

Tommy A. Thomas

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January 3, 2020

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JAN 06 2020

S.C. SUPREME COURT

PLEASE REPLY TO:  
PO BOX 88  
IRMO, SC 29063  
INMATE LINE  
(803) 732-6542

The South Carolina Supreme Court  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

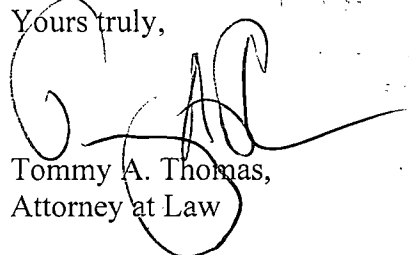
RE: Destiny H. Mills #374576 v. State of South Carolina  
Docket No.: 2018-CP-32-01575

Dear Mr. Shearouse:

Please be advised that I have been retained to represent Ms. Mills regarding the Appeal of her Post-Conviction Relief decision. Enclosed please find for filing an original and a copy of a Notice of Appeal as well as a Certificate of Service.

Kindly return the clocked copy to me in the enclosed envelope. Thank you and please feel free to contact me should you have any questions or require additional information.

Yours truly,

  
Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Janell Gregory, Esq.  
Destiny H. Mills #374576

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Post Conviction Relief

JAN 06 2020

S.C. SUPREME COURT

Brooks P. Goldsmith, Circuit Court Judge

Lower Court Case No.: 2018-CP-32-01575

Destiny H. Mills #374576,..... Appellant,

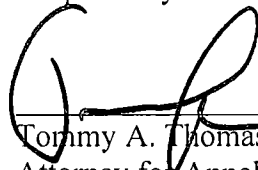
vs.

State of South Carolina, .....Respondent.

NOTICE OF APPEAL

The Appellant, Destiny H. Mills #374576, appeals the Order of Dismissal signed by the Honorable Brooks P. Goldsmith, dated November 9, 2019 and filed on November 26, 2019. Appellant received written notice of entry of this order on December 4, 2019.

Respectfully submitted.



Tommy A. Thomas  
Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

January 3, 2020

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Post Conviction Relief

Brooks P. Goldsmith, Circuit Court Judge

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Lower Court Case No.: 2018-CP-32-01575

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Destiny H. Mills #374576,..... Petitioner,

vs.

State of South Carolina, .....Respondent.


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CERTIFICATE OF SERVICE

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I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Petitioner hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to Janell Gregory, Esq. of the Attorney General's Office, at:

Janell Gregory, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549

  
Jacquelyn E. Miller  
Secretary to Tommy A. Thomas  
Attorney for Petitioner  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, SC  
January 3, 2020

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JAN 06 2020

S.C. SUPREME COURT

ORIGINAL

FILED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) FOR THE ELEVENTH JUDICIAL CIRCUIT

NOV 26 PM 4:30

Destiny H. Mills, #374576,

LISA M. CONNER  
CLERK OF COURT  
LEXINGTON SC

Case No. 2018-CP-32-01575

RECEIVED

Applicant,

JAN 06 2020

v.

ORDER OF DISMISSAL

S.C. SUPREME COURT

State of South Carolina,

Respondent.

This matter comes before this Court by way of an Application for Post-Conviction filed on May 11, 2018, by Destiny H. Mills (Applicant). The State (Respondent) filed its Return on August 17, 2018. On March 27, 2019, Applicant filed an Amended Post-Conviction Relief Application. An evidentiary hearing in the matter was held before the undersigned on June 28, 2019, at the Lexington County Courthouse. Applicant was present and was represented by Tommy A. Thomas, Esquire, (PCR Counsel). Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on her own behalf, and she called Theodore Mills as a witness. Respondent called as witnesses Assistant Solicitor Todd Michael Wagoner, Assistant Public Defender David Michael Mauldin, and Robert Theodore Williams, Senior, Esquire. During the June 28, 2019, hearing, an issue was raised that required additional testimony from the witnesses, so a supplemental hearing was held on September 9, 2019, at the Allendale County Courthouse. At that hearing, Wagoner and Williams provided additional testimony. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearings, this Court finds that Applicant has failed to meet her requisite burden of proof and denies this application.



## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its December of 2015 term, the Lexington County Grand Jury indicted Applicant for felony driving under the influence resulting in death (2015-GS-32-02929). Assistant Public Defender David Michael Mauldin was appointed to represent Applicant, but was relieved when Applicant later retained Robert Theodore Williams, Senior, Esquire. Assistant Solicitor Todd Michael Wagoner prosecuted the case on behalf of the State. On November 2, 2017, Applicant appeared before the Honorable Donald B. Hocker and pleaded guilty as indicted. Judge Hocker accepted Applicant's guilty plea and deferred sentencing. On November 16, 2017, Applicant appeared before the Honorable William P. Keesley for sentencing. Judge Keesley sentenced Applicant to a term of imprisonment of ten years. Applicant did not appeal her plea or sentence.

## CURRENT PROCEEDING

On May 11, 2018, Applicant filed an Application for Post-Conviction Relief, in which she alleged that he was being held in custody unlawfully based on her claims that her guilty plea was not knowingly and voluntarily given because she was "[m]isled" and that she was afforded the ineffective assistance of trial counsel due to his "[l]ack of research." In her amended return, Applicant alleged that she was entitled to relief on the following grounds:

1. "Counsel was ineffective which in turn lead the Applicant to involuntarily enter into a guilty plea for the following reasons:
  - a. "Failure to move for dismissal and/or suppression of blood alcohol evidence as a result of Law Enforcement's failure to comply with requirements that a Defendant is entitled to a private testing of any blood evidence.
  - b. "Failure to move Pre-trial to suppress video evidence.

