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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

L. Casey Manning, Presiding Circuit Judge – Newberry County

\_\_\_\_\_  
C/A No. 2015-CP-36-347  
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MANUEL S. HERNANDEZ (#363633),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

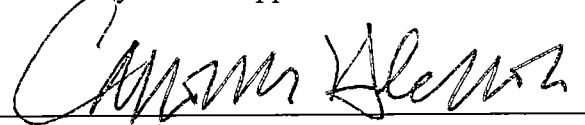
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NOTICE OF APPEAL  
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Manuel S. Hernandez appeals the Order of Dismissal issued by the Honorable L. Casey Manning on December 2, 2019, and the Order Denying Applicant's Motion to Reconsider Pursuant to Rule 59(e), SCRCP issued on July 16, 2020. This matter was heard in Greenwood County on October 16, 2019. The Appellant's trial counsel received the Order Denying Applicant's Motion to Reconsider from the S.C. Office of the Attorney General on Friday, July 31, 2020.

**THE HENDERSON LAW FIRM, P.C.**

Trial Attorney for the Appellant

By:



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Greenwood, South Carolina

July 31, 2020

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S.C. Commission on Indigent Defense  
Appellate Division  
1330 Lady Street, Suite 401  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )  
 )  
Manuel S. Hernandez, )  
SCDC No. 363633, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT

2015-CP-36-347

**ORDER DENYING APPLICANT'S MOTION  
TO RECONSIDER PURSUANT  
TO RULE 59(e) SCRPC**

FILED  
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CLERK OF COURT

This matter comes before this Court by way of Applicant's "Motion to Reconsider," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

**I. PROCEDURAL HISTORY**

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the August 2014 term of the Newberry County Grand Jury for second-degree criminal sexual conduct with a minor (victim 11-14 years of age inclusive) (2014-GS-36-0489). Applicant was represented by Charles Verner, Esquire. On April 6, 2015, Applicant pled guilty as indicted before the Honorable Eugene C. Griffith, Jr., and was sentenced to imprisonment for twelve years. Applicant did not appeal his conviction or sentence.

**II. CURRENT APPLICATION**

In his original application for post-conviction relief, Applicant alleged he is being held unlawfully for the following reasons:

**Ineffective Assistance of Counsel**

1. "Counsel failed to conduct meaningful independent investigation"
2. Failed to inform Applicant of negotiated plea agreements

3. "Failed to apprise Applicant of the many exclusionary mechanisms available to attack the validity of the State's evidence and any statements given by Applicant or witnesses"
4. "Failed to explain the charges to Applicant and the facts of these charges in relationship to the applicable law"
5. "Failed to formulate any defense strategy and took the path of least resistance by coercing Applicant to plead guilty"
6. "Failed to withdraw Applicant's guilty plea"
7. "Failed to fully apprise Applicant of his constitutional rights"

#### Involuntary Guilty Plea

On October 10, 2019, Applicant served upon Respondent an amended PCR application, adding the following claims:

#### Ineffective Assistance of Counsel

1. Failure to inform Applicant of his deportation risks;
2. Failure to obtain Victim's medical records;
3. Failure to suppress Applicant's statements; and
4. Failure to investigate and prepare the case for trial

A hearing was held on October 16, 2019, at the Greenwood County Courthouse. At the outset of the hearing, Applicant stated he was going forward on the allegations contained in his original and amended application. On October 17, 2019, this Court issued a Form 4 Order requesting each party submit proposed Orders within 30 days. Both parties submitted orders as requested. By Order dated December 2, 2019, The Honorable L. Casey Manning denied and dismissed Applicant's application with prejudice. On May 28, 2020, Respondent obtained the Order from the Public Index and served the order upon Applicant. On June 7, 2020, Applicant served a Motion to Reconsider pursuant to Rule 59(e) SCRPC. Respondent filed a Return to Applicant's motion on July 8, 2020.

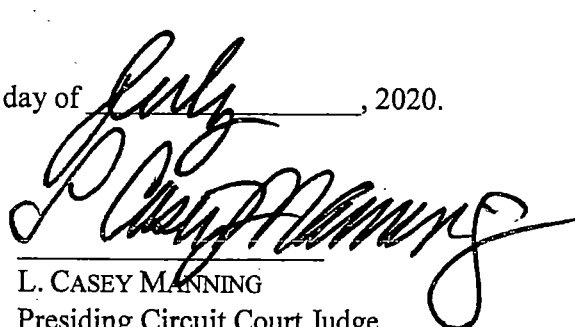
### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court's find that its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter,

this Court finds there is no basis for altering or amending its prior ruling.<sup>1</sup> Therefore, this Court hereby denies Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 16 day of July, 2020.

  
L. CASEY MANNING  
Presiding Circuit Court Judge  
Eighth Judicial Circuit

July 16, 2020

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<sup>1</sup> The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCF.

STATE OF SOUTH CAROLINA )  
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COUNTY OF NEWBERRY )  
 )  
Manuel S. Hernandez, )  
S.C.D.C. No. 363633, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
OF THE EIGHTH JUDICIAL CIRCUIT

2015-CP-36-347

**ORDER OF DISMISSAL**

The matter before this Court is an action for post-conviction relief (PCR). Manuel S. Hernandez (Applicant) commenced this PCR action July 2, 2015. The State made its return on May 9, 2019. The Court held an evidentiary hearing October 18, 2019, at the Greenwood County Courthouse before the undersigned. Applicant was present and represented by Carson M. Henderson, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented the State.

At the PCR hearing, Applicant testified on his own behalf. Charles Vermuele Verner, Esquire, (Counsel) also testified at the hearing. After reviewing the testimony presented and the relevant portions of the record before the Court, for the reasons discussed below, this Court finds Applicant's allegations are without merit and concludes Applicant failed to meet his burden. Therefore, this Court denies relief and dismisses this action with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the August 2014 term of the Newberry County Grand Jury for second-degree criminal sexual conduct

with a minor (victim 11-14 years of age inclusive) (2014-GS-36-0489). Applicant was represented by Charles Verner, Esquire. On April 6, 2015, Applicant pled guilty as indicted before the Honorable Eugene C. Griffith, Jr., and was sentenced to imprisonment for twelve years. Applicant did not appeal his conviction or sentence.

In his original application for post-conviction relief, Applicant alleged he is being held unlawfully for the following reasons:

#### Ineffective Assistance of Counsel

1. "Counsel failed to conduct meaningful independent investigation"
2. Failed to inform Applicant of negotiated plea agreements
3. "Failed to apprise Applicant of the many exclusionary mechanisms available to attack the validity of the State's evidence and any statements given by Applicant or witnesses"
4. "Failed to explain the charges to Applicant and the facts of these charges in relationship to the applicable law"
5. "Failed to formulate any defense strategy and took the path of least resistance by coercing Applicant to plead guilty"
6. "Failed to withdraw Applicant's guilty plea"
7. "Failed to fully apprise Applicant of his constitutional rights"

#### Involuntary Guilty Plea

On October 10, 2019, Applicant served upon Respondent an amended PCR application, adding the following claims:

#### Ineffective Assistance of Counsel

1. Failure to inform Applicant of his deportation risks;
2. Failure to obtain Victim's medical records;
3. Failure to suppress Applicant's statements; and
4. Failure to investigate and prepare the case for trial

A hearing was held on October 18, 2019, at the Greenwood County Courthouse. At the outset of the hearing, Applicant stated he was going forward on the allegations contained in his original and amended application.

## APPLICABLE LAW

### *Ineffective Assistance of Counsel*

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application 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.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any 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, 300 S.C. 115. When there has been a guilty plea, the applicant must prove that but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985).

### *Involuntary Guilty Plea*

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant’s right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

#### **Ineffective Assistance of Counsel**

##### *1. Failure to Explain to Applicant his Deportation Risks*

Applicant alleges Counsel was ineffective for failing to discuss Applicant’s deportation risks with him.

