

NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Case #2020-CP-43-0990

The State,

Respondent,

v.

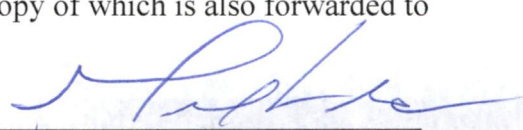
Brandon McFadden

Appellant.

NOTICE OF APPEAL

Brandon McFadden, appeals the decision of the Court, in the order dated April 28, 2021, received by counsel on May 3, 2021, where Mr. McFadden was denied his request for Post-Conviction Relief. Mr. McFadden was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 5/4/21


Timothy L. Griffith, Esquire
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Michael Neubauer, Esquire
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549, Columbia, S.C. 29211

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S.C. SUPREME COURT

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Brandon McFadden, #313848,) 2020-CP-43-990

Applicant,)

v.)

State of South Carolina,)

Respondent.)

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
[Signature]
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed on July 13, 2020, by Brandon McFadden (Applicant). The State (Respondent) filed a Return on January 21, 2021, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on March 10, 2021, remotely via the WebEx virtual courtroom. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Michael Neubauer of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Katarzyna K. Timmons, Esquire, and Timothy Murphy, Esquire also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof of establishing any constitutional deprivations or other violations that would warrant the granting of post-conviction relief. Accordingly, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

In December 2016, Applicant was indicted by the Sumter County Grand Jury for armed robbery, possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, and possession of a firearm by person convicted of a violent felony (2016-GS-43-1238). The charges stemmed from the following incident, as set forth by the State at his plea proceeding:

At approximately 6:00 a.m. on August 21, 2016, Applicant entered Young's convenience store in Sumter, at which time Victim and a customer were present. Applicant, armed with a .45 automatic Hi-Point gun, pointed the gun at Victim and demanded money. Applicant obtained \$80.00 from Victim and fled the scene. Shortly thereafter, Applicant was spotted in an area near the scene. Articles of clothing identified by Victim were found in the immediate area where Applicant was apprehended. When law enforcement questioned Applicant, he admitted he committed the offense because he needed money.

GP. Tr. 6-7.

Katarzyna Timmons, Esquire, represented Applicant. Assistant Solicitor John P. Meadors of the Third Circuit Solicitor's Office prosecuted the case.

On November 12, 2019, Applicant appeared before the Honorable R. Ferrell Cothran, Jr., circuit court judge, and pled guilty as indicted to armed robbery. Pursuant to a plea agreement entered into between Applicant and the State for a determinate sentence of twenty years of imprisonment and the dismissal of a remaining charges, Judge Cothran sentenced Applicant to twenty years of imprisonment. The remaining charges were dismissed pursuant to the terms of the plea agreement.

Applicant subsequently filed a Notice of Appeal. By Order, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Court Rules. State v. McFadden, Case No. 2019-001938 (S.C. Ct. App. filed April 15, 2020). The remittitur was sent May 29, 2020.

ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel
 - a. "Violation of 6th Amendment Right to Effective Assistance of Counsel."
 - b. "Violation of 14th Amendment Right to Due Process and Equal Protection."

As requested relief, Applicant states he is seeking “time reduction, sentence modification, and charge included to lesser offense.”

On February 25, 2021, Applicant, through his counsel, filed an amended application alleging:

- c. Mr. McFadden was told by his attorney that the recommendation of the Solicitor was 10 years. He then saw in writing an offer from the Solicitor for the 10 year recommendation.
- d. Mr. McFadden’s attorney did not tell him that the Judge could sentence without consideration of the recommendation of the Solicitor.
- e. Mr. McFadden was coerced into making the Plea. He was told he had to Plea or a bench warrant would be issued for him (according to Mr. McFadden). He was under pressure and was told he would get the 10 years.
- f. Mr. McFadden did not have discovery until the day before the Plea and his attorney did not go over the discovery with him.

