LAW OFFICE OF

Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

June 18, 2018

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

RE: Gabriel Lee Gratto, SCDC # 363659, vs. State of South Carolina
Appeal of Case No. 2015-CP-26-5563

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. I was retained to represent Mr. Gratto on his PCR at the trial level but not on the appeal of any such result. I believe Mr. Gratto may be interested in applying for appointed counsel so I would ask that the Office of Appellate Defense mail Mr. Gratto and/or myself an application for appointment of counsel so that he may apply for representation.

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

Respectfully,

Kristy Goldberg

CC: Johnny James, Jr.
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

Gabriel Lee Gratto, SCDC # 363659
Wateree River Correctional Institution
Highway 261
Rembert, South Carolina 29128

Horry County Clerk of Court
Horry County Government & Justice Center
1301 Second Avenue
Conway, South Carolina 29526

Raia Jane Hirsch
York County Public Defender's Office
Post Office Box 691
York, South Carolina 29745

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2015-CP-26-5563

Gabriel Lee Gratto, SCDC # 363659, ... Appellant

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant Gabriel Lee Gratto hereby appeals from the Order of the Honorable William H. Seals, Jr. presiding Judge for the 15th Judicial Circuit, filed February 5, 2018 and Order Denying Applicant's Motion Pursuant to Rule 59(e), received by counsel for the Applicant on June 4, 2018 in the matter of Gabriel Gratto v. State of South Carolina, Case No. 2015-CP-26-5563.

June 18, 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, Johnny James, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 21 2018

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2015-CP-26-5563

Gabriel Lee Gratto, SCDC # 363659, ... Appellant

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 June 18, 2018 by depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Johnny James, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

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, Johnny James, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA COUNTY OF HORRY	) IN THE COURT OF COMMON PLEAS) FOR THE FIFTEENTH JUDICIAL CIRCUIT)
Gabriel Lee Gratto, S.C.D.C. No. 363659, Applicant, v. State of South Carolina, Respondent.	) Case No.: 2015-CP-26-05563)))) **ORDER OF DISMISSAL**) **(Motion to Dismiss Granted)**)))

This matter comes before the Court by way of an application for post-conviction relief filed by Gabriel Lee Gratto ("Applicant") on July 23, 2015. Respondent made its return on or about December 6, 2016. The Court convened an evidentiary hearing into the matter on Monday, November 27, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

No testimony was taken at the hearing. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, the pleadings, and copies of caselaw provided by the parties in arguing Respondent's motion to dismiss. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the August 2013 term of the Horry County Grand Jury for felony DUI resulting in death (2013-GS-26-03809),

leaving the scene of an accident (2013-GS-26-03810). Applicant was further indicted at the April 2015 term for felony DUI resulting in great bodily injury (2015-GS-26-01310), and a second count of felony DUI resulting in death (2015-GS-26-01342). John M. Hilliard, III, Esq. ("Counsel") represented Applicant, and Bradley C. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 13, 2015, the State dismissed *nolle prosequi* indictment -03809, and Applicant pled guilty as indicted to the remaining three charges. The Honorable John C. Hayes, III sentenced Applicant to imprisonment for concurrent terms of 15 years on each charge. Applicant did not appeal his plea or sentence.

Present Application

In his post-conviction relief application, as amended by and through counsel on August 31, 2017, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of counsel for failure to vigorously defend Applicant and fully advise him regarding the state's evidence, potential defenses and mitigating information that could be presented during a trial or plea;"
    a. "Counsel failed to explain and advise the Applicant regarding his options including the benefits and consequences of presenting issues related to the Applicant's car, the toxicology reports, and other mitigating information; failure to present to the Court documentation regarding home detention;"
2. "Ineffective assistance of counsel for failure to have the Applicant evaluated;"
    a. "As described above;"
3. "Ineffective assistance of counsel for failure to vigorously defend Applicant by unreasonably advising him to make statements against his own interest prior to disposition of the case, thereby preventing the Applicant from having a meaningful option of contesting the issues at trial;"
    a. "Counsel was unreasonable in interjecting himself into the related civil matter and advising the Applicant to make statements and provide documentation related to that case which provided him no benefit but was used against him in the criminal matter;"
4. "Ineffective assistance of counsel for failure to to [sic] keep the applicant fully informed regarding case status, his constitutional rights, and potential sentence and sentencing consequences, resulting in an unknowing and involuntary guilty plea on the part of the applicant;"

a. "As described above;"