Counsel testified it was likely he discussed Applicant’s deportation risks with Applicant “from the beginning” of Applicant’s case. Counsel testified he was certain he told Applicant he would likely be deported due to the severity of his charges. Counsel testified he told Applicant

there was a chance he could get a lower prison sentence since Applicant would likely be deported after serving time, but he could not say for certain. Counsel testified he typically tells clients who are facing immigration issues that immigration courts make the determination regarding immigration matters at a later time. Counsel testified he did not take any continuing education specifically regarding deportation issues, however, he attended various courses that discussed deportation and immigration issues. Applicant alleges Counsel did not discuss deportation with him prior to his guilty plea hearing.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony not credible. This Court finds Counsel's performance was not deficient. In Padilla v. Kentucky, the United States Supreme Court held that where the law is not succinct and straightforward, a criminal defense attorney must advise a non-citizen client that pending criminal charges may carry a risk of adverse immigration consequences. 130 S.Ct. 1473, 559 U.S. 356 (2010). This Court finds counsel adequately complied with the Court's ruling in Padilla by advising the Applicant that he could face deportation as a result of pleading guilty. Counsel credibly testified he discussed Applicant's deportation risks, and Counsel mentioned Applicant's deportation risks on the record. (GP Tr. 13). Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency because Applicant has failed to credibly show there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

## *2. Failure to Obtain Victim's Medical Records*

Applicant alleges Counsel was ineffective for failing to obtain Victim's medical records and utilize the records to support Applicant's case.

Counsel testified the DSS records he obtained mentioned Victim visited Chapin Medical Center. Counsel testified that, to the best of his recollection, he did not independently obtain those medical records. Counsel testified the only records he would have independently obtained would have been any medical records contained in the DSS file. Counsel testified he did not believe there was any information pertinent to Applicant's underlying case contained in the medical records. Counsel also testified that after a cursory review of the medical records, he did not believe the medical records reflect that Victim disclosed any instances of abuse to doctors. Counsel testified he would not necessarily expect a victim of a sex crime to disclose the crime to his or her doctor; however, had Applicant proceeded to trial, he would have attempted to argue the lack of disclosure to the jury. Counsel testified he believed even if the records had been admitted at trial and he made such an argument to the jury, Applicant still would have been found guilty particularly due to the statement from Victim and the fact that Applicant had admitted committing the crime to his wife. Counsel testified Applicant never indicated to Counsel that he wanted to go to trial and assert defenses, as opposed to pleading guilty.

Applicant testified he had the medical file while in jail and showed the medical file to Counsel. Applicant testified Counsel took the medical file from Applicant and informed Applicant he would send Applicant copies, but Counsel never did so. Applicant testified he believed if Counsel had further investigated the medical records, along with Victim's statements, there would have been a different result.

This Court finds Counsel's testimony very credible, while also finding Applicant's testimony not credible. Had Applicant pursued a trial, he could have argued defenses and attacked the State's case by way of discrediting the State's evidence. However, Applicant waived his right to a jury trial and his right to pursue this defense by pleading guilty. As Counsel credibly testified, the medical records did not directly support Applicant's case. The only option the medical records provided to Counsel would have been to attempt to discredit Victim's allegation by pointing out the absence of any mention of sexual abuse to her doctors. Counsel also credibly testified he believed Applicant would have been found guilty regardless due to the confession he made to his wife and the Victim's statement. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has not established that there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial but for this alleged error. Applicant ultimately chose to plead guilty and, as Counsel credibly testified, Applicant did not indicate an interest in going to trial as opposed to pleading guilty. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

### *3. Failure to Inform Applicant of His Plea Agreements*

Applicant alleges Counsel was ineffective for failing to inform him of all plea offers offered by the State.

Counsel testified he informed Applicant about all plea offers offered by the State. Counsel testified the State's first plea offer was an offer to plead straight up to second degree criminal sexual conduct, which Counsel communicated to Applicant and his wife in February 2015. Counsel testified the State made another offer on March 18, 2015, which, as he recalled, was

identical to the initial offer made in February 2015. Counsel testified the State then made the final offer on March 20, 2015, which was to recommend a negotiated cap of fifteen years' imprisonment.

This Court finds Counsel's testimony very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding communicating Applicant's offers. Counsel credibly testified he discussed all plea offers with Applicant. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

#### *4. Failure to Suppress Applicant's Statements<sup>1</sup>*

Applicant alleges Counsel was ineffective for failing to suppress his written and verbal statements to law enforcement.

Counsel testified he believed Applicant spoke some English at the time he gave his verbal statement, but Applicant was not fluent in English. Counsel testified the incident report did not clearly indicate whether law enforcement brought a translator when Applicant made his statement to law enforcement. Counsel testified the incident report indicated that Applicant admitted he had been drinking immediately prior to giving his statement to law enforcement.

Counsel testified he was certain he would have discussed with Applicant the statement he made to law enforcement, as he does with any client who has given a written or verbal statement.

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<sup>1</sup> This discussion encompasses allegation three in Applicant's original allegation as well as allegation number three in his amended application.

Counsel testified he informed Applicant about his right to a *Jackson v. Denno* hearing if they were to go to trial. Counsel testified he was also concerned because he was informed by Applicant's wife that Applicant made a statement to her in which he admitted to the crime. Counsel testified he recalled explaining to Applicant the statement made to his wife would be more difficult to suppress than the statement he made to law enforcement. Counsel testified Applicant's statements were one of the "top problems" for the defense. Counsel testified he would have been surprised if the court suppressed Applicant's statement to law enforcement. Counsel said despite Applicant's arguably limited English communication skills, he was not convinced it would arise to the level of a constitutional violation to admit his statement.

Counsel testified he reviewed the evidence the State had against Applicant with him multiple times. Counsel testified Applicant never indicated he wanted to go to trial. Counsel testified Applicant never denied having inappropriate relations with Victim, generally, and that the defense's main goal was to get Applicant the best plea offer possible.

Applicant testified he did not recall talking to law enforcement on the day he gave his statement. However, immediately thereafter, Applicant indicated a translator was not present during his meeting with law enforcement. Applicant testified he did not understand his conversation with law enforcement. Applicant also testified he was intoxicated when he gave his statement to law enforcement.

This Court finds Counsel's testimony regarding this allegation credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding suppressing Applicant's statements. Counsel credibly testified he discussed Applicant's statements with him and advised him of his right to a *Jackson v. Denno* hearing. Counsel credibly testified Applicant was interested in obtaining the best plea offer

possible. Applicant waived his right to pursue any defenses in his case by pleading guilty. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has not established that there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial but for this alleged error. Applicant was interested in obtaining the best plea offer possible, as opposed to proceeding to trial. As Counsel credibly testified, Applicant never indicated to Counsel he wanted to proceed to trial, and Applicant received a substantial benefit by accepting the State's plea offer. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

5. *Failure to Investigate*<sup>2</sup>

Applicant alleges Counsel was ineffective for failing to investigate Applicant's case.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*,

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<sup>2</sup> This discussion encompasses allegation one in Applicant's original application and allegation number four in Applicant's amended application.

422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Counsel testified he reviewed Applicant's case file with Applicant, including all discovery disclosed by the State. Counsel testified he subpoenaed DSS records pertaining to the Victim and reviewed these records with Applicant. Counsel stated he spoke with witnesses including Applicant and his wife on several occasions. Counsel testified that due to the fact that the incident occurred in the privacy of Applicant's home, there did not appear to be any other witnesses to help Applicant's case. Applicant testified he believed that if Counsel had investigated the medical records and Victim's statements further, his case would have resulted differently.

This Court finds Counsel's testimony regarding this issue credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding investigating Applicant's case. Counsel testified he conducted an investigation of Applicant's case, which included reviewing Applicant's case file and discovery, interviewing possible witnesses, and reviewing DSS documents. Counsel informed the plea court on the record that he performed an investigation of Applicant's case. (GP Tr. 5). Applicant merely testified he believed Counsel should have investigated the inconsistencies of the Victim's statements in conjunction with her medical records. However, Counsel credibly testified he reviewed the Victim's statements and discussed them with Applicant. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has not established that there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial but for this alleged error. Applicant was interested in obtaining the best plea offer possible, as opposed to proceeding to trial. As Counsel

credibly testified, Applicant never indicated to Counsel he wanted to proceed to trial and received a substantial benefit by accepting the State's plea offer. Moreover, Applicant did not show that he had a viable defense that Counsel failed to discover, nor did Applicant produce any helpful witnesses that could have supported his case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*6. Failure to Prepare for Trial*

Applicant alleges Counsel was ineffective for failing to adequately prepare Applicant's case.

To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure 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); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Counsel testified Applicant was interested in obtaining the best plea offer possible. Counsel testified he reviewed the evidence with Applicant, and he understood the evidence against him. Furthermore, Counsel testified that due to the incident occurring in the privacy of Applicant's home, there were a limited number of possible witnesses he could speak with regarding the underlying incident. Counsel testified he spoke to Applicant and his wife on several occasions.