At the evidentiary hearing, Applicant stated he was going forward on the allegations set forth in his original application and his amended application.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, the application for post-conviction relief, the amended application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

1. Ineffective Assistance of Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Petitioner has the burden of proving the allegations in his PCR action, and when alleging 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. First, Petitioner must prove 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). Petitioner 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.” Id. 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 a rigid rule of representation. Rather, Strickland requires the 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. The function of the PCR 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. “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel).

When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational

under the circumstances. Padilla, 559 U.S. at 372.

In his initial application, Applicant alleged his attorney violated his 6th amendment right to effective assistance of counsel.

This Court finds Applicant claim should be dismissed for failure to specifically set forth the grounds upon which the claim is based. SC Code Ann. §17-27-50 requires “The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired.” Applicant has failed to specifically set forth any grounds explaining how his attorney violated his right to effective assistance of counsel. Applicant has merely expressed his counsel violated his 6th Amendment right to effective assistance of counsel. Therefore, this claim is denied and dismissed with prejudice for failing to comply with the statutory requirements for filing a post-conviction relief application.

Prior to his evidentiary hearing, Applicant amended his application for post-conviction relief to include specific allegations of ineffective assistance of counsel. These allegations are addressed below.

- a. Mr. McFadden was told by his attorney that the recommendation of the Solicitor was 10 years. He then saw in writing an offer from the Solicitor for the 10 year recommendation.*

Applicant asserts Counsel was ineffective because he was told he would receive a recommended sentence of ten years instead of the twenty year plea offer he accepted.

“... as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” Missouri v. Frye, 566 U.S. 134, 145 (2012).

At the evidentiary hearing, Applicant testified he agreed to a twenty year sentence for all charges. Applicant testified he believed the solicitor breached the plea agreement by dismissing

Applicant's charge for possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, and possession of a firearm by person convicted of a violent felony. Applicant testified he felt that the solicitor should have dropped the amount of time he would receive for his plea when the solicitor dropped three of Applicant's charges. Applicant testified he felt he should get less time because he was only pleading to one of the charges. When asked why Applicant did not ask the judge if he could get less time, Applicant testified he could not because his plea was already affected. Applicant testified Mr. Murphy told Applicant he could face twelve to fifteen years.

Katarzyna Timmons testified she met with Applicant multiple times prior to his plea. Ms. Timmons testified she discussed the possibility of a plea with Applicant. Ms. Timmons testified Applicant was hoping for a ten year sentence in a plea offer. Ms. Timmons testified she spoke with the solicitor and received an offer for twenty years. Ms. Timmons testified the solicitor's offer of twenty years was partially based on Applicant's previous conviction for armed robbery. Ms. Timmons testified the plea was a twenty year negotiated plea for armed robbery, because armed robbery was the most serious offense charged. Ms. Timmons testified she explained to Applicant that with a negotiated plea the judge could either accept or reject the negotiated offer, however the judge could not change the negotiated plea. Ms. Timmons testified she discussed all plea offer with Applicant and she never told Applicant there was a recommended offer for ten years. Tr. p. 8, l. 13-16.

This Court finds Applicant's allegation is without merit. Applicant at his plea hearing plead guilty to a twenty year negotiated sentence for Armed Robbery, and the other pending charges were dismissed. Tr. p. 8, l. 13-16; p. 9, l. 4-17. Though Applicant was hoping for a ten year offer, Applicant was informed prior to his plea hearing that he would be sentenced to twenty years if he

accepted the plea offer. Additionally Applicant's counsel testified she never told Applicant that a ten year plea offer existed. This Court finds Applicant has failed to show how Counsel was deficient, or how Applicant was prejudiced by Counsel's performance while negotiating a potential plea deal. Therefore this claim is denied and dismissed with prejudice.

b. Mr. McFadden's attorney did not tell him that the Judge could sentence without consideration of the recommendation of the Solicitor.