5. "Failure of counsel to file Notice of Appeal."
   a. "As described above."

Applicant requested relief as follows:

- "Conviction reversed with remand for new trial, or if appropriate, remand for resentencing."

At the evidentiary hearing, Applicant withdrew the second and fourth allegations restated above. Furthermore, Applicant firmly indicated that the only relief in which he was interested was a remand for resentencing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Respondent's Motion to Dismiss

At the outset of the evidentiary hearing, upon learning Applicant wished only to seek resentencing, Respondent requested this Court dismiss the application. Counsel for the Applicant informed the Court that they were ready to proceed that day with testimony and evidence, but that testimony and evidence would only go towards a showing that counsel was ineffective in mitigating the Applicant's case during sentencing. This Court determined it was appropriate to rule on the merits regarding the legal availability of that option, the request for resentencing only, and proceeded without testimony.

Generally speaking, where a PCR Court finds a defect in the original proceedings, the appropriate relief would be vacation of the conviction and a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available); Reed v. Becka,

333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (no constitutional right to plea bargain). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968).

Applicant argues that Counsel was deficient in representing him in preparation for and during the mitigation phase of his guilty plea proceeding. Upon this narrow allegation of ineffective assistance of counsel, Applicant firmly indicates that he does not wish to withdraw his guilty plea, but rather asks this court to remand his plea for resentencing *only*, with a limitation that his new sentence not exceed his current sentence. Applicant argues that more recent precedents provide the Court substantially greater flexibility in determining the appropriate relief and that, since the only allegations are against Counsel's performance in mitigation, the appropriate relief should be narrowly tailored to resentencing. See Boan v. State, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010) (citing Rolen v. State, 384 S.C. 409, 414-15, 683 S.E.2d 471, 474 (2009)) ("This Court has previously held that post-conviction relief may be tailored to remedy the precise prejudice resulting from trial counsel's deficient performance[;]" remanding for resentencing where the sentence written outside of the defendant's presence did not match the sentence orally pronounced); see also Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (remanding for resentencing where counsel failed to enforce the plea agreement); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000) (remanding for resentencing where defendant pled with the understanding the State would not recommend the maximum sentence, after which the State recommended the maximum sentence).

Respondent, in support of its motion, argues that the above precedents muddied precisely what relief was available in a post-conviction relief action, were subsequently corrected by the

Supreme Court, and that the only proper remedy potentially available to Applicant is total vacation of the plea and remand for a new trial. See Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015). The State argues that in order to show ineffective assistance of counsel in a guilty plea, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 59 (1985). According to Respondent, since Applicant instead insists that he does not wish to go to trial, but only seeks to achieve a reduction in his sentence, and that he would have pled guilty regardless, there is no purpose to be achieved by further proceedings, and the application should be summarily dismissed. See S.C. Code Ann. § 17-27-70(c) (authorizing the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.").

The Court finds Respondent's argument compelling and agrees with the State's reasoning. There is no question that Applicant pled guilty and would have pled guilty regardless. Applicant does not insist that, but for the deficiency, he would have gone to trial, but rather insists the contrary. As such, Applicant cannot meet his burden under Hill v. Lockhart.

The Court acknowledges that the Supreme Court of South Carolina has remanded cases for resentencing only, as they did in Boan, Rolen, Jordan and Thompson. In each of those cases Applicant's guilty plea was prompted by a plea agreement not properly honored by the State, and not properly enforced by counsel. Where the State entices a defendant to plead guilty by way of an agreement, and where it breaches that agreement, it is not difficult for an applicant to thereafter show that he would not have pled guilty but for that breach. However, the present matter involves no allegation of duplicitous dealing by the State or failure on the part of Counsel

to enforce an agreement—there is no agreement to enforce upon the requested remand. As such, the examples provided by those cases are not analogous to that at hand and are not particularly guiding. The underlying question remains that set forth in Hill and the answer provided by Applicant is that he would not have gone to trial.

This Court and Applicant discussed at the hearing that Applicant seeks relief which presents no risk to him—or "limited" risk, as suggested by Applicant. There can be no doubt that if convicted defendants are presented a vehicle by which they may take a second swing at sentencing, with limited to no risk, they will not fail to pursue it. Indeed, a substantial number of applications for relief are withdrawn every term after applicants, consulting with appointed counsel, learn that a simple "time cut" is not available relief in PCR. In a judiciary already thoroughly strained in its resources, the Court is of the opinion that entertaining claims seeking only sentence reductions or "time cuts" would only further bog down the system, to the considerable detriment of those applicants whose claims actually cast doubt on their culpability and guilt.

Applicant affirmatively disavows the claims necessary to proceed and rejects the only relief this Court could conceivably give him were he to prevail. Accordingly, Respondent's motion to dismiss is **GRANTED** and the application for relief is **DISMISSED**.

[*Conclusion and signature on following page*]

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25 **day of** Jan. **, 2018.**

WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

Marion, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)

Gabriel Lee Gratto 363659
☐ Plaintiff

v.

State Of South Carolina
☒ Defendant.

CASE NO.
2015-CP-26-5563

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Kristy G. Goldberg, Bar No. 69683 Address: 1720 Main Street; Suite 303 Columbia, SC 29201 phone: (803) 667-6633 fax: e-mail: kristy@kristygoldberglaw.com other:	Johnny E. James Jr, Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: jjames@scag.gov 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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — January 22, 2016 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:

FILED
CLERK OF COURT
HORRY COUNTY, SC
2016 FEB -5 PM 1:01
HORRY COUNTY

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Date Filed:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Gabriel Lee Gratto, S.C.D.C. No. 363659,	)	Case No.: 2015-CP-26-05563
Applicant,	)	
v.	)	**ORDER DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of Applicant's "Motion to Alter/Amend Judgment" filed on March 26, 2018. Upon request by this Court, Respondent filed a return to Applicant's motion on April 27, 2018. The Court finds as follows:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed July 23, 2015. Responded made its return on or about December 6, 2016. The Court convened an evidentiary hearing into the matter on Monday, November 27, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esq. Johnny Ellis James Jr. of the South Carolina Attorney General's Office, represented Respondent.

No testimony was taken at the hearing. In response to Applicant's amendment of the application and relief sought at the outset of the hearing, Respondent motioned to dismiss the application on grounds that Applicant's indication that he did not wish to withdraw his guilty plea foreclosed any conceivable relief, and that the relief requested was not available in a PCR.

After hearing arguments from both parties, this Court granted Respondent's motion and dismissed the application by order dated January 25, 2018, and filed February 5, 2018.

II.

In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRCP. This Court has thoroughly reviewed the arguments presented by Applicant in his motion, as well as those presented by Respondent in its return, as well as the order subject to the motion. This Court agrees with Respondent that the motion must be denied.

The Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). The Order of Dismissal correctly relies upon the prejudice standard to be met by Applicants who wish to challenge their guilty plea by way of an allegation of ineffective assistance of counsel: "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." Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) ("An applicant seeking relief from a guilty plea must present probative evidence to support the allegations in the PCR application that but for trial counsel's erroneous advice, the applicant would not have pled guilty."). Further, the Court correctly finds that the appropriate relief in a post-conviction relief matter is a new trial on the original indictments, and that the court is not obliged to pass upon his entitlement to relief that he affirmatively rejects. Gilstrap v. State, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (declining to consider exceptions taken by habeas petitioner who affirmatively rejected the relief of a new trial); Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (clarifying the proper remedy in a PCR is a new trial); Young v. State, 250 S.C.

476, 479, 158 S.E.2d 764, 765 (1968) ("Since the only relief [petitioner] seeks is that to which he is not entitled, it is not incumbent upon this court to pass upon what relief, if any, he might, perchance, [be] entitled to.").

Hill's facts are particularly on-point and dispositive in the present case. In Hill, the petitioner alleged that counsel affirmatively misadvised him as to his parole eligibility. Hill at 60; see also Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (2003) (holding that misadvice on parole eligibility was an appropriate ground for PCR). Nonetheless, the Supreme Court found Hill failed to show prejudice because he "did not allege in his habeas petition that, had counsel correctly informed him about his parole eligibility date, he would have pleaded not guilty and insisted on going to trial." Hill at 60. Where an applicant not only fails to claim he would have insisted on going to trial, but affirmatively asserts the contrary—that he wishes to preserve his plea already entered—it stands to reason that, under Hill, he cannot meet his prejudice burden.

Applicant argues zealously that the Court operated under the belief that prior cases remanding for resentencing were overruled by Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015). This Court's order does not assert that anything was overruled, but rather finds the appropriate relief was *clarified* by Smith and that instances of remand for resentencing were factually distinguishable from the present case. Each of the five cases cited by Applicant to support his proposition that the Court may freely tailor relief is an exception to the general rule that the only remedy is a new trial. Four[1] of the five involve a specific and quantifiable prejudice to the applicant and the fifth[2] involves a protestation of innocence not acted upon such that the applicant was denied an appropriate hearing to withdraw the plea. As a consequence, the

[1] Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010); Scott v. State, 334 S.C. 248, 513 S.E.2d 100 (1999); Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009); Dervin v. State, 386 S.C. 164, 687 S.E.2d 712 (2009).
[2] Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009).

appellate courts were in a position to institute a specific and quantifiable relief short of imposing a hard reset.

Smith is succinct and clear in correcting the misapplication of the precedents upon which Applicant relies:

> We take this opportunity to explain the proper remedy under these circumstances. In Jordan,[3] the Court reversed the PCR court's denial of relief and remanded for either a new trial or resentencing. In Thompson,[4] the Court reversed the PCR court's denial of relief, and remanded solely for resentencing. Here, presumably following the precedent of Thompson, the court of appeals reversed and remanded for resentencing. *We now clarify the proper remedy is a new trial.* Although Smith's attorney was deficient for failing to object at the sentencing hearing, the underlying question is whether Smith would have entered into the plea agreement had he known the State was going to breach the agreement. Therefore, the proper remedy for counsel's ineffective assistance is invalidation of the entire agreement.

Smith, 413 S.C. at 196, 775 S.E.2d at 696 (emphasis added, citations omitted). Contrary to Applicant's efforts to distinguish the present facts from that of Smith, Applicant did receive a bargained for benefit as a consequence of his plea—one count of felony DUI resulting in death was dismissed. Furthermore, Hill is the default standard for applying Strickland v. Washington, 466 U.S. 668 (1984) to guilty pleas, and Smith does not establish some special rule such that distinguishing it from this case would render Hill inapplicable. Therefore, the underlying question here is whether Applicant would not have pled guilty but proceeded to trial had he known counsel was going to be (allegedly) deficient in mitigation. The answer to that question is that Applicant still would have pled guilty and not proceeded to trial.