- c. "Failure to move Pre-trial to suppress any and all statements made by the Petitioner.
- d. "Failure of Defense Counsel to advise the Petitioner that she should assert her Constitutional right not to incriminate herself in a civil disposition conducted by Attorney Rick Hall.
- e. "Failure of Defense Counsel to attend the civil disposition on behalf of the Applicant.
- f. "Failure to adequately advise the Petitioner regarding her rights at trial.
- g. "Failure to properly advise the Applicant about her guilty plea. More specifically that she would only receive five (5) years if she plead guilty or even the possibility of house/arrest.
- h. "That the Applicant was mistakenly advised that if she assisted in the civil case that she would be assisted in the criminal case. That the Applicant mistakenly believed that this would result in the receipt of less or no active prison sentence.
- i. "That Defense Counsel did not adequately consult with the Applicant regarding her case, the evidence the State had against her and any theory of Defense.
- j. "That the Applicant believes that all plea offers were not conveyed to her."

At the evidentiary hearing before the undersigned on June 28, 2018, Respondent requested at the start of the hearing that Applicant specify for the record the grounds upon which she would move forward. In response, PCR Counsel stated that Applicant would move forward solely upon the grounds alleged in the amended application, and reserved the right to address issues that may have arisen naturally in the course of the hearing. During that hearing, Applicant asserted a new ground for relief: that the solicitor bifurcated the plea and sentencing portions of Applicant's plea hearing so that Applicant could be sentenced before Judge Keesley rather than by Judge Hocker, who accepted the entry of her guilty plea. Applicant styled this allegation as one of "judge shopping" on the part of the prosecution. More testimony concerning this allegation was taken at the supplemental PCR hearing on September 9, 2019. All other



allegations are considered by this Court to have been waived by Applicant and they will not be addressed in this Order.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

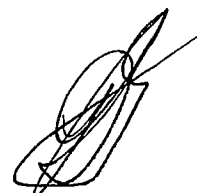
This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of

reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

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. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690. “A guilty plea is a solemn, judicial admission of the truth of the charges against an



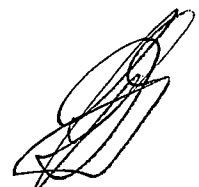
individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

***Applicant was afforded the ineffective assistance of counsel because her defense attorneys did not move to suppress the State's blood-alcohol evidence.***

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in failing to move to suppress the results of a blood-alcohol test in reliance upon S.C. Code Ann. § 56-5-2950, and that she was prejudiced because she had to plead guilty because the evidence would have been used against her at trial.

Applicant crashed her vehicle into the rear of the victims' automobile at approximately 2:00 a.m. on I-26 shortly after one of the victims had completed a shift at a pizza restaurant. As a result of the crash, one of the two victims passed away. While Applicant was being treated at the hospital afterwards, she consented to a blood draw. The results of the blood analysis showed that Applicant's blood-alcohol content was over the legal limit at the time of the draw. Applicant testified at the PCR hearing that the blood draw was conducted almost five hours after the crash. Applicant testified that someone at the hospital destroyed the second blood sample that had been



drawn from her, which had been taken pursuant to her request to have the blood independently analyzed. Applicant testified that she and Williams discussed the prosecution's blood-alcohol evidence, and that she was unsatisfied with Williams' prediction that a motion to suppress the results of the blood test likely would be unsuccessful at trial. Theodore Williams, Applicant's father, testified at the PCR hearing that he witnessed a police officer drop one of the two vials of Mills' drawn blood, which then shattered on the floor.

Wagoner testified at the PCR hearing that Applicant consented to having her blood drawn at the hospital after being read the implied consent statute. He testified that either a State Trooper or nurse dropped Applicant's blood sample after it was taken. He testified that the analysis of Applicant's blood showed that she had a blood-alcohol content of .127.

Mauldin testified at the PCR hearing that he would have attempted to pick apart the prosecution's case at trial any reasonable motion. He testified that he was aware that there would be suppression issues at Applicant's trial, but did not know if a suppression motion relating to the blood analysis would have been successful. He admitted that he did not do extensive research concerning the possibility of suppressing the analysis of Applicant's blood during his representation of her because the case was not yet up for trial, although he testified that he had done some research on other evidentiary issues relevant to her defense. When questioned on cross-examination about the extent of his research into the admissibility of the blood analysis, Mauldin testified that he had not done enough research to allow him to speculate as to whether the results of a blood draw could be suppressed if the police had broken the vial containing the blood sample that was meant to be used in an independent blood analysis conducted at a defendant's request, but he added that he would have done more research on the issue if the case had proceeded to trial.