Applicant alleges his counsel did not inform him the Judge could sentence Applicant without consideration of the recommendation from the State.

Applicant testified he thought the twenty year offer was dependent on him pleading guilty to all four charges. Applicant testified he thought he should get less time because he was only pleading to one of the charges. On cross-examination Applicant testified he recalled the prosecutor saying the plea was negotiated.

Ms. Timmons testified she told Applicant his plea offer was for a negotiated twenty year sentence. Ms. Timmons testified she explained to Applicant what a negotiated plea was, and that the judge could either accept or reject the negotiations but not change the negotiations. Ms. Timmons testified she did not think Applicant was rushed into pleading guilty, and that Applicant was able to think about the plea offer for some time.

This Court finds Applicant has failed to show his counsel was ineffective. Applicant was informed at his plea hearing the negotiated plea was for twenty years. GP Tr. 8. Additionally, Ms. Timmons testified she did not receive a plea offer for ten years, and did not tell Applicant that a ten year plea offer existed. Accordingly, Applicant's claim his trial counsel failed to inform him that the Judge could sentence Applicant without consideration of the recommendation of the Solicitor is without merit. This claim is denied and dismissed with prejudice.

c. Mr. McFadden did not have discovery until the day before the plea and his attorney did not go over the discovery with him.

Applicant asserts he was not provided a copy of his discovery until the day before his plea, and his attorney did not discuss the State's evidence against him prior to his plea.

Applicant testified he only spoke with his attorney two or three times before he went to court. Applicant testified neither Mr. Murphy nor Ms. Timmons went over discovery with him. Applicant testified he did not receive a copy of discovery until the day before his plea hearing. Applicant testified when he received a copy of his discovery he did not have time to look through it. On cross examination, Applicant again testified he did not receive discovery until the day before his plea hearing. Applicant testified he recalled telling the plea judge he had enough time to talk with his attorney prior to the plea hearing.

Mr. Tim Murphy¹ testified he assigned himself Applicant's case shortly after Applicant was arrested. Mr. Murphy testified he received discovery in Applicant's case on October 27, 2016. Mr. Murphy testified he reviewed the discovery in Applicant's case, then attempted to schedule a meeting with Applicant. Mr. Murphy testified he attempted to get in contact with Applicant via letters and phone calls, however Applicant did not respond to Mr. Murphy's requests to meet. Mr. Murphy testified he did not provide Applicant with a copy of his discovery prior to leaving the Public Defender's Office.

Ms. Timmons testified she was appointed to Applicant's case in September of 2019. Ms. Timmons testified she had a copy of Applicant's discovery when she was appointed. Ms. Timmons testified she discussed the discovery with Applicant several times. Ms. Timmons also testified she will provide clients with a copy of discovery if they request it, however Ms. Timmons cannot

¹ Mr. Tim Murphy, who formerly worked with the Sumter County Public Defender's Office, was originally appointed to represent Applicant after his arrest in August 2016. Mr. Murphy represented Applicant from September 2016, until Mr. Murphy left the Sumter County Public Defender's Office in 2019.

specifically remember when she provided Applicant with a copy of his discovery. Ms. Timmons testified she has a record of discussing discovery with Applicant, however she does not have any records indicating when she provided Applicant with a copy of the discovery.

This Court finds Applicant has failed to show his counsel was ineffective by failing to discuss the discovery with Applicant prior to his plea. Both of Applicant's attorneys testified they met with Applicant multiple times prior to Applicant's plea hearing. Ms. Timmons testified she met with Applicant five times, and had six phone conversations with him. Ms. Timmons testified she reviewed the discovery with Applicant several times, and the discovery materials contained Applicant's confession to the Armed Robbery. This court finds Ms. Timmons testimony credible. Further, this court finds Applicant's allegation his counsel did not provide Applicant with a copy of discovery until the day before the plea, and Counsel did not go over the discovery with Applicant to be without merit. Therefore this claim is denied and dismissed with prejudice.

