

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
HONORABLE BRIAN M. GIBBONS
2017-CP-42-2489

DAVID BOGGS, SCDC# 369103

APPELLANT,

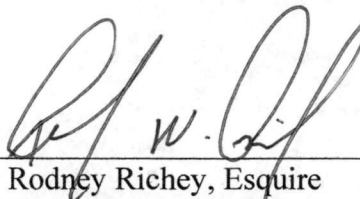
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

David Boggs appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Brian M. Gibbons, Circuit Judge on June 1, 2021 an Order issued on July 6, 2021 and filed on July 12, 2021. The Appellant received notice of the judgment on July 13, 2021.



Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

Other Counsel of Record:
William Ray, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

RECEIVED

JUL 10 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

David Boggs, SCDC #369103,)
Applicant,)

Case No.: 2017-CP-42-2489

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
2021 JUL 12 AM 9:31
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

This matter comes before this Court by way of Applicant David Boggs's post-conviction relief application filed July 21, 2017, and not received by Respondent the State of South Carolina until July 23, 2020. Respondent made its return on December 16, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 1, 2021, at Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General William Ray of the South Carolina Attorney General's office represented Respondent. Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Beverly Jones, also testified.

After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted during the June 2015 term of the Spartanburg County Grand Jury on one count of murder and one count of possession of a weapon during the commission of a violent crime. (201-GS-42-02327). Applicant was represented by Assistant Public Defender Beverly

Jones of the Spartanburg County Public Defender's Office Deputy Solicitor Derrick Bulsa of the Seventh Circuit Solicitor's Office prosecuted the case. On July 25, 2016, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty but mentally ill to the lesser included offense of voluntary manslaughter and possession of a weapon during a violent crime as indicted. The plea was made without any negotiations or recommendation by the State as to a sentence Judge Cole accepted the plea and sentenced Applicant to twenty-five years of imprisonment. Applicant did not appeal his plea or sentence.

Applicant filed an application for post-conviction relief on July 21, 2017, which was not sent to Respondent until July 24, 2020.

Factual History

On the afternoon of February 9, 2015, officers from the Spartanburg County Sheriff's Department were dispatched to a residential address on Wilkie Bridge Road in Chesnee. (Tr. 15, 16-Tr. 16, 2). Upon arrival, officers met with the property owner, Roy Griffin, who directed them to a building near the rear of the property that was being used as living quarters. (Tr. 15, 23-Tr. 16, 2). Officers entered the small building and discovered the body of Eddie Richards. (Tr. 16, 1-3). Richards was lying in his bed, having been shot twice in the head at close range with a shotgun. (Tr. 16, 11-14).

The officers began their investigation by sequestering everyone at the scene in a vehicle and questioning them individually. (Tr. 17, 1-4). Applicant, Roy Griffin's stepson, was present at the scene, broke down, and confessed to shooting Richards. (Tr. 17, 5-7). Applicant stated that he went into the room where Richards was sleeping early the previous morning, fired two rounds, disposed of his clothing, and placed the shotgun in Roy Griffin's bedroom. (Tr. 17, 7-12). When asked why, Applicant mentioned some prior sexual contact between himself and Richards, but

2021 JUL 12 4:19:31
CLERK OF COURTY
SPARTANBURG COUNTY
ALIX W. GAY



claimed it was consensual. (Tr. 17, 13-14).

Applicant went with his mother to the sheriff's office to report sexual abuse a month before the shooting. (Tr. 17, 15-18). While speaking with Sergeant Tony Brown, Applicant stated that the alleged abuse had not occurred until he was over the age of consent and that it was consensual. (Tr. 17, 22-25). Applicant explained that he had been receiving gifts in exchange for the sexual contact, and was aware of other victims. (Tr. 18, 1-8). Sergeant Brown told Applicant to bring more evidence and the allegations would be investigated further. (Tr. 18, 5-9). The sheriff's office did not hear back from Applicant until the date of the shooting, four weeks later. (Tr. 18, 10-12).

Action before this Court

In his PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective counseling"
 - a. "Attorney had advised me to plea guilty."
 - b. "Attorney did not fully explain what I agreed to."
 - c. "I was in court for less than an hour."

Applicant, through Counsel, filed an amended application on May 28, 2021. In the amended application, Applicant alleged the following:

1. Counsel was ineffective for not pursuing a jury trial;
2. Counsel was ineffective for not pursuing a defense that Applicant was forced to kill the victim by his Stepfather;
3. Counsel was ineffective for not pursuing a defense that Applicant did not have the ability to conform his actions at the time of the incident;

At the PCR hearing, Applicant proceeded forward on all of the above mentioned allegations.

