-trial to the fact that Applicant was charged with and later convicted of Sexual Exploitation of a Minor in the Second Degree and Third Degree;
(c) coerced the Applicant to plead guilty;
(d) failure to adequately prepare to present a defense at trial;
(e) failure to notify Applicant of his right to appeal and failing to file a notice of appeal.

II. The PCR Evidentiary Hearing

At the hearing, this Court had before it the Saluda County Clerk of Court records pertaining to Applicant's indictments and sentencing, Applicant's South Carolina Department of Corrections records, the *pro se* and amended PCR applications, the State's Return, and the transcript of Applicant's guilty plea and sentencing proceeding.

When the evidentiary hearing convened, the parties clarified that the claims going forward at the hearing would be those pursued within the amended PCR application PCR counsel Goldberg filed on Applicant's behalf. *See* Rule 71.1(d), SCRCP. (PCR Tr. pp. 4-5). Applicant, his ex-wife Lori Lantz, and his trial counsel Andy Anderson testified at the hearing.

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a. Applicant's Testimony

Applicant testified on his own behalf, recalling that he retained counsel, Mr. Anderson, in January or February of 2013 after being dissatisfied with the representation of two prior counsel. (PCR Tr. pp. 6-8). Applicant remained out on bond pre-trial, meeting with counsel between February and July of 2013, knowing that trial was slated to begin on July 13 of that year. (PCR Tr. pp. 8-10). Applicant recalled that the night before trial, the State "kept faxing indictments" to counsel's office, which affected his recognition of the charges upon which we would be tried as well as his feeling of preparedness for trial. (PCR Tr. p. 10). However, Applicant was aware prior to trial that he was accused of contributing to the delinquency of a minor due to his allowing minors to see that he had downloaded child porn to his computer. (See PCR Tr. pp. 18-20, 22). Applicant testified that he was also aware prior to trial that his charges pertained to additional sexual contact alleged to have occurred between him and his stepdaughter when she was between the ages of seven and seventeen.[1] (PCR Tr. p. 19).

As to counsel's preparation for and performance at trial, Applicant testified that "at that time [he] was satisfied." (PCR Tr. p. 33). Applicant testified that he hired a private investigator to work with counsel to examine the hard drive and computers at issue in the investigation, as well as to find facts to corroborate an alibi for one of the dates that child porn was downloaded to his computer. (PCR Tr. pp. 36-37). Applicant testified counsel advised that the information obtained from investigation as to the December 18th date was "not enough" to defend him in front of the jury on alibi. (PCR Tr. p. 37). He stated his family, and not his lawyer, investigated the alibi defense. (PCR Tr. pp. 38, 42). Applicant also agreed that at trial, the State established

[1] Both the stepdaughter and her friend who also witnessed the pornographic material testified at trial. (PCR Tr. pp. 21-23). Their testimony detailed the computer programs Applicant would use to view and delete the child pornography on his computer. (PCR Tr. pp. 23-28).

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ALAN WILSON
ATTORNEY GENERAL

April 25, 2018

The Honorable R. Keith Kelly
Circuit Court Judge
125 E. Floyd Baker Blvd.
Gaffney, South Carolina 29622

Re: Kendall Sudduth v. State of South Carolina
2013-CP-41-00236

Dear Judge Kelly:

Enclosed is a copy of Respondent's proposed Order of Dismissal in the above reference post-conviction relief action. A Word copy of the order was submitted by email on this date. If this Order meets with your approval, if you would kindly sign and return the original to me in the enclosed envelope, I will forward the original to the Saluda Clerk for filing.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/trb
(Enclosures)

cc: Kristy G. Goldberg, Esq (w/enclosure)
The Honorable Sheri Coleman (w/enclosure)

when Applicant clocked out of work on one instance where child porn was downloaded. This contradicted Applicant's alibi for this instance, wherein he said was at work and was not at home to download the illicit material. (PCR Tr. pp. 38-39).

Applicant also testified that the defense witnesses were not settled upon until the day of trial, and counsel did not subpoena or call anyone to be present at trial. (PCR Tr. p. 12). Nor did counsel prepare any witnesses, including, specifically, a group of school teachers Applicant suggested as witnesses who could allegedly testify that Applicant was in Aiken at a dinner during one of the charges he faced. (PCR Tr. pp. 12-13). Applicant also testified counsel "flat-out refused to question" the chain of custody on Applicant's computer which was seized and housed at SLED. (PCR Tr. p. 13).

During trial, Applicant changed his plea to guilty, but testified at PCR that he "felt like [he] was under duress to take the plea." (PCR Tr. p. 11). Applicant testified that during a break in the trial, counsel informed him "that the judge said the jury is gonna [sic] find me guilty, I better take a plea." (PCR Tr. p. 11; see also pp. 33 and 41). He advised Applicant should accept the plea. Applicant further testified that after he told counsel "no," counsel "asked the judge to hold on a minute and then he sat there and kept talking to [him] and finally he – he got [Applicant] to take the plea." (PCR Tr. p. 11). Applicant testified he did not believe counsel should have "known what the judge or the jury was gonna [sic] say." (PCR Tr. p. 12). He admitted that he informed the plea judge he was pleading guilty because the case was "not looking good," but testified, "[t]hat statement was made because of the statement Mr. Anderson made to me, that the judge said the jury was gonna [sic] find me guilty. I was scared." (PCR Tr. p. 33; see also p. 41 (... I got scared because I didn't know if the judge was persuading the jury or what was going on. I just knew I was scared.").

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As to the charges and penalties faced at the plea, Applicant testified at PCR that he did not know that second degree exploitation of a minor was a violent crime carrying two to ten years—he believed it carried zero to ten years. (PCR Tr. p. 15). Applicant also testified that at the time of the plea, counsel expressed that he "felt like the second and third degree [charges] was double jeopardy," and that the more Applicant learned about his charges post-plea, he felt counsel should have argued that during trial. (PCR Tr. p. 15). Applicant also testified, though, that he knew he was receiving a benefit from pleading guilty because the State was dismissing the more serious charges pertaining to the physical acts conducted with his stepdaughter, and was also agreeing to lower the maximum potential sentence from twenty-three to fifteen years. (PCR Tr. pp. 28-29). He agreed the judge sentenced him to the agreed-upon cap. (PCR Tr. pp. 39-40). Applicant testified that he recalled the stages of the plea colloquy with the judge. (PCR Tr. pp. 29-30).

Applicant testified at the PCR that, in contrast to his admission during the plea, he was not guilty of the offenses. (Compare PCR Tr. pp. 30-31 with Plea Tr. pp. 13-14). In addition to his prior assertion of guilt – and, as previously referenced above – Applicant also asserted at the time of the plea that he was pleading guilty specifically because it appeared that the trial was not going to hold a promising end for him. (PCR Tr. p. 33; see also Plea Tr. p. 13, "It's just not looking good" and "I've done the math and it don't add up..."). Applicant conceded in his PCR testimony that he had waived his trial rights, but asserted he did so because he "was scared," and posited, "What else was I supposed to do?" (PCR Tr. p. 33). In some explanation of the answers given at the plea, Applicant testified he "felt like [he] had to answer the questions presented with what they wanted to hear," regardless of his understanding that he was sworn to tell the truth.

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(PCR Tr. p. 33). Applicant stated he apologized to the victim during sentencing because his "attorney told [him] to do it." (PCR TR. p. 36).

As to the possibility of appealing the plea's outcome, Applicant testified defense counsel never talked to him about that, nor filed notice of appeal. (PCR Tr. p. 16). Applicant stated his belief at the time of the plea was that an appeal was not a possibility: "I thought the only way you could appeal was by trial, a conviction. I didn't know you could appeal a plea sentence." (PCR Tr. p. 16). Applicant further stated that he believed counsel should have appealed the court's ruling regarding the search warrant lending to Applicant's arrest, which was subject to a pre-trial motion, as well as the double jeopardy issue he had already vaguely and summarily referenced previously in the PCR hearing regarding the convictions of sexual exploitation of minor, second degree, and sexual exploitation of minor, third degree, though he conceded the issue was never argued in court. (PCR Tr. pp. 15-17). Applicant testified he would have requested an appeal had he been notified of his right to do so. (PCR Tr. p. 18).

b. Lori Lantz's Testimony

Applicant's ex-wife, to whom he was married during the pendency of his charges, also testified on his behalf. (PCR Tr. p. 43). Lantz testified that she attended trial and was involved in the preparations for trial. (PCR Tr. pp. 43-44). She stated she felt "that there was a lot of information presented to Mr. Anderson that he didn't look into," such as potential witnesses and potential alibis. (PCR Tr. pp. 44-46, 50-51). Lantz testified Applicant wanted her involved in trial preparation with his attorney, which caused her personally to feel "pressured into coming up with things at some points" to get to counsel to get him to investigate, but Ms. Lantz indicated that no affidavits were ever taken of the witnesses and they were not subpoenaed to court (though she admitted "one of or two of them" were actually in court). (PCR Tr. pp. 47-49; see

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also p. 45 ("A couple of them were present. Some of them were waiting to be called before they actually showed up."). She also acknowledged counsel spent time preparing her to testify at trial even though he was unsure if he was going to call her. (PCR Tr. p. 50). Lantz testified, had she been called as a witness, she would have testified that she was with Applicant on December 18th at a dinner in Aiken between approximately 5:00 pm to 8:00 pm. (PCR Tr. pp. 45-46). However, she also testified: "there were three specific dates ... I don't' remember if we had any alibis for the other two dates...." (PCR App. p. 51). Ultimately, Lantz testified counsel did not reach the point of having to call any witnesses to testify because Applicant pled guilty before the end of the State's case. (PCR Tr. p. 50). Lantz stated she thought the first day of trial went well for Applicant, but counsel appeared anxious in court the next day and called Lantz prior trial reconvening that morning to ask whether Applicant may take a guilty plea. (PCR Tr. p. 52). Lantz recalled counsel advised as to the trial, "it's not looking good," and "strongly encouraging the guilty plea." (PCR Tr. p. 46).

c. Trial Counsel Anderson's Testimony

The State then presented counsel, Mr. Anderson, who testified first as to his background. Counsel testified that prior to entering private practice in criminal defense, he was a public defender for two years and a prosecutor for six, and had approximately twenty-five years of criminal trial experience. (PCR Tr. p. 53). Counsel recalled that when he took on Applicant's case, he identified issues concerning who could have accessed Applicant's computer who could have downloaded the illicit files because the computer was not password protected. He hired an investigator to forensically examine the computer because the State had utilized a key logger (input-tracking) program Applicant had installed on his own computer to pull up the images with which he was charged. (PCR Tr. pp. 54-57). Counsel stated that as a result of that investigation,

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"what we ended up doing was finding a whole bunch more child porn that the State didn't find and . . . that didn't seem to help us." (PCR Tr. p. 57).

He testified that as part of that investigation, which took place over a two-day period at SLED, they examined the stepdaughter's friends' social media posts made from Applicant's computer, hoping to find someone else's "fingerprints on the downloads," or "teen kind of things." (PCR Tr. pp. 57-58). This did not pan out. (PCR Tr. pp. 58-59). The investigator, instead, found timestamped searches for things that Applicant had interests in, like tattoos, accessed simultaneous to the child porn download. (PCR Tr. pp. 57-58). As a result of this and other investigative leads followed into the child victims who appeared in specific pornographic materials, counsel recognized that it was not an available defense to argue that someone else had access to Applicant's computer and downloaded the illicit material. (PCR Tr. pp. 59-62).

Counsel likewise testified that he investigated potential alibis, one being Applicant's timecard at work which may have removed him from his home at the time of one illicit download, and another being his attendance at a holiday dinner for his wife's school, but those dates and times ultimately did not provide Applicant with an alibi as hoped. (PCR Tr. pp. 62-63, 76-77). Counsel recalled reaching similar dead-ends when he spoke with witnesses named by Applicant and Lantz. (PCR Tr. pp. 64-66).

In sum, counsel testified he felt as prepared for trial as he usually did, but that as an attorney, one never feels "perfectly prepared." (PCR Tr. pp. 66-67). He testified that he was not surprised by the charges that they ended up proceeding to trial upon. (PCR Tr. p. 69). He also stated that the extra indictments faxed by the prosecutor on the eve of trial were boiled down to the basics by the time trial began, and that leading up to and during trial Applicant and counsel

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both knew the nature of the charges: that "the girl's saying that he messed with her and there was child porn." (PCR Tr. pp. 74-75).

In regards to the plea decision, counsel noted Applicant's previous decision to turn down a plea offer to one contributing to the delinquency of a minor charge which carried a mere three-year sentence. (PCR Tr. pp. 66-67, 71). He opined that "maybe Kendal thought it was gonna [sic] keep getting better," so he rejected that offer even after a frank discussion with counsel, counsel's wife (also an attorney), and Lantz. (PCR Tr. pp. 66-67). As to the plea deal Applicant ultimately accepted, counsel testified he did not believe he coerced Applicant, but he "did recommend that he do it. . . . the judge certainly thought [Applicant was] guilty, . . . he was not [ ] helpful in any way whatsoever for [them] during the trial." (PCR Tr. p. 69; *see id.* at 72). Counsel testified that he and Applicant both understood at the time of the plea that the judge would likely give him the agreed-upon maximum of fifteen years. (PCR Tr. pp. 69-70). He stated it was a stressful decision for his client to make to plead, and the judge was impatient and gave them only about ten minutes to make the decision. (PCR Tr. p. 70). Counsel testified the judge's frustration appeared to stem from Applicant's decision to take the plea being made after the victim had testified and been cross-examined: "I remember the judge being mad that we didn't plead before the cross-examination ... [b]ecause the cross-examination of the alleged victim was not pleasant ...." (PCR Tr. p. 70).

Counsel testified that he did not think he talked to Applicant about an appeal after the plea, Applicant did not ask him to appeal, nor did Anderson think there was any appealable issue as a result of the outcome of the plea. (PCR Tr. p. 73). As to the failure to move pre-trial to bar prosecution on the second-degree and third-degree charges for sexual exploitation of a minor for distribution of the same items, counsel testified that it may "seem a little duplicitous" to charge

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twice for a single item which is shared through a peer-to-peer sharing system online. (PCR App. pp. 77-78). He said "there was no allegation that he distributed any porn to anybody." (PCR Tr. p. 78).

III. Findings of Fact and Conclusions of Law

After considering the allegations raised in the amended application, hearing the testimony presented at the evidentiary hearing, considering the record in this action incorporated by way of the State's Return, and after reviewing of the transcript of the PCR proceedings occurring on October 14, 2014, the undersigned denies the application.

Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

a. Standard of Review

When an applicant "enters a plea on the advice of counsel, [he] may only attack the voluntary and intelligent character of the plea" by fulfilling a two-prong test established regarding proof of ineffective assistance of counsel. *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370 (1985) (adopting seminal ineffective assistance of counsel standard from *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984), and applying to cases resolved via guilty plea)). "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 the applicant was prejudiced by that deficiency." *Stalk v. State*, 383 S.C. 559, 560–61, 681 S.E.2d 592, 593 (2009) (citing *Hill v. Lockhart, supra*). In regards to the first prong, "[t]he proper measure of attorney performance remains reasonableness under prevailing professional norms." *Strickland v. Washington, supra* at 688, 104 S.Ct. at 2065. In order to satisfy the

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prejudice requirement, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial." *Hill v. Lockhart, supra* at 59, 106 S.Ct. at 370.

At all times during the proceeding, the Applicant maintains the burden of establishing that he is entitled to relief. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Moreover, the proceeding is coupled with "a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006). Therefore, Applicant must demonstrate 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.'" *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 441(1985) (quoting *Strickland v. Washington, supra* at 686, 104 S. Ct. at 2064).

b. The Merits of the Allegations

The totality of Applicant's claims relate to the performance of defense counsel, Mr. Anderson. As a matter of general impression, this Court finds not credible Applicant's testimony and assertions. In contrast, this Court finds counsel's testimony credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Also as a matter of first impression, this Court finds applicable the strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgement in his representation of Applicant at all stages of Applicant's trial and plea. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland, supra*). "[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed

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ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" *Lounds v. State,* 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (emphasis in original). 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, 104 S.Ct. 2052. Thus, any post-conviction relief court must be wary of second-guessing trial counsel's tactics. *Whitehead v. State,* 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court additionally finds at the outset all claims from the *pro se* petition not duplicated in the amended application waived and abandoned as they were not addressed at the evidentiary hearing. S.C. Code Ann. § 17-27-90.

Proceeding on the claims raised in the amended application, this Court finds each without merit and addresses them in the order raised within that application:

1. Counsel's Failure to Object to Alleged Inadequate Notice of the Charges Faced at Trial

This Court finds Applicant and counsel were aware and informed of the nature of the charges in advance of the trial. This Court concludes counsel did not provide deficient representation in failing to object to the alleged inadequate notice of such charges, and also that Applicant failed to show any prejudice, because there was no basis upon which to object. *See Strickland v. Washington, supra*; *Hill v. Lockhart, supra.* Applicant could not prevail on any objection the indictments against him so long as the State's notice of the charges was "stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon." *Carter v. State,* 329 S.C. 355, 362-63, 495 S.E.2d 773, 777 (1998); S.C. Code Ann. § 17-19-20 (allegations sufficient for indictment).

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Some testimony at PCR indicated the State altered the charges against Applicant on the eve of trial by faxing a number of additional indictments to Counsel's office, leading Applicant to uncertainty as to the charges which would be brought against him at trial. (PCR Tr. p. 10). But counsel, with over twenty years of criminal trial experience, credibly testified that he was prepared for Applicant's trial and that he was not surprised. (PCR Tr. pp. 67-69). Counsel also noted that the charges were ultimately condensed to five. (PCR Tr. p. 74). Regardless of the number of indictments, this Court finds counsel knew that the nature of the charges concerned Applicant's sexual interactions with his stepdaughter as well as child pornography identified on his computer. (PCR Tr. pp. 74-75). Applicant himself further corroborated counsel's recollection of the charges at trial. (PCR Tr. pp. 18-22).

