THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Jocelyn Newman, Circuit Court Judge

Case No.: 2017-CP-40-04517

Fred Jack Sanders, Petitioner,

vs.

State of South Carolina Respondent.

NOTICE OF APPEAL

Fred Jack Sanders, Petitioner, appeals the Order of Dismissal issued by the Honorable Jocelyn Newman on May 16, 2019, which was filed on May 17, 2019. Petitioner also appeals the Order denying Applicant's Motion Pursuant to Rule 59 (a) & (e), SCRCP, which was issued on March 24, 2020 and filed on March 30, 2020. Petitioner, through counsel, received notice of the entry of the latter Order on April 2, 2020.

Respectfully submitted,

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April 28, 2020

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Fred Jack Sanders (SCDC #300135), Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-40-04517 **ORDER OF DISMISSAL**

This matter came before the Court upon Application for Post-Conviction Relief filed by Fred Jack Sanders ("Applicant") on July 28, 2017, and amended on August 14 and November 19, 2018. An evidentiary hearing was convened at the Richland County Judicial Center on December 7, 2018. Applicant appeared along with his counsel, Tricia A. Blanchette, Esquire. The State of South Carolina ("the State") was represented by Assistant Attorney General Lindsey McCallister, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED.

BACKGROUND

Applicant is currently confined at the South Carolina Department of Corrections pursuant to orders of commitment issued by the Richland County Clerk of Court. He was indicted at the September 2013 term of the Richland County Grand Jury for manufacturing methamphetamine, third or subsequent offense (2013-GS-40-5845); possession with intent to distribute methamphetamine third or subsequent offense (2013-GS-40-5846); possession with intent to distribute crack cocaine, third or subsequent offense (2013-GS-40-5848); possession of a firearm by a person convicted of a crime of violence (2013-GS-40-5849); possession of a controlled

substance (2013-GS-40-5850); and possession with intent to distribute heroin, third or subsequent offense (2013-GS-40-5851). Applicant initially pled not guilty to all charges.

Applicant's jury trial began on March 17, 2014. He was represented by Assistant Public Defenders Lucas D. Hawkes, Esquire ("Trial Counsel") and John Christopher Shipman, Esquire. Following pre-trial hearings but before the jury was sworn, Applicant pled guilty to the single charge of possession of a firearm by a person convicted of a crime of violence. Sentencing on that charge was withheld until the completion of the jury trial as to Applicant's remaining charges.

On March 19, 2014, the jury returned verdict of guilty as to the charges of manufacturing methamphetamine, possession with intent to distribute heroin, and possession of a controlled substance. As to the charge of possession with intent to distribute methamphetamine, the jury found him guilty of the lesser offense of possession of methamphetamine. Similarly, as to the charge of possession with intent to distribute crack cocaine, the jury found Applicant guilty of the lesser offense of possession of crack. Judge Cooper sentenced Applicant to terms of imprisonment for each of the charges as follows: six months for possession of a controlled substance; five years for each charge of possession of methamphetamine, possession of crack cocaine, and possession of a firearm; and twenty years each for manufacturing methamphetamine and possession with intent to distribute heroin. All sentenced were to be served concurrently.

Applicant timely filed a Motion for Reconsideration, asking that the Court reconsider the sentences imposed at trial. A hearing was convened regarding that motion on June 9, 2014. As a result, Judge Cooper reduced the twenty-year sentences to fifteen years each, still to be served concurrently.

Applicant then filed and perfected a Notice of Appeal. Applicant's convictions were affirmed in an unpublished *per curiam* opinion which was filed on December 14, 2016. The Remittitur was issued on December 30, 2016.

On July 28, 2017, Applicant filed the instant Application for Post-Conviction Relief ("PCR Application"). Two amendments to the PCR Application were filed on August 14 and November 19, 2018. In those filings, Applicant alleges that Trial Counsel was ineffective in his representation in the following ways[1]:

1. Failure to ensure that all plea offers were properly and completely conveyed to Applicant and that Applicant knowingly and voluntarily rejected all plea offers.

2. Failure to address matters related to the search warrant and confidential informant prior to and during trial.

3. Failure to be properly prepared for trial and/or raise discovery issues prior to trial.

4. The handling of witness Sara Brassell and failure to request a mistrial or object to the curative instruction on the record on the basis raised on direct appeal.

During the evidentiary hearing in this matter, both Applicant and Trial Counsel testified. The Court found the testimony of Trial Counsel to be more credible than that of Applicant. In addition to the PCR Application and its amendments, the Court reviewed and considered the State's Return (dated January 24, 2018 and filed on January 26, 2018), the transcript of the guilty plea and jury trial, the transcript of the hearing on Applicant's Motion for Reconsideration, the exhibits offered by Applicant during the evidentiary hearing, records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

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[1] In the initial PCR Application, Applicant alleged ineffective assistance of appellate counsel. However, he expressly waived and withdrew this claim at the evidentiary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Where an application for PCR alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* 466 U.S. at 686; *see Butler v. State*, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland,* 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. *Bell v. State,* 321 S.C. 238 (1996); *see also Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRCP.