Williams testified as a witness for Respondent at the PCR hearing. He testified that he had attempted to suppress the results of a blood analysis for a client he represented before being hired by Applicant in which the blood sample meant for that defendant's independent analysis had been destroyed by the State, and that his efforts to suppress in that case had been unsuccessful. He testified that he would have attempted to suppress the results of the State's analysis of Applicant's blood had the case proceeded to trial.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, "[a] criminal 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." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

This Court finds that neither Mauldin nor Williams performed deficiently with respect to a motion to suppress the blood-alcohol evidence. Mauldin's testimony indicates that he would have challenged the prosecution's case on every available front had the case gone to trial. He testified that he did not do enough preparation to speculate as to the outcome of a motion to suppress the prosecution's blood-alcohol evidence due to the fact that the case was not up for trial in the near future, but added that he would have done more preparation on the issue as trial approached. This Court finds that Mauldin's lack of detailed research into the admissibility of blood analysis when Applicant had been denied the chance to independently test her the second sample of her blood was excusable and reasonable at that early stage of the criminal case. At any rate, Applicant had hired Williams by the time of her trial, so Mauldin's performance with respect to trial motions is irrelevant. Williams and Applicant both testified that they discussed the issue of the illegally high alcohol content in Applicant's blood. Williams testified that he would have moved to suppress the blood evidence at trial if Applicant had not first pleaded guilty. This Court finds that Williams' testimony that he would have moved to suppress had the case gone to trial is credible. Applicant may have been dissatisfied with Williams' assessment that the motion would have been unsuccessful, but she waived her right to have him make the motion on her behalf by pleading guilty. Applicant affirmed to Judge Hocker that she wanted to waive her trial rights by pleading guilty.

This Court finds that Applicant did not suffer prejudice due to the performance of either Mauldin or Williams with respect to the suppression of the blood-alcohol evidence. To demonstrate prejudice, Applicant would have to show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires

more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). In this instance, because Applicant pleaded guilty before the obligation of Mauldin or Williams to move to suppress the results from the blood test would have applied, she prevented them from taking an action that could be evaluated as either competent or deficient under the prejudice prong of Strickland and Hill. Therefore, Applicant has failed to show prejudice.

This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to his treatment of the results of the analysis of Applicant's blood because Applicant has failed to demonstrate any deficiency in the performance of either attorney and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

***Applicant was afforded the ineffective assistance of counsel because her defense attorneys did not move to suppress the prosecution's video evidence.***

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in failing to move to suppress video recordings that showed her on the night of the crash. Applicant testified at the PCR hearing that there was a video recording taken of her at the hospital following the crash. Although she testified that she had never seen the video, she speculated that she would have appeared therein as sober rather than drunken. She testified that she had heard that there were videos from the bars at which she had been drinking before the crash.

Wagoner testified that the attorneys representing the father of the deceased victim in the dram shop civil suit against the bars at which Applicant had been drinking had discovered a video recording of Applicant drinking alcohol. He testified that the video recording taken of Applicant at the hospital showed Applicant appearing to be "stunned and dazed."



This Court finds that neither Mauldin nor Williams performed deficiently with respect to a motion to suppress the video recordings of Applicant. Mauldin's testimony indicates that he would have challenged the prosecution's case on every available front had the case gone to trial. At any rate, Applicant had hired Williams by the time of her trial, so Mauldin's performance with respect to trial motions is irrelevant. Williams testified that, if Applicant had proceeded to trial, he would have moved to suppress the video recordings of Applicant. This Court finds that Williams' testimony that he would have moved to suppress had the case gone to trial is credible.

This Court finds that Applicant did not suffer prejudice due to the performance of either Mauldin or Williams with respect to the suppression of the video recordings. To demonstrate prejudice, Applicant would have to show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). In this instance, because Applicant pleaded guilty before the obligation of Mauldin or Williams to move to suppress the recordings would have applied, she prevented them from taking an action that could be evaluated as either competent or deficient under the prejudice prong of Strickland and Hill. Even if such an obligation had attached, Applicant's testimony indicated that she did not believe that the video recording from the hospital would have been harmful to her defense at trial. When testifying regarding the hospital video, Applicant offered that she believed that video recording from the hospital would have shown her to be sober. Presumably, evidence of any sobriety on Applicant's part would have been welcome to Applicant had she proceeded to trial. Applicant has failed to show prejudice.

A handwritten signature in black ink, appearing to be the initials 'JL' or similar, located in the bottom right corner of the page.

This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to his treatment of the video recordings of Applicant because Applicant has failed to demonstrate any deficiency in the performance of either attorney and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

***Applicant was afforded the ineffective assistance of counsel because her defense attorneys did not move to suppress her statements.***

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in failing to move to suppress statements that she made to police. Applicant testified at the PCR hearing that she gave multiple statements to law enforcement after the crash. She testified that she gave a statement to the police officer who responded to the scene of the crash, in which she claimed that she was on the way home from a friend's residence after drinking a single beer. She testified that she gave a second statement at the hospital after discovering that one of the victims had died. In that statement, she told police that she had had four beers over a five-hour period. She testified that, before she had been given warnings pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), she told a police officer that she had a "buzz". She testified that she later regretted making that last statement because it was cited in her arrest warrant.

Wagoner testified at the PCR hearing that a State Trooper talked with Applicant in the back of an ambulance shortly after the crash, and that she told that Trooper that she had had one beer. He testified that she later admitted to drinking alcohol at the Wild Wing Cafe, Applebee's, and the British Bulldog Pub. He testified that she admitted to the MAIT team that she had consumed alcohol. He testified that Applicant told varying stories once she arrived at this hospital, including that the crash happened because she was manipulating her car's stereo system at the time of the crash and that she crashed in the victims' car because her passenger was

distracting her at the time of the crash by trying to get amorous with her. He testified that the prosecution had two witnesses who would have testified at trial that Applicant was drinking alcohol on the night of the crash.

This Court finds that neither Mauldin nor Williams performed deficiently with respect to a motion to suppress Applicant's statements to law enforcement. Mauldin's testimony indicates that he would have challenged the prosecution's case on every available front had the case gone to trial. At any rate, Applicant had hired Williams by the time of her trial, so Mauldin's performance with respect to trial motions is irrelevant. Although Williams did not specifically testify about his intention with respect to Applicant's statements to law enforcement if the case had gone to trial, his answer to similar questions at the PCR hearing is instructive. Respondent asked for an explanation as to why Williams did not move to suppress the blood-alcohol evidence, and Williams answered, "Because she was pleading." Williams' explanation that he did not move to suppress the blood-alcohol evidence since Applicant decided to plead guilty instead of proceeding to trial likewise serves as a reasonable rationale for his not filing a motion to suppress Applicant's statements to police.

This Court finds that Applicant did not suffer prejudice due to the performance of either Mauldin or Williams with respect to the suppression of Applicant's statements. To demonstrate prejudice, Applicant would have to show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). In this instance, because Applicant pleaded guilty before the professional obligation of

Mauldin or Williams to move to suppress her statements would have applied, she prevented them from taking an action that could be evaluated as either competent or deficient under the prejudice prong of Strickland and Hill. Applicant waived her right to have an attorney make the motion on her behalf by pleading guilty.

This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to his treatment of Applicant's statements because Applicant has failed to demonstrate any deficiency in the performance of either attorney and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

*Applicant was afforded the ineffective assistance of counsel by Mauldin because he did not advise her to assert her right not to testify at the civil deposition. Applicant was afforded the ineffective assistance of counsel by Mauldin because did not attend the civil deposition with Applicant. Applicant was afforded the ineffective assistance of counsel by Mauldin because he advised her that the deceased victim's family would assist her in her criminal case if she cooperated with the dram shop suit.*

Applicant argues that she was afforded the ineffective assistance of counsel because she Mauldin did not properly advise her regarding the dram shop action, and that her participation harmed the strength of her case at trial. The allegations all concern the advice that Mauldin gave Applicant about the dram shop suit, her participation in a civil deposition in that action, and the consequences thereto. For this reason, these allegations will be considered together.<sup>1</sup>

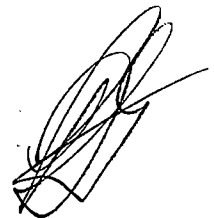
Applicant testified that she was named as a defendant in a civil suit brought against her and the bars at which she had been drinking on the night of the crash, and that the deceased victim's family was bringing the suit. She testified that she felt that the family was pursuing the bars for responsibility rather than her, even though she was a party. She testified that she had been served on the day of her released from the detention center with a subpoena requiring her

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<sup>1</sup> These allegations concern events that occurred before Applicant retained Williams, and can therefore only be reasonably construed as allegations regarding Mauldin's performance.

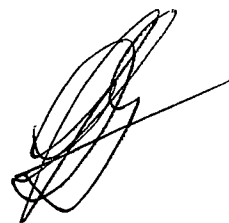
attendance at a deposition in the civil case. She testified that she felt that she was required to participate in the deposition since she had only just been released from detention. She testified that, when she discussed it with Mauldin, he told her that she would not attend the deposition with her because he was not being paid to represent Applicant in a civil suit. She testified that Mauldin described the civil suit as a "help me, help you situation". She testified that Mauldin shared this opinion with one of the civil attorneys involved in the dram shop action. She hired a civil attorney to represent her in the civil case. When asked on direct examination at the PCR hearing if Mauldin had ever discussed with Applicant the possibility of her refusing to be deposed or advising her that it was not a good idea to give testimony at the deposition, Applicant answered that she could not remember. She testified that he did not explain that she had a constitutional right to remain silent in a civil deposition, and that she did not know that statements she made during the deposition could be used against her later at trial. She did participate in the civil deposition. She testified that the civil attorney conducting the deposition later gave a transcript of it to Wagoner. The transcript from that deposition was admitted into evidence at the PCR hearing without objection as Applicant's Exhibit One. She testified that the civil attorney representing the deceased victim's family was Frederick Ivey Hall, III, Esquire, and that he showed up to make a statement at her sentencing hearing on behalf of the deceased victim's family. She testified that her understanding from Hall that the family could help Applicant if she helped them in the civil case, but that there were no direct promises.

Applicant testified that the results from the blood analysis were "the only evidence . . . against [her]." When asked at the PCR hearing how the prosecution would have proven at trial that she was guilty of felony DUI, Applicant answered, "Pretty much with the blood work." Applicant affirmed that the "blood work was controlling in this case."



Wagoner testified at the PCR hearing that the victims' civil representation acted as quasi-victim advocates in the case, and allowed him to look at their case file. He testified that he shared a copy of the file with Williams since he had viewed it. He testified that the file included Applicant's deposition transcript and a transcript from the deposition of the passenger in Applicant's car at the time of the crash, copies of the surveillance videos from the bars at which Applicant had been drinking, and receipts of Applicant's purchases at those bars. He testified that the deposition transcript indicated that Applicant was a defendant in the civil action. He testified that the testimony provided by Applicant at the deposition was similar to her previous statements to law enforcement, except that she went into more detail about who paid for her drinks. He testified that her deposition testimony indicated that Applicant's passenger, Bonner, paid the bar tabs. He testified that, had Applicant proceeded to trial, the prosecution would have used the blood-alcohol test results, the testimony of Applicant's passenger, the testimony of the surviving victim, the testimony of emergency medical personnel and law enforcement officers who responded to the scene of the crash, and the report from the MAIT analysis of the crash.

Mauldin testified at the PCR hearing that he informed Applicant that she would need to hire a civil lawyer if she needed representation in the dram shop suit because Mauldin's employment as a public defender precluded him from representing her in a civil action. He testified that he explained to Mills that he was aware of other felony DUI cases in which the family members of victims made beneficial statements on behalf of the defendants at sentencing when the defendants had cooperated in the dram shop suits against the bars that had overserved the defendants. He testified that he warned Applicant that, if she cooperated in the dram shop suit and gave any statements, the statements could be used against her in her own criminal trial. He described his approach to the dram shop suit as a "let's wait and see thing. It wasn't a definite



yes, cooperate or a definite no, not cooperate.” He elaborated on his advice to Applicant, testifying that he would have needed to do a balancing test to see if any cooperation on Applicant’s part would have provided the prosecution with more evidence of Applicant’s guilt than it already had, and whether Applicant’s cooperation would have been damaging to her defense. When asked on cross-examination if he would ever advise a defendant to give a deposition in a civil case while the defendant was awaiting trial, Mauldin answered that his advice to the defendant would depend on the facts and circumstances of the individual case.

Mauldin testified that he received a call from Applicant in which she informed him that she had participated in a deposition in the dram shop suit the preceding week, and that she had taken a civil attorney with her to that deposition. He testified that this phone call was the first occasion on which he had been made aware by Applicant that the attorneys in the dram shop suit were attempting to depose her. He testified that, had he known of the deposition beforehand, he would have asked Applicant’s civil attorney for information about the attitude of the deceased victim’s family before advising Applicant whether or not she should cooperate in the dram shop suit. He testified that the testimony that Applicant provided during the deposition was generally consistent with the statements that she had already given to police officers following the crash.

Williams testified that Applicant was not a party in the dram shop suit. He testified that his assessment of the testimony that Applicant gave at the deposition was that it did not afford the prosecution with “a bunch of additional information” since most of the information supplied by Applicant during the deposition was otherwise accessible to the prosecution. He testified that Applicant’s deposition testimony was consistent with statements that she had already made to police after the crash, but added that he believed that the deposition testimony contributed to the trustworthiness of her statements to police because the deposition testimony, unlike the



statements to police, was given while Applicant was under oath. He testified that it was his opinion that the prosecution had sufficient evidence to convict Applicant, even without the deposition transcript.

This Court has reviewed Applicant's Exhibit One. This Court finds that Applicant was not a party to the civil action by the deceased victim's family and estate against the bars at which Applicant was drinking on the night of the crash. The transcript indicates that Applicant was represented at that civil deposition by Wesley William Waites, Jr., Esquire. At the civil deposition, Applicant testified that she had been to Carolina Ale House, Applebee's, Wild Wing Café, and the British Bulldog Pub on the night of the crash. She testified that she drank two cranberry vodkas with Red Bull at the Wild Wing Café, half a beer at the British Bulldog Pub, and two beers and a split shot of a drink named screaming orgasm at Carolina Ale House. She testified that she did not consume any alcoholic drinks at Applebee's, but ate a steak and mashed potatoes there. She testified that she had not had any alcoholic drinks on the afternoon of the crash. She testified that, all together, she had had around four-and-a-half alcoholic drinks on the night of the crash. She testified that she gave two statements to law enforcement officers on the night of the crash, and that her second statement was truthful, whereas her first statement had not been truthful. She testified that the second statement had been that she had drank four beers and either a full or half shot on the night of the crash. She denied that she had told one of the law enforcement officers that she had drank Grand Mariner on the night of the crash. She testified that Tripp Graham was her passenger after she left the bars to drive home, and that he was distracting her by trying to kiss her while she drove her car. Applicant answered questions at her deposition about her knowledge as to her personal tolerance to alcohol. She testified that she did not believe that her ability to drive was impaired on the night of the crash due to her

consumption of alcohol. She told Hall that he could check the video cameras at the bar if he needed corroboration as to the number of alcoholic drinks she had. Hall asked many questions regarding the actions of Applicant's drinking partners on the night of the crash.

Phillip E. Reeves, Esquire, who represented Applebee's, questioned Applicant briefly during the deposition about her claim not to have consumed any alcohol at Applebee's. J. Eric Cavanaugh, Esquire, represented Wild Wing Café at the deposition. He questioned Applicant about her use of social media, whether she had reached a plea deal in her criminal case. She reiterated the number and types of drinks that she had had on the night of the crash. She testified that her cell phone at the time of the crash had since been wiped in a factory reset by her sister at Applicant's request during Applicant's first week in jail. She testified that her first statement to police contained false information, but that her second statement was accurate.

William O. Sweeny, IV, Esquire, was representing Carolina Ale House at the deposition, and he questioned Applicant. He questioned Applicant about her driving record and past speeding tickets, and a ticket for minor in possession of alcohol. Applicant testified that Graham's attempts to kiss her distracted her while driving, leading to the crash. Warren C. Powell, Jr., Esquire, was representing the British Bulldog Pub at the deposition, and he also questioned Applicant. In response to his questions, Applicant testified that she drank only half a beer at the British Bulldog Pub because Graham caused her to spill the remaining half of her beer, and that she did not get another drink.