Summary of Testimony Presented at Evidentiary Hearing

At the hearing, Applicant testified Counsel was ineffective because Counsel did not pursue a jury trial because there were several defenses he could have raised. Applicant stated his mental



FILED
2021 JUL 22 AM 9:31
CLERK OF COURT
SPARKLAND COUNTY
JANNA COX

health issues, evidenced by a pre-trial psych evaluation, would have been enough for a jury to find him not guilty had he proceeded to trial. Two reports from psychiatric evaluations were introduced by Applicant at the hearing. Both evaluations had been order by Applicant's Counsel prior to his plea.

The first evaluation was conducted by Donna Schwartz Maddox, M.D., on March 19, 2016. This report detailed his developmental, educational, familial, medical, psychiatric, substance abuse, social, sexual, and legal history. The reports included statements that Applicant had been sexually abused by the victim, that he had been diagnosed and treated for depression and attention deficit disorder, had engaged in self-mutilation, and had been bullied at school. Regarding the present offense, the report states that the victim had been yelling at him about his dog on the day of the offense and that his stepfather "called him into the house, put the gun in his hand and [his] Mom talked [him] into it." The report states that they formulated a plan to make it appear like a break in before he shot the victim. His stepfather then told him that it looked like the victim was still breathing, but that Applicant started it so it was Applicant's problem. He acknowledged during the evaluation that he did not tell police this version of events, instead he told them that he killed the victim because of sexual abuse and manipulation.

Dr. Maddox's report listed his diagnoses as PTSD, cannabis use disorder, borderline personality disorder, gastric esophageal reflux, and headaches. The report contained specific findings that Applicant had a rational and factual understating of the proceedings and the capacity to assist in his defense, was able to determine moral and legal right from wrong and recognized the wrongfulness of his actions, and that his PTSD and borderline personality disorder rendered him unable to conform his conduct to the requirements of the law.

The second examination was conducted by Lois J. Veronen, M.D., over three sessions



FILED
2021 JUL 13 AM 9:3
CLERK OF COURT
STANTON COUNTY
MO

taking place on May 18, 2016, then June 1, 2016, and finally June 30, 2016. The examination was conducted at Counsel's request and was done for the purpose of examining Applicant's "history of sexual victimization, the impact of his sexual victimization, and to determine whether this history and his psychological profile is consistent with elements of Battered Child Syndrome, Rape Trauma Syndrome, or Battered Person Syndrome."

Dr. Veronen's report stated that Applicant described a situation where the victim had given him money, drugs, alcohol, and electronics in exchange for more and more sexual favors. Applicant's high school girlfriend moved in with Applicant's family because of a tumultuous home life of her own. The report states that her presence in the home created a schism between Applicant and the victim because she did not approve of their sexual relationship. Her disapproval prompted Applicant to tell his mother about the relationship, and it was eventually reported it to the Spartanburg County Sheriff's Department. Applicant stated that he felt relieved that he had "taken a stand." Nevertheless, the report describes a situation where the victim retaliated against Applicant's dog and threatened to kill him. Applicant's stepfather played on these fears by saying Applicant needed to kill the victim so that he would not have to live in fear any longer. The report states that his stepfather obtained a shotgun, loaded it early one morning, handed it to Applicant and told him that he had to kill the victim to make everything better. He then went and shot him twice in the head. His stepfather then told him that to take a shower and get rid of his clothes, before going to the victim's body and stealing money and drugs.

As for his mental state, the report found that Applicant was psychologically distressed and was suffering from several mental disorders, the most prominent being PTSD and delayed onset and major depressive disorder. Dr. Veronen found that Applicant's girlfriend's disapproval of his relationship with the victim was the catalyst that caused him to realize he was being abused,



FILED
2022 JUL 22 AM 9:51
CLERK OF COURTY
SPARTANBURG COUNTY
AMY W. COX

become angry, and feel the need to protect himself and his family. His stepfather's behavior convinced him that "he would never feel safe or have peace from Eddie's threats or manipulation until Eddie was dead." Dr. Veronen's report concluded by finding that Applicant was a victim of sexual abuse and suffered from battered child syndrome and PTSD.

Applicant recalled the evaluations being performed and claimed that his post-traumatic stress disorder and borderline personality disorder rendered him incapable of conforming his actions in accordance with the law. He explained his belief that his Counsel did not do enough to raise that issue as a defense, and did not recall reviewing the reports with her prior to entering his guilty plea. Applicant also claimed that his attorney should have pursued a defense that his stepfather forced him to commit the homicide.

During cross examination, Applicant stated that he had first met Counsel while in the county jail and they met several times to discuss possible defenses. It was his belief that she would argue self-defense at trial. Applicant recalled that when he confessed to police that he had broken down and cried. He explained that he was upset at the time because he had shot the victim. Applicant stated that he told police the same thing that he told Counsel. He acknowledged that he did not tell police or Counsel that his stepfather forced him to commit the crime. He admitted that his stepfather did not actually threaten him, nor did Applicant believe that his stepfather would harm him if he did not do the shooting. Instead, he interpreted his stepfather's statement that the situation had "to be taken care of" to mean that he must kill the victim. He also stated that he wished he had spoken to Counsel at greater length about the extent of abuse he suffered at the hands of the victim. Applicant claimed that he did not believe the shooting was wrong at the time, but now he recognizes the true nature of his actions.

Plea counsel Beverly Jones stated she has been practicing law for thirty years, the majority



2011 JUN 12 AM 9:31
CLERK OF COURT
SHERIFFS OFFICE
MAY 11 2011

of which has been criminal law. She explained that she was appointed to represent Applicant through the public defender's office and met with Applicant multiple times prior to his plea hearing. Counsel stated that Applicant never once asked for a jury trial, rather, Applicant frequently asked for a plea offer. She repeatedly spoke with the solicitor and the police investigators about an offer. However, she did not believe it would be beneficial for Applicant to plead to murder, instead preferring an offer with the lesser included offense of voluntary manslaughter. Only one such plea offer was ever made, and it came on the morning trial was scheduled to begin. Counsel stated that she was prepared to go to trial, had requested that the psychiatric evaluations be performed, and would have raised the findings as part of their defense. Counsel testified that the plan to pursue an insanity defense, based upon the findings of the evaluations, is what compelled the solicitor to offer a plea deal just prior to trial. She advised Applicant to accept the offer to plead guilty but mentally ill to voluntary manslaughter rather than proceed to trial facing a murder charge. She stated that it was ultimately Applicant's choice to accept the plea offer.

Counsel confirmed that the self-defense was discussed, but only once so that she could explain that it was contrary to all of the evidence and would not fit. She noted that the victim had been shot in the head twice while he was sleeping. She further explained that she had many other conversations with Applicant, where they spoke about his life and his case. Applicant had often expressed remorse and stated that he would regret the crime for the rest of his life, leading her to believe he understood the nature and impact of his actions. She felt that a jury would not find him to be legally insane.

She explained that Applicant never told her that his stepfather forced him to kill the victim during the course of these conversations. Instead, she found out about this story about ten months



FILED
2021 JUN 12 AM 9:31
CLERK OF COURT
ST. LOUIS COUNTY
JAY W. COX

before the plea in letters written by Applicant were intercepted by the prison mailroom. She did not believe that this story was credible, because the extent of the stepfather's involvement was unclear, if he was involved at all.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-70 and 80.

Ineffective Assistance of Counsel Generally

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional

2021 JUN 12 AM 9:11
CLERK OF COURT
SPARTANBURG COUNTY
ANDY W. COX



norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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. *Strickland*, 466 U.S. at 696. 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

FILED
2021 JUL 14 AM 9:30
CLERK OF COURT
PARTNERSHIP UNIT
ARMY CO



easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Pursue a Jury Trial

Applicant alleges that his plea counsel was ineffective for failing to pursue a jury trial. This allegation is without merit.

With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—Applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. *Id.* 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.

FILED
2011 JUL 12 AM 9:31
CLERK OF COURT
SARATOGA COUNTY
ALAN W. COX

Applicant has failed to meet the burden imposed upon him. The record shows that Applicant frequently requested a plea offer, and accepted the first one that was made. He did so with the reasonable advice of competent counsel, with a full understanding of the agreement's terms and its consequences. His plea counsel testified that she was ready and willing to go to trial, but that he freely, voluntarily, knowingly, and intelligently entered a plea of guilty but mentally ill. Applicant has not shown that his counsel was deficient in negotiating the plea, preparing a defense, or advising him about his case. Furthermore, he has not shown that he was prejudiced by



her performance, because he has not established that he would have proceeded to trial but for her errors. Therefore, he has not met the burden imposed upon him of proving deficiency or prejudice, and the allegation that his plea counsel was ineffective for failing to pursue a jury trial is hereby dismissed with prejudice.

Failure to Pursue a Defense of Duress

Applicant alleges that his plea counsel was ineffective for failing to pursue a defense of duress, because his stepfather allegedly forced him to kill the victim.

Duress requires evidence showing that “the degree of coercion [was] present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done.” *State v. Robinson*, 294 S.C. 120, 363 S.E.2d 104 (1987). Duress is not a defense to murder and cannot be used to mitigate the crime of murder to voluntary manslaughter. *State v. Rocheville*, 310 S.C. 20, 425 S.E.2d 32 (1993).

Applicant testified that his stepfather forced him to commit the crime but did not threaten him, nor did he believe he would be harmed if he did not shoot the victim. He further testified that he did not tell his attorney or police about this theory of the case. Counsel confirmed that Applicant did not tell her this story, but instead came to be aware of it when Applicant’s mail was intercepted by the jail’s mail room. She did not believe that the story was credible, nor could it be proven at trial, so she did not pursue it as a defense. This Court finds that this is an objectively reasonable interpretation of this evidence, and therefore finds no deficiency in counsel’s performance.

Furthermore, the purported defense would have failed on the merits because Applicant stated that his stepfather did not threaten him and that he was not in fear of being harmed if he did not commit the crime. In fact, evidence shows that Applicant was not forced by his stepfather to do anything at all, instead he simply interpreted something he said to mean he should go shoot and

FILED
2021 JUN 12 AM 10:31
CLERK OF COURTS
SPARTANBURG COUNTY
MAY WICKOX



kill a sleeping man. There is no reasonable probability that this defense would have prevailed at trial. Therefore, Applicant has not met the burden imposed upon him of proving deficiency or prejudice, and the allegation that his plea counsel was ineffective for failing to pursue a defense that Applicant's stepfather forced him to commit the crime is hereby dismissed with prejudice.

Failure to Pursue a Defense that Applicant Lacked the Ability to Conform his Actions to the Requirements of the Law

Applicant alleges that his plea counsel was ineffective for failing to pursue a defense that he was unable to conform his actions to the requirements of the law. This allegation is without merit.

If a person is unable to conform their conduct to the requirements of the law, he or she may still be found guilty and sentenced to incarceration. S.C. Code Ann. §17-24-70. If they are found guilty but mentally ill, they will first be taken to a mental facility for treatment until they may safely be integrated in the general prison population. *Id.* A defendant may only avoid criminal liability due to mental illness or insanity if, at the time of the commission of the crime, they lacked the capacity to distinguish moral or legal right from wrong. S.C. Code Ann. §17-24-10.

Here, Applicant entered a guilty but mentally ill plea to voluntary manslaughter. Applicant's assertion that Counsel was deficient in failing to present his inability to conform his actions to the requirements of the law cannot stand, because that was the key to Counsel's plea negotiations. Counsel ordered two psychiatric evaluations in preparation for trial. These evaluations found that Applicant could not conform his actions to the requirements of the law, but also found that he knew the difference between right and wrong, and was motivated to commit the crime when he realized the true nature of his sexual relationship with the victim. Counsel used this information to prepare a defense, but did not believe that it would have prevailed at trial.

2021 JUL 27 11 09 AM
CLERK OF COURT
STAFFORD COUNTY
AMY W. COX



Nevertheless, Counsel stated that the plea offer was made only after it became clear that the defense at trial would be that Applicant was legally insane. Counsel's use of this piece of evidence was crucial to getting Applicant a plea offer that, as discussed above, he eagerly and knowingly accepted. Counsel was not deficient in this regard because the evidence shows that she did precisely what Applicant is now claiming she did not do.

Furthermore, Applicant was not prejudiced by Counsel's performance. At best a jury would have found him guilty but mentally ill, which was precisely the plea offer that he accepted. Simply put, Applicant would have benefitted in no way by presenting this defense at trial, in light of all the evidence in the record. Therefore, Applicant has failed to meet his burden of showing deficiency or prejudice, and allegation that Counsel was ineffective for failing to pursue a defense that unable to conform his actions to the requirements of the law is hereby dismissed with prejudice.

FILED

2021 JUL 12 AM 9:31

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX



Conclusion

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

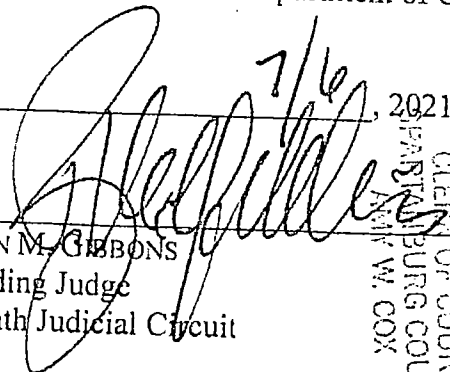
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant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

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this _____ day of _____, 2021.

BRIAN M. GIBBONS
Presiding Judge
Seventh Judicial Circuit



CLERK OF COURT
PARTIALBURG COUNTY
AMY W. COX

2021 JUL 12 AM 9:31

1011 P110



_____, South Carolina.