The court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). 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.

I. Plea Offer

Applicant first alleges that Trial Counsel failed to convey to him the plea offers made by the State and failure to ensure that Applicant knowingly and voluntarily rejected those plea offers

before the jury trial commenced. According to Applicant, this rendered Trial Counsel ineffective. This Court disagrees.

At the evidentiary hearing, Trial Counsel testified that he met with Applicant nearly fifteen times prior to trial. In those conversations, they discussed Applicant's drug use and addiction. He didn't believe that Applicant was a drug dealer, as was alleged by the State. Despite that, Trial Counsel testified that the State was not interested in allowing Applicant to enter the Drug Court program or the Mental Health Court program. Instead, the State hoped to see Applicant spend some time in prison.

Trial Counsel stated that he did, in fact, convey the State's plea offer to Applicant. He specifically recalled telling Applicant that the best plea offer from the State was for Applicant to plead guilty "straight up" to possession with intent to distribute heroin, second offense. Trial Counsel's recollection was refreshed by the portion of the trial transcript in which he told Judge Cooper that the State had previously offered a maximum ten-year sentence if Applicant pled to the heroin offense, several drug possession charges and the gun charge pre-trial. Although Applicant rejected that offer, Trial Counsel admitted that he is unsure that he told Applicant that the offer had officially been withdrawn. Nevertheless, with the rejection of the plea offer, their trial strategy was to demonstrate to the jury that Applicant was simply a drug user with an addiction and not a drug dealer, hoping that they would have some sympathy.

Applicant equivocated in his testimony on this issue. At one point in his testimony, he stated that he first learned of the State's plea offer after he was convicted; however, Applicant later admitted that Trial Counsel had previously told him about the ten-year plea offer during one of their meetings in the multipurpose room at the jail. Applicant did testify that he inquired about Drug Court in lieu of prison, but that apparently wasn't a feasible option for him. Applicant denied

knowing that the ten-year offer had been withdrawn or that a "straight-up" plea was an option. According to Applicant, if he had known he would have pled guilty in hopes of receiving a probationary sentence with required drug treatment.

Finally, Trial Counsel testified that he advised Applicant that he would have to serve eighty-five percent of any sentence received after pleading guilty to possession with intent to distribute heroin, second offense. He also told Applicant that he would be eligible for parole if he pled guilty, although Applicant denied that conversation occurred. In support of this claim, Applicant offered an affidavit from Christina Bigelow, Deputy General Counsel at SCDC, which supports Trial Counsel's explanation of the sentence computation. Nevertheless, Applicant maintained that Trial Counsel did not correctly explain this to him and, but for the erroneous explanation, he would have accepted the plea offer. In the end, Applicant felt that he simply didn't have enough time to decide whether to accept any of the plea offers.

The Supreme Court of South Carolina has held that a defendant has the right to effective assistance of counsel during plea negotiations. *See, e.g., Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009). In the *Strickland* analysis, our court have held that the failure to convey a plea offer to the accused constitutes deficient performance, and the difference in the sentence received by the accused versus the sentence associated with the plea offer is proof of prejudice. *See, e.g., id.* However, where the issue is one of counsel's advice regarding a properly-conveyed plea offer or misinformation about the consequences of a guilty plea, the petitioner must prove both prongs of the *Strickland* test. *See, e.g., Judge v. State*, 312 S.C. 554, 471 S.E.2d 146 (1996).

In this case, we find the testimony of Trial Counsel to be credible as to his communication of plea offers to Applicant, particularly in light of Applicant's equivocation on the issue. Therefore, the issue before the Court is that of Trial Counsel's advice to Applicant regarding the

State's plea offers. Trial Counsel articulated a clear strategy with respect to his advice – to describe Applicant as a user and hope for his conviction only on possession charges, not on charges of manufacturing or distribution of drugs. Based on the testimony of Trial Counsel and Applicant, the Court finds no evidence from which it could conclude that Applicant didn't receive sufficient representation. *Id.* at 561, 471 S.E.2d at 150, *overruled on other grounds by Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000) (counsel's advice to reject a plea agreement does not fall below the reasonably effective assistance standard simply because, in hindsight, the advice was wrong or the attorney's trial tactics backfired). Therefore, this allegation is denied and dismissed.