Hall then questioned Applicant again. She testified that she have a drinking problem before the crash and that she would drink alcohol as a way to cope with her anxiety and depression. He asked more questions about Applicant's estimation of the drunkenness of her drinking friends on the night of the crash. She testified that the receipts from the bars would have

provided an accurate accounting of the amount of alcohol served to Applicant and her drinking friends on the night of the crash, but that the receipts would not necessarily indicate which specific drinks had been consumed by each member of the group. Cavanaugh questioned Applicant again briefly about whether she or Graham had purchased drinks. Sweeney questioned Applicant again about her reason for thinking that Graham was intoxicated on the night of the crash.

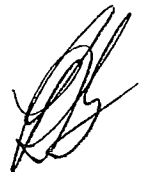
This Court finds that Mauldin's testimony about his advice to Applicant about the potential consequences of her cooperating with the plaintiffs in the dram shop suit and about Applicant's failure to notify him that she was being subpoenaed for a deposition is more credible than Applicant's. Although his testimony at the PCR hearing does not indicate that Mauldin provided Applicant with the blanket advice that she should not cooperate with the deceased victim's family in the dram shop suit or make any statements, his testimony indicates that he would have employed a balancing test in order to ascertain whether or not Applicant's cooperation would have been beneficial to her defense rather than harmful had he had more information about the dram shop suit. At the time, he advised that cooperation could potentially be beneficial but could also be harmful, and exercised caution. Mauldin credibly testified that Applicant did not alert him to the fact that she was being deposed until after she had already participated in the deposition. Applicant kept Mauldin the dark about the deposition until afterwards, and thereby deprived him of the opportunity to provide advice as to whether or not she should assert her right not to testify therein. Applicant's contention that she believed that she would receive a favorable sentence due to her cooperation with the plaintiffs in the dram shop suit could not have naturally been a consequence of Mauldin's advice to her, which was that he would not advise her on the issue until he had more information. Even if she did hold such a



belief, Williams credibly testified at the PCR hearing that he had advised her of the potential sentence that she could face if she pleaded guilty and such a belief would have been cured by the court's colloquy during her plea hearing.

This Court finds that Applicant has failed to show that she suffered prejudice from the performance of Mauldin with respect to her not exercising her right to remain silent during the civil deposition. At the PCR hearing, Applicant emphasized the significance of the results from the State's analysis of her blood to the prosecution's case. In contrast, when asked if she believed that she suffered prejudice from the prosecution's possession of the transcript from his deposition testimony, Applicant's only response was, "Yes." When her testimony is taken as a whole, this Court finds that Applicant put more weight on the prosecution's blood-alcohol evidence than she did on the prosecution's possession of the transcript from the civil deposition when she was considering whether to proceed to trial or to plead guilty.

This Court further finds, based upon its review of Applicant's Exhibit One, that the testimony Applicant gave at her deposition was substantially similar to the statements that she made to law enforcement after the crash, and that the prosecution would likely have attained no more benefit from her deposition testimony at trial than it would have from cross-examining her on her multiple statements to law enforcement. The testimony from both Mauldin and Williams was in agreement that anything that Applicant said during her deposition in the dram shop suit was not all that harmful to her criminal case. The prosecution had access to all of the evidence that it would have used at Applicant's trial independently of Applicant's deposition testimony, and Wagoner testified that he would have not been able to use the transcript from the deposition at trial for any purpose other than impeachment of Applicant, if she had decided to take the



stand. Wagoner also testified that Applicant's testimony during the deposition was mostly consistent with the statements that she had given to law enforcement after the crash.

This Court finds that Mauldin was not constitutionally ineffective for not advising Applicant to assert her right to remain silent at the civil deposition because Applicant has failed to demonstrate any deficiency in his performance and any resulting prejudice. This Court finds that, since Williams had not yet been hired by Applicant at the time of her deposition, he could not have been ineffective with respect to the civil deposition, and to the extent that this allegation is meant to be directed at his conduct, it is denied. As such, this allegation is denied and dismissed with prejudice.

***Applicant was afforded the ineffective assistance of counsel by her defense attorneys because she was not advised of her trial rights.***

This Court finds that Applicant's contention that she was not informed of her trial rights is without merit. Williams testified that he discussed evidentiary issues, among other things, with Applicant in preparation for trial. He testified that he and Applicant discussed one of his previous cases, in which there was an issue regarding the admissibility of blood-alcohol evidence due to the defendant's inability to independently test his blood after the State failed to preserve the second blood sample. Applicant testified at the PCR hearing about this conversation with Williams, further lending credibility to his testimony as to his informing Applicant of her trial rights. This Court finds that Williams' testimony about his informing Applicant of her trial rights is more credible than Applicant's testimony on this point.

At Applicant's plea hearing, Judge Hocker informed Applicant that, by pleading guilty, she would waive her right to a jury trial, her right to remain silent, her right to have Williams challenge the prosecution's case, her right to the presumption of innocence, and her right to be proven guilty beyond a reasonable doubt. Applicant affirmed that she understood these rights and

that she wanted to waive them and plead guilty. At the PCR hearing, Applicant explicitly affirmed that she understood that she was waiving her right to have her defense counsel move before the court on her behalf and cross-examine the prosecution's witnesses at trial by pleading guilty. Even if Williams had not adequately informed Applicant of her trial rights, Judge Hocker's colloquy would have cured the deficiency.

This Court finds that neither of Applicant's attorneys was constitutionally ineffective for not advising Applicant of her trial rights because Applicant has failed to demonstrate any deficiency in their performance and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

*Applicant was afforded the ineffective assistance of counsel by her defense attorneys because she was advised that she would receive a five-year sentence if she pleaded guilty or perhaps be sentenced to house arrest only.*

Applicant testified at the PCR hearing that she was told before entering her guilty plea that she was to be sentenced to house arrest. She testified that she was told that she had been overcharged and that she would probably be sentenced to house arrest if she pleaded guilty. She did not identify the source of these statements in her testimony.

Williams testified that he advised Applicant of the potential sentences she could face and that he did not promise any particular sentence to her. Applicant did not testify that Williams had promised her house arrest, but even if she mistakenly did not attribute during her testimony the promise to Williams, this Court finds that Williams' testimony about his advice to Applicant is more credible than hers. However, even if Williams had not properly informed Applicant of the potential penalty she could face after pleading guilty, Judge Hocker's colloquy would have cured the deficiency. At her plea hearing, Applicant affirmed to Judge Hocker that she could be sentenced to as many as twenty-five years in prison. Applicant affirmed at the PCR hearing that

Judge Hocker had explained to her the potential sentence to which she would be exposed after pleading guilty, had not told her that she would be sentenced to house arrest, and admitted that she affirmed Judge Hocker that no one had promised her that she would receive any particular sentence by pleading guilty.

This Court finds that Applicant was adequately informed about the potential sentence she could receive if she pleaded guilty. The transcript from Applicant's plea hearing and the testimony from the PCR hearing shows that Applicant knew that she could be sentenced a prison term after pleading guilty. This Court finds that neither of Applicant's attorneys was constitutionally ineffective with respect to advice about potential sentences because Applicant has failed to demonstrate any deficiency in their performance and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

***Applicant was afforded the ineffective assistance of counsel by her defense attorneys because they did not adequately consult with her.***

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in not adequately consulting with her about her case and that she was prejudiced thereby. She testified at the PCR hearing that, if Mauldin and Williams had explained to her that legal issues surrounding the blood-alcohol evidence, that she would not have pleaded guilty and would have insisted on proceeding to trial.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, "[a] criminal 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." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for

reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions. . ." Strickland, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. See Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997).

This Court finds that neither Mauldin nor Williams was constitutionally ineffective for failing to adequately consult with Applicant. Both attorneys testified as to their conversations with Applicant about the evidence in her case and potential defenses. Mauldin's conversations with Applicant about her case were appropriate for the procedural posture of Applicant's case at the time of his representation of her. Williams' conversations with Applicant were appropriate in light of the approaching trial and Applicant's decision to plead guilty rather than proceeding to trial. Applicant's own testimony indicates that the attorneys had multiple discussions with her about the evidence and her defense thereto. As such, this allegation is denied and dismissed with prejudice.



***Applicant was afforded the ineffective assistance of counsel by her defense attorneys because they did not convey to her all plea offers extended by the prosecution.***

“[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms a conditions that may be favorable to the accused.” Missouri v. Frye, 566 U.S. 134, 145, 132 S.Ct. 1399, 1408 (2012); see Davie v. State, 381 S.C. 601, 610, 675 S.E.2d 416, 421 (2009) (finding that counsel’s failure to communicate a plea offer was deficient), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Applicant testified at the PCR hearing that Williams had her sit outside a courtroom while he met with Wagoner, and that he told her afterwards that he would not allow Applicant to accept a plea offer that is not expressly conveyed, and she testified that she did not know what was said in the courtroom; later, Applicant testified that “[t]here were no plea offers.” Wagoner testified that the prosecution did not extend any plea offers to Applicant, other than offering that he would not request a specific sentence while simultaneously allowing law enforcement officers and the victims speak freely at Applicant’s sentencing, if Applicant were to plead guilty. Williams testified at the PCR hearing that the prosecution did not extend any plea offers to him during the course of his representation of Applicant, and that he did not believe that any were extended before he was retained. This Court finds that no plea offers were extended to Applicant. This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to the communication of plea offers to Applicant because Applicant has failed to demonstrate that any were extended. As such, this allegation is denied and dismissed with prejudice.

***The prosecution engaged in inappropriate “judge shopping.”***

During the PCR hearing, Williams produced a printout of an email chain, which was then admitted into evidence as Applicant’s Exhibit Two. It showed a series of emails between Wagoner, Williams, and Judge Keesley’s law clerk about the bifurcation of Applicant’s plea

hearing into a portion for the entry of the guilty plea and another for sentencing. At the supplemental PCR hearing, Williams testified that he was not particularly concerned about the fact that Applicant would be sentenced by a judge other than the one who accepted the entry of her guilty plea. He testified that he believed that Wagoner was more concerned with the role of the various judges than he. When asked on cross-examination whether he had objected to the sentencing of Applicant by Judge Keesley, Williams testified that he had not done so. Williams also addressed Wagoner's testimony about the general policy of the Eleventh Circuit Solicitor's Office that a defendant who pleads guilty after his case has been set for trial go before the assigned trial judge to enter the guilty plea, testifying that he believes that there have been instances in which the Solicitor's Office has departed from that practice.

Applicant testified at the PCR hearing that she believes that she should have been sentenced by Judge Hocker since he accepted the entry of her guilty plea. She speculated that she was prejudiced by the bifurcation, which she described as "judge shopping." She testified that the deceased victim's father had made statements to her that she believes would have helped her had Judge Keesley heard them before sentencing her, but that the father was present only at the plea hearing and not the sentencing hearing.

Wagoner testified that it is the general policy of the Eleventh Circuit Solicitor's Office that, once a case has been set on the trial roster, if the defendant thereafter decides to plead guilty before trial is called is taken before the trial judge to plead. In this case, Applicant was set for trial before Judge Keesley when Applicant indicated that she had decided to plead guilty instead of proceeding to trial. Wagoner's testimony was that he deviated from the general practice of the Solicitor's Office by scheduling Applicant's plea hearing before Judge Hocker, who was the judge presiding over the plea roster, because Wagoner was worried that Applicant would change



her mind by deciding to proceed to trial if she were not allowed to plead guilty quickly. He testified that the purpose of having Applicant enter her guilty plea before Judge Hocker was to save the victims and surviving family members from the stress of a trial. He testified that the parties agreed to bifurcate the plea hearing.

The Court of Appeals has had the chance to consider a case in which there were accusations that the solicitor had engaged in judge shopping. State v. Cheatem, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002). Although the issue in Cheatem was whether the trial court erred in refusing to recuse himself after the solicitor called the case to trial before him when a different judge had given an impression to the parties that the other judge would rule in favor of the defendant on evidentiary matters, the Court reasoned that, because the defendant did not allege or demonstrate that the trial court had engaged in any impropriety, the trial court did not err in refusing to recuse himself. Id. at 111-12, 561 S.E.2d at 624. Applicant did not object to the bifurcation at the time of her plea hearing or during her sentencing. During her plea hearing, Applicant affirmed to Judge Hocker that she knew that the parties had agreed to deter sentencing and that a judge other than Judge Hocker would sentence Applicant.

This Court finds that Williams was not deficient in not objecting to the bifurcation of Applicant plea hearings. His testimony indicated that he was not concerned by the bifurcation at the time of Applicant's plea, and that he did not believe that Applicant's sentence was greater due to her being sentenced by Judge Keesley than Judge Hocker. Further, the record shows that Applicant did not raise any objections to the bifurcation at the time, indicating her acceptance of the bifurcation.

This Court finds that Wagoner's testimony about the general practice of the Eleventh Circuit Solicitor's Office regarding having defendants plead guilty before the assigned trial judge

is credible. This Court finds that Wagoner's testimony about the departure from that general practice in Applicant's case is credible. He testified that the exception to the general practice was in having Judge Hocker accept Applicant's guilty plea, and that this exception was made because he feared that Applicant would change her mind and decide to proceed to trial if the plea was not accepted earlier than it would be if the parties were to wait for the original trial date. This Court finds that Wagoner is in a better position to testify as to the general practice of the Eleventh Circuit Solicitor's Office's with regard to the roster and the reasons for exceptions thereto than Williams. This Court finds that Applicant has failed to demonstrate that the solicitor behaved inappropriately in suggesting the bifurcation.

This Court finds that Applicant has failed to demonstrate that she suffered prejudice by the bifurcation of her plea hearing. Applicant did not produce any evidence that the sentence imposed by Judge Keesley was harsher than a sentence that she would have received from Judge Hocker's bench, or that Judge Keesley's sentence was inappropriate in any respect. Even though Applicant's hearing was bifurcated, she received substantial support at her sentencing before Judge Keesley. Two witnesses made statements on Applicant's behalf at sentencing. Williams presented Judge Keesley with multiple letters written to court on Applicant's behalf.

This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to the bifurcation between the entry of Applicant's guilty plea and her sentencing because Applicant has failed to demonstrate any deficiency in their performance and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.



**CONCLUSION**

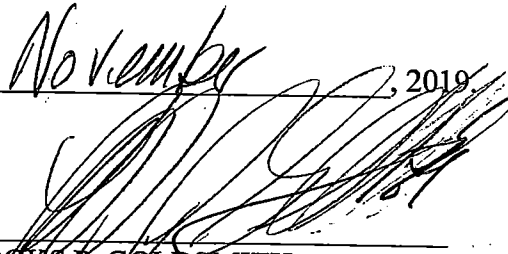
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.


This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. Rule 203 and 243, 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 post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9 day of November, 2019

  
\_\_\_\_\_  
BROOKS P. GOLDSMITH  
Presiding Judge

  
\_\_\_\_\_, South Carolina

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2018CP3201575**

Destiny H Mills 374576		South Carolina State of	
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by:</b>	<b>Attorney for:</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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.  See Page 2 for additional information.
- 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- 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 JUDGMENT 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 (List amount(s) below)

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.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge

Judge Code

11/26/2019

Date

**For Clerk of Court Office Use Only**

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

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

Taylor Zane Smith PO Box 11549 Columbia, SC 29211

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

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**Court Reporter**

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**Lisa M. Comer - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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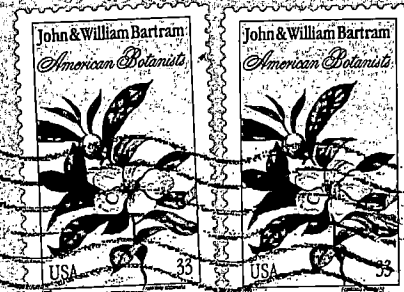
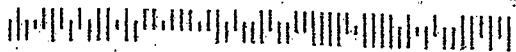
**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Columbia PS DC 390  
FRI 03 JAN 2020 PM

TOMMY A. THOMAS  
ATTORNEY AT LAW  
P.O. BOX 88  
IRMO, SC 29063

The South Carolina Supreme Court  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211