

October 15, 2019

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

RECEIVED

OCT 17 2019

S.C. SUPREME COURT

Re: Faasiu Toese vs. State of South Carolina  
C/A No: 2015-CP-40-07115

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Toese in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
J. Derham Cole, Jr., Circuit Court Judge

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2015-CP-40-07115

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**RECEIVED**

OCT 17 2019

S.C. SUPREME COURT

Faasiu Toese, # 363340,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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NOTICE OF APPEAL

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Faasiu Toese, # 363340, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 8, 2019, issued by the Honorable J. Derham Cole, Jr., Presiding Judge, Fifth Judicial Circuit.



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Jonathan D. Waller

Waller Law Group  
SC Bar No.: 76290  
1116 Blanding Street  
Suite 2B  
Columbia, SC 29201  
803-520-7278 (phone)  
jonathan@wallergroupsc.com  
ATTORNEY FOR PETITIONER

October 15, 2019

Other Counsel of Record:

Lindsey A. McCallister, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
J. Derham Cole, Jr., Circuit Court Judge

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2015-CP-40-07115

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**RECEIVED**

OCT 17 2019

S.C. SUPREME COURT

Faasiu Toese, # 363340,

Appellant,

v.

STATE OF SOUTH CAROLINA,

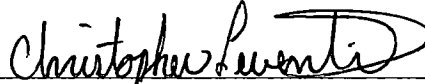
Respondent.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.

  
Christopher Leventis

October 16, 2019

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007115

Faasiu #363340 Toese

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 8 October 2019 to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller

Lindsey Ann McCallister

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

FILED  
RICHLAND COUNTY  
2019 OCT - 8 AM 9:45  
JANET E. W. MCBRIDE  
CLERK, C.S. & P.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

Faasiu Toese, #363340, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTH JUDICIAL CIRCUIT )

C.A. No. 2015-CP-40-7115 )

**ORDER OF DISMISSAL** )

**2019 OCT - 8 AM 9:45**  
**FILED**  
**RICHLAND COUNTY**  
JENNIFER W. McBRIDE  
S.C.P., G.S., & F.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Faasiu Toese (Applicant) on November 25, 2015. Respondent made its return on April 27, 2016. An evidentiary hearing into the matter was convened on April 1, 2019, at the Richland County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the call of the case, Applicant addressed the Court, in English, and requested a continuance in order to have his sister and other witnesses present at the hearing. Mr. Waller explained he had attempted to contact the witnesses and Applicant's sister but had been unsuccessful in doing so, and he was prepared to go forward without them. Thereafter, Applicant testified on his own behalf. Jennifer C. Davis, Esquire, Applicant's plea counsel, was also called to testify. Evangelina Burrows was sworn as a certified court interpreter and translated the proceeding from English to Samoan and vice versa for Applicant.

This Court had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's

Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application for relief.

### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April 2013 term of the Richland County Grand Jury for one count of murder (2013-GS-40-02761). Applicant was represented by Jennifer C. Davis, Esquire (Counsel). Applicant pleaded guilty as indicted on March 18, 2015. Pursuant to a negotiated agreement between Applicant and the State, the Honorable Robert E. Hood sentenced Applicant to thirty-six years imprisonment.

A notice of appeal was filed on Applicant's behalf on March 20, 2015. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation on May 29, 2015. A rehearing was denied on February 5, 2016. The case was remitted to the circuit court on April 26, 2016.

### ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
  - a. "Failure to seek continuous (sic) to better prepare the case."
  - b. "Failure to offer a defense strategy other than a guilty plea."
  - c. "Failure to provide interpreter notwithstanding the defendant's request."
  - d. "Failure to explained or discussed (sic) with the defendant any of the elements of the crime charge[d]."
  - e. "Failure to challenge the voluntariness of the defendant's statement to the police."

- f. "Failure to explained or discussed (sic) with the defendant her professional opinion why I should or should not testify."
- g. "Failure to investigate the possibilities of self-defense and a lesser included offense of voluntary manslaughter."

### SUMMARY OF TESTIMONY

Applicant testified he is from American Samoa, where he lived until 2010 when he moved to California to live with relatives. Applicant testified his family spoke Samoan in their home growing up, all of his friend spoke Samoan, and he was exposed to English only on television and a few times per year at school. Applicant explained he moved to South Carolina to live with his sister, who was in the Army and stationed here. Applicant testified he spoke Samoan with other Samoans here but spoke English with everyone else. Applicant further testified he had been involved in a previous court case and required an interpreter every time he appeared in court, but he did not have one in this case. Applicant stated he first met with a different attorney, Joanna Delany (Delany), and asked her for an interpreter, but she did not arrange one as she thought it was unnecessary because he spoke English and understood what was said. However, Applicant testified he needed an interpreter to understand his meeting with his PCR counsel in August 2018, and he speaks more English now than he did at the time of his criminal case because he has learned since being in prison.

Applicant testified he spoke to Counsel and Delany about the statement he gave to law enforcement. Applicant stated he tried to explain to his attorneys what happened but he did not speak enough English to adequately express himself. According to Applicant, law enforcement asked him some questions, he told them what happened, and he signed an affidavit waiving his rights after questioning. Applicant also testified law enforcement wrote out the statement, not

him, and his right were conveyed to him in English. Applicant stated he tried to explain these details to his attorneys, but he was not sure they understood. Applicant also testified he was “over intoxicated” at the time he gave his statement, and when he is drunk sometimes people can take advantage of him due to his level of English-speaking ability. Applicant stated he did not recall whether he discussed his intoxication with his attorney.

Applicant testified he met with Counsel three or four times for approximately thirty minutes each time. Applicant stated he had difficulty expressing what he wanted her to do, and he had questions he did not know how to ask. Applicant testified the only thing he could recall about what happened was that law enforcement wrote his statement for him. Applicant further stated he did not recall Counsel telling him anything about going to trial or how to prepare for a trial. Applicant also testified he and Counsel did not discuss the elements of the charges, possible defenses, or whether he should testify at a trial, and he did not understand what the State would have to prove against him. Applicant stated he did not talk to Counsel about anything related to the charges or his case, although he did recall being told he was supposed to have a trial. On cross-examination, Applicant explained Counsel told him the case was scheduled for a trial, but he did not understand what that meant until he was already in prison.

Applicant further testified Counsel never discussed any possible defenses with him and did not explain much about his case except that he was looking at life in prison. Applicant stated he signed the plea agreement based on Counsel’s advice. Applicant testified he and Counsel never discussed seeking a continuance to give them more time to prepare.

On cross-examination, Applicant stated he prepared his PCR application, in English, with the help of friends, but agreed he wrote it. Applicant testified he came to South Carolina at the end of 2011 and spoke only broken English. Applicant further testified at the time of the incident he was working at a Wal-Mart store on Farrow Road, stocking shelves, but he did not have much contact with customers. Applicant recalled the plea hearing and agreed he answered the judge's questions, but he testified he did not understand all of them. Applicant testified he told Counsel he needed an interpreter when she came to visit him in the detention center prior to the plea, but he did not ask for one on the day of the plea. Applicant stated he did not inform the plea judge he did not understand what was going on because he did know he had the right to ask questions of the judge.

Counsel testified she was appointed to Applicant's case and took over as the lead attorney in January 2015, but she had been involved as second chair since March 2014. Counsel stated she met with Applicant six or seven times between January and March 2015, when he entered the guilty plea. Counsel denied Applicant ever asked her for an interpreter, and she testified that although he had some trouble understanding legal concepts when they spoke, it was not because of a language barrier. Counsel testified she would have obtained an interpreter if he told her he need one.

Counsel testified Applicant gave a statement to law enforcement admitting his involvement, and the version of the facts he told her differed from the content of the statement. Counsel stated she discussed this discrepancy with Applicant, and Applicant inquired about giving a supplemental statement to talk about self-defense. Counsel testified she reviewed the statement

and advice of rights form and verified the signatures, date, and time. Counsel testified Applicant never mentioned any details to make her think there was a violation of Applicant's rights in taking the statement. Counsel also testified she was aware of the allegation Applicant had been drinking the night of the incident, when the statement was given. Counsel did not recall whether Applicant's statement was recorded. Counsel also testified law enforcement confiscated Applicant's cell phone and downloaded its contents, and she had that data on a CD in her file.

Counsel testified she had some concerns about Applicant's mental health, and he was evaluated privately and by the Department of Mental Health. Counsel testified her concerns about Applicant's competency were not because of communication issues, but because Applicant had a history of mental illness and was complaining of hallucinations while in pre-trial detention. Counsel stated Applicant was put on anti-psychotic medication.

Counsel testified she and Applicant discussed what murder is, the State's burden of proof, the defense's responsibility to show self-defense, and how to mitigate the offense to voluntary manslaughter. Counsel also testified she explained Applicant's right to have a trial and what could happen if he chose to do so. Counsel testified she and Applicant discussed self-defense, voluntary manslaughter, and the defense of accident. Counsel stated she felt Applicant understood their conversations, and she did not have any trouble explaining issues to him. Counsel also stated Applicant asked relevant questions during their discussions.

Counsel explained much of their defense would have come from Applicant testifying at trial. Counsel stated Applicant claimed he and the victim had an argument, he struck her in the face, and then she grabbed the knife first. Counsel testified she used an investigator from her office

and followed up with Applicant's co-workers at Wal-Mart as potential witnesses. Counsel stated the case was set for trial twice but was continued prior to the first trial date because Delany knew she was leaving the office. Counsel explained she received DNA testing results after the continuance was granted because Delany had filed a motion to compel. Counsel testified she did not recall missing any discovery, and she would have followed up again if the case had proceeded to trial.

Counsel testified she discussed the State's plea offer with Applicant and explained his right to plead guilty or go to trial. Counsel further explained the State eventually offered Applicant a plea with a cap of forty years, but Applicant wanted a sentencing range of ten-to-fifteen years. Counsel testified the parties ultimately agreed to a negotiated sentence of thirty-six years, and Counsel explained the ramifications of the agreement to Applicant, including its effect on his right to an appeal.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the evidence and witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel’s 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. When there has been a guilty plea, the applicant must prove counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered

by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant failed to prove Counsel's performance was deficient in any way, nor was Applicant prejudiced by Counsel's performance. Counsel met with Applicant on several occasions and reviewed with him the elements of the crime charged, the evidence and discovery in the case, Applicant's version of the facts and potential defenses, and the State's plea offer. This Court finds Applicant ultimately chose to plead guilty in order to avail himself of a guaranteed thirty-six year sentence, and this decision was made freely and voluntarily. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

#### Involuntary Guilty Plea

Applicant alleges Counsel's ineffective assistance in (1) failing to seek a continuance; (2) failing to investigate self-defense or voluntary manslaughter; (3) failing to prepare a defense; (4) failing to challenge the voluntariness of Applicant's statement; (5) failing to explain the elements of the crime charged; (6) failing to explain Applicant's right to testify at trial; and (7) failing to secure an interpreter led to Applicant entering an involuntary and unknowing guilty plea. This Court disagrees and finds the plea colloquy is dispositive as to these issues. The Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant pleaded guilty freely and voluntarily.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). An applicant who pleads guilty with the advice of counsel

may collaterally attack the plea only by showing (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). 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 the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harres, 282 S.C. at 133, 318 S.E.2d at 361. However, statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from

the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent and coherent colloquy with the plea court, and gave appropriate responses to the court's questions. At the beginning of the plea hearing, Applicant informed the court he was not under influence of any substance which would affect his ability to understand what he was doing, and he informed the court he had taken Zyprexa as prescribed. Tr. pp. 3-4. The plea court explained Applicant's right to remain silent, jury trial, confront witnesses and present a defense, and the State's burden of proof beyond a reasonable doubt, and Applicant indicated he understood those rights and wished to give them up in order to plead guilty. Tr. pp. 6-7. The plea court then explained the negotiation and clearly informed Applicant if it accepted his plea, the only possible sentence would be the agreed upon thirty-six years, and Applicant again indicated he understood. Tr. pp. 7-8.

Importantly, Applicant informed the plea court he had understood all of his conversations with Counsel, and he understood why he was in court and what he was doing. Tr. p. 4. Applicant averred he satisfied with Counsel and felt they had fully discussed the charges and evidence. Tr. p. 8. Applicant stated no one had threatened him or promised him anything to induce his guilty plea, and he was entering the plea freely and voluntarily. Tr. pp. 8-9. Applicant was given the opportunity to speak to the plea court and never indicated he did not understand the proceedings or needed an interpreter. Instead, Applicant took responsibility for the crime, telling the plea court, "I know I'm responsible for this." Tr. p. 38.

The Court finds Counsel's representation of Applicant was not deficient. The Court finds credible Counsel's testimony she was able to communicate effectively with Applicant, and she had no indications he did not understand their conversations. This finding is confirmed by the plea transcript, which reflects Applicant understood the plea court's colloquy and answered the plea court's questions intelligently. Additionally, this Court finds credible Counsel's testimony she reviewed both the content of Applicant's statement and the circumstances surrounding the taking of the statement and discussed Applicant's version of the facts with him. Counsel testified Applicant never divulged any information indicating or imply the statement was not given voluntarily. Counsel further testified she used an investigator and followed up with potential witnesses from Applicant's employment. However, the record reflects Applicant never disputed that he killed the victim; any defense would have involved an argument for self-defense, accident, or voluntary manslaughter. Counsel credibly testified she discussed these concepts and issues with Applicant prior to his guilty plea.

In any event, Applicant did not present any witnesses or evidence to support his claims Counsel failed to investigate, failed to prepare a defense, and failed to ask for a continuance, so this claim must fail as to the prejudice prong as well. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (holding a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific

testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, based on the combined record of the plea transcript and the testimony presented at the evidentiary hearing, this Court finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. Counsel met with Applicant on multiple occasions to review discovery, discuss the facts of the case, and explain Applicant's constitutional rights and options for resolving the case. Further, the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Therefore, this Court denies relief and dismisses this allegation with prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, 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 Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

**IT IS THEREFORE ORDERED:**

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED.**

9/20, 2019

  
\_\_\_\_\_  
J. DERHAM COLE, JR.  
Presiding Circuit Court Judge  
Fifth Judicial Circuit

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

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