II. Search Warrant and Confidential Informant

Next, Applicant alleges that Trial Counsel was ineffective due to his "failure to address matters related to the search warrant and confidential informant prior to and during trial."

At trial, the State argued that a confidential informant had made a controlled drug buy from Applicant. Applicant was not criminally charged for that incident, but it provided the probable cause justification for the Richland County Sheriff's Department ("RCSD") obtaining and executing a search warrant at the residence where Applicant lived with his mother. RCSD seized drugs, evidence of a methamphetamine lab, and drug paraphernalia from Applicant's bedroom.

Prior to trial, Trial Counsel requested a continuance. He argued that pursuant to *State v. Burns*,[2] the State was required to disclose information about the confidential informant and that he would then need sufficient time to interview the informant prior to trial. At the evidentiary hearing, Trial Counsel testified that he "probably didn't attack that as much as [he] should've;" however, he did raise the issue prior to trial. Unfortunately, the trial court disagreed with Trial Counsel's analysis of the issue and denied his motion.

[2] 294 S.C. 338, 364 S.E.2d 465 (1988)

The Court finds that Trial Counsel did, in fact, address these issues both prior to and during trial. Although in hindsight he may believe he could have done a better job, that sentiment does not amount to proof that counsel was ineffective in his representation. While an attorney's failure to object to certain evidence can result in effective assistance, that is not true in every case; and even when deficiency is found, prejudice must still be shown. *See, e.g., Bruno v. State*, 347 S.C. 446, 556 S.E.2d 393 (2001). Applicant has failed as to both elements – Trial Counsel did object, and no prejudice has been shown. Therefore, this allegation is denied and dismissed.

III. Trial Preparation

Applicant contends that Trial Counsel was not properly prepared for trial and that he failed to raise certain discovery issues prior to trial, rendering his representation deficient. The Court disagrees.

At the evidentiary hearing, Trial Counsel testified that he was, in fact, prepared for trial. He met with Applicant approximately fifteen times, reviewed discovery with Applicant, and discussed certain potential discovery issues with him. Although this was the first time Trial Counsel participated in a methamphetamine trial, he had prior experience trying drug-related cases.

Trial Counsel admitted that he was aware of certain problems with the discovery in this case, including the destruction of potential evidence and the existence of a witness for whose statement he was unable to obtain from the State. Trial Counsel argued at trial that he had learned of the destruction only one week earlier. While he was surprised that the methamphetamine waste collected by RCSD had been destroyed, he deemed it "a good surprise" because it gave him a "weapon" to use to Applicant's advantage. Although Trial Counsel objected and requested a continuance on this basis, the trial court disagreed.

The Court finds the testimony of Trial Counsel to be credible. It appears that his meetings with Applicant were numerous and thorough, and that he was properly prepared for trial. Any discovery issues were a surprise to Trial Counsel and, in the face of that surprise, he made strategic decisions as to how best to react. Simply put, Applicant has offered no evidence from which the Court can find that Trial Counsel's performance fell below the standard of reasonableness "under prevailing professional norms." Additionally, in order to demonstrate that counsel was inadequately prepared for trial, Applicant must present evidence showing how additional preparation would have had an effect on the result at trial. *See, e.g., Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant has not done that. Therefore, this allegation is denied and dismissed.

IV. Sara Brassell

Applicant's final allegation is that Trial Counsel was ineffective in his "handling of witness Sara Brassell" and for his failure to request a mistrial. Again, the Court disagrees.

At trial, Brassell testified that she knew Applicant because she had been to his home for drugs. Brassell was in the home with Applicant when RCSD executed the search warrant which led to his arrest. Once the State elicited this testimony from her, Trial Counsel objected to the lack of notice of this witness and her "prior bad act" testimony, which was sustained by the court. Although a curative instruction was given, instructing the jury to disregard Brassell's testimony, Trial Counsel also moved for a mistrial. That motion was denied. When asked why he did not object to Brassell before trial began, Trial Counsel testified that he believed "it would make a bigger splash" if he waited and that he wasn't even sure if she would ultimately testify. He also stated that he made a strategic decision to wait until Brassell testified about something substantive

so that he would make a strong argument about it having been improper. Finally, Trial Counsel testified that he had set his sights on a mistrial.

Attorneys must be given leeway to make reasonable strategic decisions. *Strickland*, 466 U.S. 668. "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). "Judicial scrutiny of counsel's performance must be highly deferential." *Strickland*, 466 U.S. at 689.

Here, Trial Counsel articulated a reasonable trial strategy. In particular, he evaluated the potential outcomes of pretrial motions, objections, and moving for a mistrial. It is clear, based on his testimony, that he made the reasonable, strategic decisions that he thought were best under the circumstances. The Court can find neither deficiency nor prejudice to Applicant with respect to this allegation; therefore, this allegation is denied and dismissed.