In light of counsel's preparation for and awareness of the charges, as well as Applicant's admissions that he was at all times aware of the nature of the charges against him, this Court finds Applicant fails to show counsel was deficient in failing to object on the basis that he had insufficient notice of any charge levied at the time of trial, or that Applicant was prejudiced from lack of objection. Since Applicant fails to meet his burden of establishing the first and second prong of ineffective assistance of counsel under *Strickland* and *Hill* the undersigned denies and dismisses this claim with prejudice.

2. Counsel's Failure to Raise Pre-Trial Objection to Applicant Being Charged with Second Degree and Third Degree Sexual Exploitation of a Minor

Applicant testified at PCR that counsel expressed a belief the State's charging him with both second degree and third degree sexual exploitation of a minor constituted double jeopardy, but he never presented this argument to the trial court. (PCR Tr. p. 15). This Court finds no

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deficient performance and resulting prejudice in relation to this second claim for relief. *Strickland v. Washington, supra*; *Hill v. Lockhart, supra.*

Counsel stated at the guilty plea that while he believed there was a "high likelihood" that Applicant would be found guilty of the charges pled had trial continued, but that he "was going to make an argument to Your Honor that he couldn't be convicted of both statutes for the same items . . . ." (Plea Tr. p. 7). That argument was not made; however, counsel credibly testified at PCR that he considered arguing an interpretation of the statute which would bar prosecution for both second and third degree exploitation when the underlying facts concern distribution of child porn through an online peer-to-peer sharing system. (PCR Tr. pp. 77-78).

This Court finds counsel exercised a reasonable professional decision in choosing not to pursue this argument in light of Applicant's decision to plead guilty because counsel could not prevail in his argument. *Ard v. Catoe, supra*; *Lounds v. State, supra.* The Double Jeopardy Clause of the United States Constitution "protects only against the imposition of multiple *criminal* punishments for the same offense." *Hudson v. United States*, 522 U.S. 93, 99, 118 S.Ct. 488, 493 (1997) (emphasis in original). "Under traditional double jeopardy analysis, multiple punishment is not prohibited where each offense calls for proof of a fact that the other does not." *State v. Cuccia*, 353 S.C. 430, 438, 578 S.E.2d 45, 49 (Ct. App. 2003); *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180 (1932). "A mere overlap in proof does not constitute a double jeopardy violation." *Id.*

This Court finds counsel's purported, but un-argued, challenge does not provide a basis upon which he could prevail. Applicant's charges contain distinct elements such that double jeopardy does not apply. Applicant's indictment for third degree sexual exploitation of a minor reads:

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that he did unlawfully and while knowing the character or content of the material, did possess material that contained a visual representation of a minor engaging in sexual activity, to wit: photograph(s) and/or digital image(s) and/or digital electronic file(s) and/or film(s) of a minor child engaged in sexual activity and/or a visual representation of a minor child engaged in sexual activity as defined in Section 16-15-375(5), in violation of S.C. Code of Laws Section 16-15-410.

Applicant's indictment for second degree sexual exploitation of a minor reads:

that he did unlawfully and while knowing the character or content of the material, (1) record, photograph, film, develop, duplicate, produce, or create digital electronic file material that contains a visual representation of a minor engaged in sexual activity; or (2) distribute, transport, exhibit, receive, sell, purchase, exchange, or solicit material that contains a visual representation of a minor engaged in sexual activity, to wit: did duplicate, create, solicit or receive a photograph or digital image or digital electronic file(s) or film of a minor engaged in sexual activity and/or material containing a visual representation of a minor engaged in sexual activity as defined in Section 16-15- 375(5), in violation of South Carolina Code of Laws Section 16-15-405.

Because a mere overlap in proof cannot constitute double jeopardy and because each charge contains elements that the other does not, this Court finds counsel was not ineffective for failing to argue that the charges were duplicative before the trial court. *Blockburger v. United States, supra*; *State v. Cuccia, supra.*

This Court further finds counsel's decision not to pursue that argument caused Applicant no prejudice. There exists no reasonable probability that the result of the proceeding would have been different had counsel argued his purported motion. Applicant was not prejudiced by counsel's representation because there is no reasonable likelihood of a different result had counsel acted in the manner complained of—double jeopardy does not act as a bar to Applicant's charges for second and third degree exploitation of a minor. *Id.*

Since Applicant further fails to meet his burden of establishing he is entitled to relief upon either prong of this claim of ineffective assistance of counsel under *Hill* and *Strickland*, this claim for relief is denied and dismissed with prejudice.

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3. Petitioner's Alleged Involuntary Guilty Plea

The undersigned also finds Applicant pled guilty freely, knowingly, and voluntarily. 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 (1969). "In addition to the requirements of *Boykin*, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

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

This Court finds meritless any contention by Applicant that he did not plead guilty knowingly and voluntarily. This Court finds very credible counsel's testimony regarding his preparation and advice concerning the charges, the plea offers rendered by the State, Applicant's rejection of a more favorable plea deal, and Applicant's acceptance of the plea deal entered after

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the State had presented a large part of its case at trial. (PCR Tr. pp. 66-71). The plea transcript corroborates that counsel did address with his client the elements of the charges pled and the benefit of accepting the plea bargain, as well as the rights waived by deciding to withdraw from the ongoing trial and enter the plea. (PCR Tr. pp. 6-8).

This Court conversely finds Applicant's testimony on this topic not credible. (*See generally* PCR Tr. pp. 11, 15, 30-33). The PCR record instead bears out that Applicant was aware of the benefit received from accepting the plea deal obtained, that he recalled accepting the guilty plea in front of the judge by engaging in the plea colloquy, and that he agreed to the sentencing cap of fifteen years. (PCR Tr. pp. 28-30, 39-40). Specifically on the allegation of coercion, Applicant's ex-wife testified that she witnessed Applicant's and counsel's consideration of the guilty plea prior to its acceptance and believed counsel was only "strongly encouraging" Applicant to accept the plea. (PCR Tr. p. 46).

This Court also finds the plea court specifically reviewed the potential sentences with Applicant and that he was accepting the fifteen-year cap on sentencing. Applicant responded that he understood, that he wished to plead guilty, and that he was making that plea without the influence of drugs, alcohol, or medication. (Plea Tr. pp. 8-9). This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court, including his right to continue with trial by jury. (Plea Tr. pp. 10-12). This Court finds Applicant on three occasions answered the plea court that the decision to plead was his own, and that no one forced him to do so. (Plea Tr. pp. 12-13 ("Yes, sir, it's mine")). Applicant informed the plea court he changed his plea to guilty because it was "just not looking good," that he had "done the math and it d[idn't] add up," so he believed that accepting the plea offer was "the best thing." (Plea Tr. p. 13).

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This Court finds Applicant failed to meet his burden in proving he pled guilty involuntarily and unknowingly. *Blackledge v. Allison*, *supra.* The record reflects Applicant admitted his guilt to the plea court after being fully informed of the nature and consequences of his plea by his attorney and by the plea court. (Plea Tr. p. 14). The record further reflects and this Court further finds Applicant entered his plea on his own accord, (Plea Tr. p. 11), while acknowledging the wavier of his right to trial, including the cross-examination of witnesses and the presentation of witnesses, if any, though he would be presumed innocence. (Plea Tr. pp. 10-11). This Court also finds that in regard to the length of sentence received, Applicant cannot prove prejudice for the reasons stated within the remainder of the undersigned's Order, specifically in regards to the sentence exposure Applicant faced had he proceed through to the close of trial and been found guilty. *Infra* at 21-22. This Court therefore denies and dismisses with prejudice any allegation that Applicant pled guilty involuntarily.

4. Counsel's Alleged Failure to Prepare an Adequate Defense

Applicant claims that counsel did not adequately prepare to defend him. Ultimately, counsel did not attain the phase of trial necessitating his presentation of witnesses on behalf of Applicant's defense. As found above, Applicant entered a knowing and voluntary guilty plea prior to the conclusion of the trial. But the record bears out and the undersigned finds that counsel conducted a detailed investigation in preparation for trial meeting the demands of *Ard v. Catoe, supra.*

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *see also McKnight v. State,* 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) ("A criminal

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defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."). Our courts have additionally cautioned not to lose sight "of the reasonableness standard regarding counsel's duty to investigate. *Id.* "Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client." *Id.* at 457, 710 S.E.2d at 64–65.

Counsel credibly testified at PCR that he spent time thoroughly investigating the contents of Applicant's computer at SLED with the assistance of a private, technologically-adept forensic investigator. (PCR Tr. pp. 54-58). Counsel prepared as his theory of defense that Applicant's computer was not password-protected and that the victim and her adolescent friends had equal access to the computer and could have been downloading the pornographic material. (PCR Tr. pp. 56-58). Counsel's investigation did not aid in preparing that defense, as it only led to the discovery of more instances of child porn that Applicant had not been charged with, and as it also uncovered searches conducted simultaneous to the pornographic downloads that pertained to Applicant's other personal interests. (PCR Tr. p. 58-59). Further, counsel attempted to identify the child victims featured in the illicit downloads to verify their age and origins in an effort to create an additional defense to the child porn charges. (PCR Tr. pp. 59-62). Thus, despite counsel's development of a theory of defense, his investigation into the hard drive appeared only to corroborate the State's case.

Counsel also investigated Applicant's potential alibis with the input and assistance of Applicant and Lantz. (PCR Tr. pp. 62). However, the two alibis alleged could not, according to counsel's credible testimony, be corroborated. Applicant stated he was at work during one

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alleged pornographic download, but counsel testified Applicant's timecard showed that he clocked out early that day. (PCR Tr. p. 62). After another investigation, Applicant's alibi that he was at a Christmas party during the time of one alleged incident (as offered by Lantz at the PCR proceedings, see PCR Tr. p. 45), did not pan out because, according to counsel's testimony (which is admittedly in tension with Lantz), the dinner receipt was actually for another day. (PCR Tr. pp. 62-63). Lantz had testified that a co-worker still had his receipt with a date on it, which spurred her "to investigate with the actual restaurant" and to see if she could other proof; however, she testified the restaurant did not have "a record of reservations" adding "it had been several years later" when she asked. (PCR Tr. p. 45). However, in his testimony, trial counsel testified the restaurant records were available in his investigation ("I called the owner of the Bowery and he pulled the ledger..."), but did not help as "the party was the day before or the day after." (PCR App. p. 63; see also pp. 76-77, acknowledging witnesses alone could offer testimony on alibi, but counsel's "memory is that it was dismissed in my mind as an issue because it was the wrong day."). Trial counsel acknowledged and credited Lantz with being helpful, but credibly testified, "... I just can't imagine if we had a receipt we didn't make more hay of that for the right date." (PCR Tr. p. 63). This Court notes no exhibits were introduced at the PCR hearing. (See PCR Tr. p. 2). Where a PCR applicant fails to proffer evidence in support of the alleged deficient investigation, he fails to meet his burden of proof. *Edwards, supra*, 392 S.C. at 459, 710 S.E.2d at 66; *Glover v. State,* 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995); *Cherry v. State,* 300 S.C. 115, 118–19, 386 S.E.2d 624, 625–26 (1989). The absence of the receipt (which counsel testified he did not ever recall seeing, PCR Tr. p. 63), does not help Applicant in his burden of proof for this action, and actually tends to lend more credibility to counsel's testimony.

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Moreover, the Court notes that the contemporaneous record of the plea demonstrates Applicant advised the plea judge that he was, at that time, satisfied with counsel, (Plea Tr. p. 13), a representation he acknowledged during his PCR testimony, (PCR Tr. p. 33).

Considering the foregoing, this Court finds counsel conducted a reasonable investigation into the facts giving rise to the charges, but the investigation essentially dead-ended, or worsened the case against Applicant, at each turn. This Court finds Applicant has failed to demonstrate on the part of trial counsel due to the extent of the investigation. *See Strickland, supra; Hill v. Lockhart, supra.* Additionally, this Court finds Applicant has failed to demonstrate prejudice due to the damaging fruits of counsel's private investigation. *See id.* Having presented no evidence to the contrary, the allegation is denied.

5. Applicant's Notice of his Right to Appeal

This Court notes at the outset the plea transcript reflects the plea judge asked if Applicant understood he was waiving his right to an appeal, which Applicant agreed he so understood. (Plea Tr. pp. 11-12). The plea judge also advised the jury, after acceptance the plea and in explanation of the process, that had Applicant been convicted by them, the jury, Applicant still could have appealed, but that "he's waiving that right as well." (Plea Tr. p. 19; see also p. 20, "we avoid any appeal of the proceeding and thus there is some finality to it."). The solicitor, in explanation of the plea after substantial trial proceedings, noted "we did have discussions with the victim in this regard. We briefly discussed with her all the things involved in an appeal and potential repercussions of appeals. And for that reason, we believe that a plea under these circumstances may be the best way to resolve this...." (Plea Tr. pp. 41-42). Thus, the plea record reflects that Applicant either would not have thought he could appeal at all, as a term of the agreement and/or result of the plea, or would have reasonably understood any appeal would

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have been limited by his decision to enter the plea. Even so, the precise issue raised challenges counsel's advice and is addressed in that context.