Applicant's alternatively proposed "different outcome" is that he could have received a lesser sentence. Outside of the death penalty context, this alternative proposed standard is inherently speculative, as it calls upon one circuit court judge to determine if, in light of

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[3] Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988).
[4] Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000).

additional mitigation offered in a PCR evidentiary hearing, another circuit court judge would have imposed a more lenient sentence. Speculation does not satisfy the prejudice prong under Strickland. See, e.g. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1988); Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998).

This Court finds Applicant's proposed "strong policy argument" for a resentencing-only form of relief is similarly without merit. Applicant's presentation of the possibility that the State might otherwise have to take a case to trial is not compelling in the present case, since there is no risk of that in light of Applicant's avowed desire to maintain his guilty plea. Furthermore, as this Court noted from the bench at the November 2017 hearing and in its order, a very substantial number of post-conviction relief actions are withdrawn each year upon Applicant's learning that they cannot get a "time cut" by way of PCR and that the only relief available is, as established by the law, a new trial. We cannot calculate the number of potential applications which go unfiled by incarcerated persons with the knowledge that a sentence reduction or reconsideration is not available in PCR. Were incarcerated persons provided a limited-risk opportunity to take a second swing at sentencing, it stands to reason that many more would try their luck for no reason of actual injustice, but simply to try and get a shorter sentence.

The principles underlying the post-conviction relief process do not serve to ensure that every defendant gets the best possible outcome from their criminal adjudication, but rather the process exists to safeguard the fundamental fairness of the proceedings whose result is challenged. See Strickland at 696. "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test[.]" Strickland at 693. "In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular

proceeding is unreliable because of a breakdown in the adversarial process that our system counts on the produce just results." Strickland at 696. Notwithstanding the contrary in the death capital context, one can hardly claim or prove such a substantial breakdown where an applicant still admits his guilt and only contends that still more mitigation might have coaxed a judge into further mercy and a lesser sentence.

Finally, Applicant argues that the Court's order effectively forecloses the ability to bring claims of ineffective assistance of counsel for deficient performance in mitigation in non-capital cases. It does not. It simply requires that Applicant seek relief available, that being vacation of the conviction and remand for a new trial, and satisfy the demands of Hill.

Accordingly, the Court properly ruled on all issues before it, and Applicant's motion must be denied.

CONCLUSION

Based on all of the foregoing, this Court finds and concludes that Applicant has not established any reason to alter or amend its Order of Dismissal dated January 25, 2018, and filed February 5, 2018. Accordingly, Applicant's Motion to Alter or Amend is **DENIED.**

AND IT IS SO ORDERED this 10 **day of** May **, 2018.**

WILLIAM H. SEALS, JR.
Chief Judge for Common Pleas
Fifteenth Judicial Circuit

Marion, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Gabriel L. Gratto, #363659
☐ Plaintiff

v.

State Of South Carolina
☒ Defendant.

CASE NO.
2015-CP-26-5563

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Kristy G. Goldberg, Bar No. 72674	Johnny E. James Jr, Bar No. 101260
Address:	Address:
1720 Main St., Ste 303 Columbia, SC 29201	Post Office Box 11549 Columbia SC 29211-1549
phone: fax:	phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:	e-mail: jjames@scag.gov 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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — May 4, 2018 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ 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:

RENEE M. LEWIS CLERK OF COURT HORRY COUNTY, SC
2018 MAY 17 PM 1:16
HORRY COUNTY

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

ALAN WILSON
ATTORNEY GENERAL

May 15, 2018

The Honorable Rence N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, SC 29528-0677

Re: Gabriel Lee Gratto, #363659 v. State of South Carolina
2015-CP-26-5563

Dear Ms. Elvis:

Enclosed please find the original **Order Denying Applicant's Motion Pursuant to Rule 59(e)** signed by the Honorable William H. Seals, 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.

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Johnny Ellis James Jr.
Assistant Attorney General

JEJ/mm

Enclosure

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW
1720 MAIN STREET, SUITE 303
COLUMBIA, SOUTH CAROLINA 29201

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