V. Other Allegations

As to any and all allegations that were raised in the PCR Application or at the evidentiary hearing but are not specifically addressed in this order, the same are denied. The Court finds that Applicant failed to present any evidence regarding any such allegations and has, therefore, abandoned them.

CONCLUSION

Based on the foregoing, the Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant the requested relief. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

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

IT IS, THEREFORE, ORDERED that the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.

JOCELYN T. NEWMAN
Presiding Judge

May 16, 2019
Columbia, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4004517

FRED JACK SANDERS (SCDC# 300135)

PLAINTIFF(S)

STATE OF SOUTH CAROLINA

DEFENDANT(S)

Submitted by: NEWMAN, J.

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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

RICHLAND COUNTY FILED
2020 MAR 30 AM 11:09
JEANETTE W. WALKER C.C.P., G.S., & F.C.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

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.

Jocelyn Newman
Circuit Court Judge

2757
Judge Code

March 24, 2020
Date

SCANNED

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of May, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT Jeanette W McBride

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.

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.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Fred Jack Sanders (SCDC #300135), Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2017CP4004517 **ORDER DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(A) & (E), SCRCP**

This matter came before the Court upon "Motion Pursuant to Rule 59(a) & (e), SCRCP," which was filed by Fred Jack Sanders ("Applicant") on May 28, 2019, and supplemented on June 10, 2019. In the motion, Applicant asks this Court to reconsider the matters contained in its Order of Dismissal, which was entered on May 17, 2019. For the reasons set forth below, the motion for reconsideration is DENIED.[1]

BACKGROUND

Applicant is currently confined at the South Carolina Department of Corrections ("SCDC"). After being arrested and indicted for a number of offenses, Applicant pled guilty on March 17, 2014, to the charge of possession of a firearm by a person convicted of a crime of violence. On the same day, he was tried before a jury on the remaining charges. Upon conclusion of the trial on March 19, 2014, the jury found Applicant guilty of manufacturing methamphetamine, possession with intent to distribute heroin, possession of a controlled substance, possession of methamphetamine, and possession of crack.

[1] The Court decides this motion without oral argument pursuant to Rule 59(f), SCRCP.

The Honorable G. Thomas Cooper, Jr., sentenced Applicant to terms of imprisonment for each of the charges as follows: six months for possession of a controlled substance; five years for each charge of possession of methamphetamine, possession of crack cocaine, and possession of a firearm; and twenty years each for manufacturing methamphetamine and possession with intent to distribute heroin. All sentenced were to be served concurrently. Applicant was represented by Assistant Public Defenders Lucas D. Hawkes, Esquire ("Trial Counsel") and John Christopher Shipman, Esquire, for both the guilty plea and jury trial.

Applicant timely filed a Motion for Reconsideration, asking that Judge Cooper reconsider the sentences imposed at trial. A hearing was convened regarding that motion on June 9, 2014. As a result, Judge Cooper reduced the twenty-year sentences to fifteen years each, still to be served concurrently.

On July 28, 2017, Applicant filed an Application for Post-Conviction Relief ("PCR Application"). Two amendments to the PCR Application were filed on August 14 and November 19, 2018. An evidentiary hearing was conducted on December 7, 2018, and by Order dated May 17, 2017, this Court denied the PCR Application and dismissed it with prejudice. Applicant now asks that this Court reconsider its decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Plea Offer

Applicant contends that the Court failed to fully consider his argument that Trial Counsel failed to convey to him the plea offers made by the State and to ensure that he knowingly and voluntarily rejected those plea offers before the jury trial commenced. Applicant believes that he is entitled to a new trial or resentencing pursuant to *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009). The Court disagrees.

State, 347 S.C. 446, 556 S.E.2d 393 (2001). The Court does not even find deficiency here, much less prejudice. Therefore, Applicant's motion for reconsideration of this issue is denied.

III. Additional Arguments

Applicant also asks that the Court reconsider its conclusions regarding Trial Counsel's trial preparation, discovery issues, and the handling of trial witness Sara Brassell. Because Applicant simply reiterates the same arguments found in his PCR Application and the amendments thereto, the Court need not address these arguments again. Therefore, Applicant's motion for reconsideration of these issues is denied.

CONCLUSION

Based on the foregoing, the Court again finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant the requested relief. Therefore, the Application for Post-Conviction Relief was properly denied, as is the instant motion for reconsideration.

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

IT IS, THEREFORE, ORDERED that Applicant's "Motion Pursuant to Rule 59(a) & (e), SCRCP" is DENIED.

IT IS FURTHER ORDERED that Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.

JOCELYN T. NEWMAN
Presiding Judge

March 24, 2020
Columbia, South Carolina.