"[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Roe v. Flores–Ortega,* 528 U.S. 470, 480, 120 S.Ct. 1029, 1036 (2000). "Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." *Jones v. State*, 382 S.C. 589, 596, 677 S.E.2d 20, 23 (2009). "The bare assertion that a defendant was not advised of appellate rights is insufficient to grant [post-conviction] relief. *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

This Court finds Applicant's case does not fall within those imposing a duty upon counsel to consult regarding an appeal under *Roe v. Flores-Ortega, supra,* and its state-law equivalents. This Court finds that due to the significant benefit obtained as a result of the guilty plea entered, no rational defendant would have continued with trial or sought to appeal that plea following the testimony that had already been presented at trial. *See Jones,* 382 S.C. at 596–97, 677 S.E.2d at 24. Applicant proceeded to trial for criminal sexual conduct with a minor first and second degree, committing or attempting a lewd act upon a child, sexual exploitation of a minor second and third degree, and for contributing to the delinquency of a minor. Trial continued through the State's presentation of the victim of the criminal sexual conduct charges before Applicant changed his plea to guilty. (Plea Tr. pp. 54-55). In exchange for the plea, the State dropped the most serious of charges faced at trial, as Applicant pled only to sexual exploitation

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of a minor second and third degree and to contributing to the delinquency of a minor. (Plea Tr. p. 58).

The record also shows Applicant's sentencing exposure was greatly reduced by the guilty plea obtained. Applicant faced a potential maximum of fifty-plus years of given consecutive sentences on the charges faced at trial. (Plea Tr. p. 41). Even on the charges pled, Applicant faced a maximum of ten years for each second degree and third degree sexual exploitation, and three years for contributing to the delinquency of a minor. S.C. Code Ann. §§ 16-15-405, -410, -490 (2013). But the State and the plea court agreed to cap Applicant's sentence at fifteen years. (Plea Tr. p. 42). Thus, Applicant received significantly less time than other possible alternative resolutions. Accordingly, under the first application of *Roe*, this Court finds no rational defendant would wish to appeal the outcome of his guilty plea due to the severity of the charges which were dropped even after the victim had already testified at trial. *Roe v. Flores–Ortega,* 528 U.S. at 480, 120 S.Ct. at 1036.

Moreover, and also under the first application of *Roe, supra*, this Court finds the record is void of nonfrivolous grounds for appeal. As found within the remainder of this Order, Applicant knowingly and voluntarily pled guilty. A guilty plea "constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485 (2013). Moreover, no objections appear in the plea record from which Applicant could raise a properly preserved appellate issue. *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (2005). This Court thus finds that the record contains no nonfrivolous basis for appeal upon which post-conviction relief, or a belated appeal, could arise. *Roe, supra*; *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) (proscribing procedure for

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belated appeal stemming from allegations of ineffective assistance of counsel for failure to file notice of appeal).

Finally, this Court finds Applicant did not demonstrate to his counsel that he desired to appeal the outcome of his guilty plea. *See Roe, supra* (relief may be appropriate when an applicant "reasonably demonstrated to counsel that he was interested in appealing" and counsel did not do so); *Weathers v. State, supra.* This Court finds credible counsel's testimony that Applicant did not inquire about the appellate process after the plea. (See PCR Tr. p. 73; p. 78). Accordingly, the undersigned denies the application for post-conviction relief on this ground.

Conclusion

Upon consideration of the testimony presented at the evidentiary hearing, a review of the pertinent portions of the file made part of this record by way of attachment to the State's Return, and the applicable case law, the undersigned finds that Applicant has failed to meet his burden of establishing error and prejudice, or that he entered an unknowing, involuntary guilty plea. Even if Applicant had put forth sufficient evidence that plea counsel's performance was unreasonable under prevailing professional norms, which this Court finds he did not, Applicant has failed to present any evidence that would tend to establish that he was prejudiced by some act or omission of counsel, or that had counsel not acted in the manner complained of, that Applicant would not have pled guilty and would have instead proceeded to the conclusion of trial. Applicant additionally failed to put forth any evidence sufficient for this Court to find that he did not have a full understanding of the plea deal into which he entered.

IT IS THEREFORE ORDERED THAT:

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

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

This Court additionally 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. 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.

AND IT IS SO ORDERED this 7th day of May, 2018.

R. KEITH KELLY
Presiding Judge

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