This Court finds Counsel's testimony regarding this issue credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding preparing Applicant's case. Counsel reviewed the evidence and file pertaining to Applicant's case. Counsel credibly testified Applicant was interested in receiving the most favorable plea offer possible and by pleading guilty, Applicant waived his right to a jury trial. Moreover, as previously discussed, Applicant testified he did not need any more time to discuss his case with Counsel. (GP Tr. 11).

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant did not show that he had a viable defense that Counsel failed to discover, nor did he produce any helpful witnesses that could have supported his case. Applicant failed to show that any additional preparation would have helped his case. Applicant also failed to credibly show that any alleged deficiency regarding Counsel's preparation of Applicant's case caused him to plead guilty as opposed to proceed to trial. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*7. Failure to Withdraw Applicant's guilty plea*

Applicant alleges Counsel was ineffective for failing to withdraw Applicant's guilty plea.

Applicant provided no testimony or evidence regarding this allegation. Accordingly, this Court finds this allegation is waived and abandoned. This allegation is denied and dismissed with prejudice.

### **Involuntary Guilty Plea<sup>3</sup>**

Applicant alleges his guilty plea was not made voluntarily and intelligently because he was coerced to plead guilty and because Counsel did not adequately describe the elements and defenses to his charges.

Counsel testified he discussed the evidence the State's evidence with Applicant on multiple occasions. Counsel testified he discussed the elements of the offenses to Applicant. Counsel testified he discussed the possible defenses with Applicant, to the extent Applicant had any viable defenses. Counsel testified Applicant's defense would have been that it wasn't a second-degree criminal sexual conduct (CSC) offense, but rather at most a CSC third-degree offense, or some other lesser-included offense. Counsel testified Applicant never denied committing a sex crime with Victim. Counsel testified Applicant was interested in obtaining the best plea offer possible. Counsel testified Applicant never indicated he wanted to go to trial, as opposed to accepting the final plea offer. Counsel testified it was ultimately Applicant's decision to plead guilty or proceed to trial.

Applicant testified he told the plea court he understood he was waiving his constitutional rights at his guilty plea hearing. Applicant testified that although he initially disagreed with some of the specific facts stated by the Solicitor, he ultimately agreed to the set of facts at his guilty plea hearing. Applicant testified he told the plea court he was pleading guilty because he was in fact guilty. Applicant testified he was not threatened or coerced to plead guilty. Applicant testified he

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<sup>3</sup> This discussion encompasses allegations four, five, and seven in Applicant's original application.

told the plea court he was not suffering from any mental or emotional disability at the time of his guilty plea. Applicant testified he was not under the influence of any alcohol or drugs at the time of his plea hearing. Applicant testified he told the plea court he was thinking clearly at the time of his guilty plea hearing. Applicant testified he told the plea court he did not need any additional time to discuss his case with Counsel. Applicant testified he told the plea court he was pleading freely and voluntarily.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony credible only to the extent it is directly supported by the guilty plea hearing transcript. This Court finds Applicant's plea was entered freely and voluntarily. The credible testimony shows Applicant wanted to plead guilty and received a great benefit by accepting the State's plea offer. Counsel credibly testified he discussed the terms of Applicant's plea agreement with Applicant, as well as the elements to the offense and possible defenses. Applicant testified at his plea hearing that he was not suffering from any mental disability. (GP Tr. 5). Applicant testified at his guilty plea hearing he was not under the influence of alcohol or drugs. (GP Tr. 5). Applicant testified at his plea hearing that he was pleading guilty freely and voluntarily. (GP Tr. 10). Applicant testified at his guilty plea hearing he was thinking clearly that day. (GP Tr. 5). Applicant told the plea court he did not need any more time to speak with Counsel. (GP Tr. 11). Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing that his plea was not entered freely and voluntarily. Therefore, this allegation is denied and dismissed with prejudice.

#### CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to


the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding his performance before or during the plea, nor was Applicant prejudiced by Counsel's representation. Furthermore, the record and the PCR testimony show Applicant freely and voluntarily entered his plea. Accordingly, all allegations are denied and dismissed with prejudice.


Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED.**

 2019

  
L. CASEY MANNING  
Presiding Circuit Court Judge  
Eighth Judicial Circuit