2. Involuntary Guilty Plea

- a. Mr. McFadden was coerced into making the Plea. He was told he had to Plea or a bench warrant would be issued for him (according to Mr. McFadden). He was under pressure and was told he would get ten years.***

Applicant alleges he was coerced into making his plea offer. Applicant claims he was told a bench warrant would be issued for him if he did not plea. This Court disagrees, and finds that Applicant has failed to prove that he was coerced into pleading guilty.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969);

Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37 (1970); cf. United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (“It is well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” (citing Brady, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. 52).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made

at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

Applicant testified he was arrested prior to his plea on a bench warrant. Applicant testified he was under pressure when he plead, and he didn’t know the “ins and outs of his case.” Applicant further testified he felt threatened into taking the plea offer from the State. On cross-examination Applicant testified he told the plea judge he did not need more time to talk with his attorney. Applicant testified he recalled telling the judge he was not threatened or promised anything to get him to plead guilty. However, Applicant testified he was advised by his attorney that he had to say yes to the plea judge’s questions. Applicant testified he recalled telling the judge he was pleading guilty on his own free will, however Applicant stated he was told he had to say this. Applicant

testified he was going to court due to an outstanding bench warrant. Applicant testified he was not threatened with a bench warrant in order to get him to plead guilty.

Ms. Timmons testified she discussed all plea offers with Applicant. Ms. Timmons testified she informed Applicant of his constitutional right prior to his plea hearing. Ms. Timmons testified Applicant was previously arrested on a bench warrant prior to his plea hearing, and Applicant was not threatened with a bench warrant to plead guilty. Ms. Timmons further testified she did not coach Applicant on how to answer the plea judge's questions, Ms. Timmons testified she told Applicant to answer the questions truthfully and to be respectful to the plea judge. Ms. Timmons testified she felt Applicant was not rushed into accepting a plea offer, Ms. Timmons stated Applicant was able to think about the plea offer for some time.

This court find Applicant's allegation to be without merit. Applicant was already incarcerated on a bench warrant at the time of his guilty plea. Applicant's counsel testified she did not coerce Applicant into accepting a plea offer. Additionally, Applicant's counsel testified she did not tell Applicant how he had to respond to the plea judge's questions. This court finds Applicant has failed to show he was coerced into accepting a plea, additionally Applicant has not provided any evidence, outside of his own self-serving testimony, to indicate he would have rejected the plea offer and proceeded to trial. Therefore, Applicant's claim is denied and dismissed with prejudice.

3. Due Process Violation

Applicant alleges his attorney violated his 14th amendment right to due process and equal protection.

This Court finds Applicant claim should be dismissed for failure to specifically set forth the grounds upon which the claim is based. SC Code Ann. §17-27-50 requires "The application

shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired.” Applicant has failed to specifically set forth any grounds explaining how his attorney violated his right to due process and equal protection under the law. Applicant has merely expressed his counsel violated his 14th Amendment right to due process and equal protection. Therefore, this claim is denied and dismissed with prejudice for failing to comply with the statutory requirements for filing a post-conviction relief application.

CONCLUSION

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

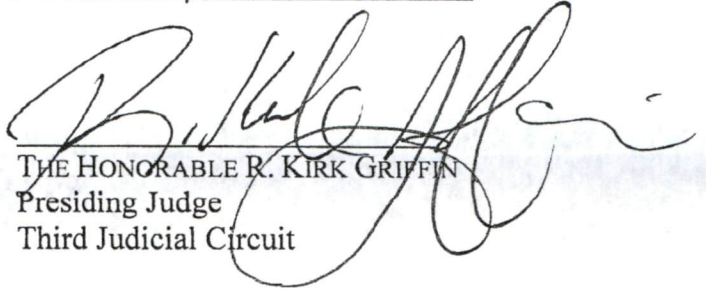
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant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

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IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of April, 2021.


THE HONORABLE R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina