THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

J. Mark Hayes, II, Presiding Circuit Judge – Newberry County
(8th Circuit PCR Term)

Post-Conviction Relief C/A Number:
2016-CP-36-0057

Maurice Anthony Odom #199677,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

MAURICE ANTHONY ODOM #199677 appeals the decision and Order dated August 2, 2021. Counsel for Appellant received written entry of this Order on August 5, 2021.

Date: August 30, 2021

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STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Maurice Odom, S.C.D.C. No. 199677, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT Case No. 2016-CP-36-0057 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Maurice Odom's (Applicant) post-conviction relief application, filed on January 26, 2016. Respondent made its Return on November 1, 2016, requesting an evidentiary hearing be convened. The evidentiary hearing was held on January 26, 2021, via the WebEx Virtual Courtroom platform. Applicant was present at the hearing and represented by Laura M. Saunders, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Russell O. Brown, Esquire, Deputy Solicitor C. Dale Scott, and Elizabeth P. Wiygul, Esquire, also testified. After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof in establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the February 2012 term of the Newberry County Grand Jury for burglary

(2012-GS-36-0156). Applicant was represented by Russell Brown, Esquire (Counsel). On January 5, 2015, Applicant appeared before the Honorable Donald Hocker, Jr., and pled under *North Carolina v. Alford*. Judge Hocker sentenced Applicant to fifteen years of imprisonment.

Applicant filed a notice of appeal. On March 3, 2015, the Court of Appeals issued an order dismissing the appeal for Applicant's failure to file a sufficient explanation pursuant to SCACR 203(d)(1)(B)(iv). The Remittitur was sent March 20, 2015.

SUMMARY OF THE FACTS

The State presented the underlying facts at Applicant's guilty plea as follows:

"[...] October 7th of 2011 about 4:57 a.m. the Sheriff's Department responded to Around the Clock BP, that is on Highway 34. The owner was there when officers got there and he complained that his gas station had been broken into. The officers found a side window was propped open and that was believed to be the subject's point of entry. There had been a case taken out of the register as well as a cabinet under the register. They had primarily taken cigarettes. That is where all the restitution figures come from, just cartons and cartons of cigarettes and then sell them on the street or some other entity. They did review the camera footage and it showed two black males, their faces were covered so they were unable to make an ID at that time. About a month later over in Clinton the same kind of thing happened at a BP just right off of 385 up there. And the same thing. They had seen a car nearby and ran the tag on it thinking it was just an abandoned automobile on the interstate. It came back as Maurice Odom and shortly thereafter the break-in had occurred at the BP. And, again, two black males had masks on but had kind of put two and two together. After bloodhounds tracked a scent that went from the gas station to the car they had seen prior, they put two and two together and maybe Maurice Odom was someone to speak with. He is from Barnwell so officers with, Tyrone with the City of Clinton and Robert at

the Sheriff's Department here went down to Barnwell with arrest warrants for Maurice Odom. The second male was a younger man named Christopher Nix (phonetic), and they spoke with him and he kind of admitted that that was us on the camera, here is how we did it and implicated Mr. Odom in it...."

(GP Tr. 6-8).

CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective Assistance of Counsel
   i. Failure to Prepare Applicant's case/ Communicate with Applicant
2. Malicious prosecution
   i. "They had me in the jail with no bond and not attorney for three years, and day before trial had me on a floor in jail with bright light forcing me to take [illegible]."
3. "Violation of 8th Amendment"
   i. Denied preliminary hearing

An evidentiary hearing, Applicant indicated he was going forward on the three allegations listed in his initial PCR application.

SUMMARY OF TESTIMONY

Counsel's Testimony

Counsel testified he represented Applicant in the past in connection with other charges, but he was appointed to Applicant's case in this instance on June 27, 2014. Counsel testified he is not a contract attorney but he regularly took clients in Newberry County.

Counsel testified he filed a discovery motion on July 1, 2014. Counsel testified the motion was filed on July 1st, served upon the solicitor on July 3rd, and on July 8, 2014, he faxed a letter to SCDC to visit Applicant. Counsel testified his first meeting with Applicant was on July 14, 2014.

Counsel testified he had subsequent visits on August 1, August 15, August 29, and September 29, 2014. Counsel testified he was represented by Elizabeth Wiygul prior to his appointment.

Counsel testified Applicant had other charges in Laurens County. Counsel testified the State felt it had a pretty good case. On September 5, 2015, the State filed and served an LWOP notice for Applicant. Counsel testified the LWOP notice made Applicant realize the seriousness of his case. Counsel testified the offer for his plea was for second-degree burglary violent, for which his sentence would be served concurrent to his sentence for the Laurens County charges. Counsel testified this plea offer would also have taken LWOP out of consideration. Counsel testified he took this officer to Applicant for his consideration. Counsel testified he spoke to Applicant about the seriousness of the charges and he was provided a trial date of October 27, 2014, so at that time he decided to accept the plea offer to the burglary second. Counsel could not recall if Applicant's Edgefield charges were pending at the time. Counsel testified he advised client to take the fifteen years to run concurrent with his sentence from his Laurens charges instead of risking getting life without parole.

Counsel testified he was not aware of an Order authorizing access to cell phone and telephone tower locations during his representation of Applicant, and similarly was not aware of any records that might have been produced pursuant to that Order. Counsel testified the evidence in this case consisted of testimony from his co-defendant and pictures from the scene. Counsel testified there was no ten year plea offer to resolve his Newberry case during his representation of Applicant.

On cross-examination, Counsel testified he has been practicing law for sixteen years and approximately eighty five percent of that has been in criminal law. Counsel testified his meetings

with Applicant were primarily in person and each lasted at least an hour. Counsel testified he and Applicant discussed the charges against him and the State's case against him.

Counsel reiterated the evidence against Applicant primarily consisted of still photos of the break in, statements from his co-defendant who was willing to testify against Applicant, information regarding the fact that Applicant's prior criminal activities had a similar scheme and pattern, and the police tracking of his vehicle. Counsel testified his investigation primarily consisted of thorough view of the discovery and analyzed how law enforcement connected the dots to build a proper defense. Counsel testified Applicant did not give him the name of any witnesses or leads to investigate that he did not investigate.

Counsel testified it was ultimately Applicant's decision to plead guilty, that he did not tell Applicant how to answer the judge's questions, and that he did not coerce him into pleading guilty. Counsel testified he did advise Applicant what questions the judge would ask him and that he had to answer them truthfully. Counsel testified he would have been prepared to go to trial and had adequate time to prepare the case.

Applicant's Testimony

Applicant testified that prior to his guilty plea in this case, he was tried and convicted in Laurens County and received fifteen years of imprisonment for those charges. Applicant testified the solicitor's office then put him on notice for his potential LWOP in this case. Applicant testified Counsel was able to get the LWOP off the table by way of his plea offer in this case. Applicant testified he only met with Counsel once or twice, not five times as Counsel testified.

Applicant testified he pleaded guilty because he was scared about the thought of taking his case to trial the following week, and because Dale Scott cursed at him. Applicant testified the solicitor never spoke to him without Counsel present. Applicant testified Charles Verner gave him

the copy of the order authorizing cell phone tower records. Applicant could not recall whether or not he discussed this with Counsel.

Applicant testified he is alleging ineffective assistance of plea counsel because Counsel only sent him one letter, and rarely met with him. Applicant testified his meetings with Counsel were only approximately thirty minutes long and not one hour per meeting as Counsel had testified. Applicant also testified he is alleging ineffective assistance of plea counsel for failure to investigate cell phone records obtained by the prosecution. Applicant testified he is alleging prosecutorial misconduct based on the meeting that involved Verner and Dale Scott, in which Scott cursed at him. Applicant testified he was represented by Charles Verner for a period of time and also Mr. Broadwater for a period of time. Applicant claims he would have taken his initial ten year plea offer that would have covered all of his pending Newberry and Laurens County charges.

On cross-examination, Applicant testified he and Counsel did not review discovery, nor did they discuss trial strategy. Applicant testified Counsel informed him that if he did not accept a plea, he was going to be going to trial the following Monday. Applicant testified he and Counsel did discuss the elements of the offense and the advantages and disadvantages of going to trial. Applicant testified they did not discuss the possible sentences he was facing. Applicant testified he believed the State filed an LWOP notice in order to coerce him to plea. Applicant testified he could not recall whether he and Counsel discussed possible defenses. Applicant testified he could not recall if Counsel discussed his constitutional rights with him, but he believed the plea court discussed them with him. Applicant testified he recalled telling the plea court he did not consume any drugs or alcohol on the day of his plea. Applicant testified he did not recall telling the plea court he was clearheaded at the time of the plea. Applicant could also not recall if he told the plea court he did not need any more time to discuss his case with Counsel.

Dale Scott's Testimony

Scott testified he was the primary prosecutor in Applicant's case. Scott testified he did not offer Applicant a ten-year plea offer in this case. Scott testified Applicant filed a complaint against him with the Office of Disciplinary Counsel (ODC) on the basis that Scott had allegedly threatened Applicant; however, after reviewing the allegations ODC found the allegation was unfounded. Scott testified he believed the prosecution did not obtain any cell phone or cell phone tower records pursuant to the Order authorizing phone and cell phone tower records.

Elizabeth Wiygul's Testimony

Wiygul testified he represented Applicant for his charges in Laurens County. Wiygul testified just prior to the trial for his Laurens charges, Assistant Solicitor Mowry extended a 10 year plea offer to plead to burglary, conspiracy, and grand larceny, and that this plea offer would have handled all charges pending in the Eighth Judicial Circuit, including the charges at issue in this case. Later the prosecution offered accessory before or after the fact with no recommendation. However, Applicant opted to go forward with the trial for his Laurens charges. Wiygul testified that also before his trial Scott offered Applicant the chance to plead to concurrent times, meaning the sentence for his Newberry charges would have run concurrent to his Laurens charges, but Applicant rejected all offers. Wiygul testified Applicant was informed the offers would cover both his Laurens and his Newberry charges.

Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, records submitted by the parties, and applicable law. Before this Court are Applicant's Newberry County Clerk of Court Records, Applicant's South Carolina Department of Correction records, the plea transcript, Applicant's direct appeal records, and the PCR action records. Pursuant to South Carolina Code Annotated, Sections 17-27-

70 and -80, this Court dismisses the application based upon the following findings:

Ineffective Assistance of Counsel

In his application, Applicant alleges Counsel was ineffective for failing to communicate with him and failing to investigate phone and cell phone tower records. This Court disagrees and denies and dismisses the application with prejudice.

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 norms." *Strickland*, 466 U.S. at 688. S*ee also* Rule 71.1(e), SCRCP ("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).

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pleaded guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d

347, 350 (4th Cir. 1975)).

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

a. Failure to Communicate with Applicant

Applicant testified he is alleging ineffective assistance of counsel for failure to communicate with Applicant because Counsel, according to Applicant, only sent him one letter and rarely met with him. This Court disagrees and denies and dismisses this allegation with prejudice.

"The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 404 S.C. at 500-01, 745 S.E.2d at 382 (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

Applicant testified his meetings with Counsel were only approximately thirty minutes long and not one hour long as Counsel had testified. Applicant testified he pleaded guilty because he was scared about the thought of taking his case to trial the following week. Counsel testified

his first meeting with Applicant was on July 14, 2014. Counsel testified he had subsequent visits on August 1, August 15, August 29, and September 29, 2014. Counsel testified his meetings with Applicant were primarily in person and each lasted at least an hour.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony credible only to the extent he testified he was scared to take his case to trial because he was facing LWOP. This Court finds Applicant's remaining testimony on this issue not credible. Applicant has not met his burden as to deficiency for failure to communicate with Applicant, as a lack of communication in and of itself, even if true, does not necessitate this Court to grant post-conviction relief. *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012). Moreover, the credible testimony shows Counsel met with Applicant many times between his appointment and Applicant's plea. Accordingly, Applicant has wholly failed to show Counsel was deficient for failing to communicate with Applicant.

With respect to prejudice, Applicant has failed to show how additional time spent in consultation would have resulted in a different outcome. *Smith*, 404 S.C. at 500-01. Applicant cannot show he would have taken his case to trial but for this alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). In fact, Applicant acknowledged he was facing LWOP and testified he was afraid to take his case to trial and risk receiving LWOP. Applicant received a substantial benefit for pleading guilty, and decided to plead guilty to receive the benefit of his plea offer. Applicant has not shown how any additional communication reasonably would have caused him to take his case to trial. Accordingly, Applicant has failed to meet his burden as to both deficiency and prejudice, and this Court denies and dismisses this allegation with prejudice.

b. Failure to Investigate Phone Records

In his application, Applicant alleges Counsel was ineffective for failing to investigate cell phone records and telephone tower records allegedly obtained by the prosecution. This Court disagrees and denies and dismisses this allegation with prejudice.

Strickland makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change her recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant testified Charles Verner gave him a copy of an order authorizing cell phone tower records. Applicant could not recall whether or not he discussed this Order with Counsel. Counsel testified he was not aware of an Order authorizing access to telephone records and phone locations during his representation, and similarly was not aware of any records that might have been produced pursuant to that Order. Counsel testified Applicant did not give him the name of any witnesses or leads to investigate that he did not investigate. Scott testified he believed the prosecution did not obtain any cell phone or telephone tower records pursuant to the Order.

This Court finds Counsel's and Scott's testimony credible, while also finding Applicant's testimony on this issue credible only to the extent he testified he was aware an Order authorizing

phone records and telephone tower records existed. Although an Order authorizing cell phone records and telephone tower was issued, this Court finds the evidence does not show records were ever obtained by the prosecution pursuant to this Order. *See Glover,* 318 S.C. at 498-99. It appears the prosecution did not obtain phone records or cell phone tower records pursuant to the Order, and therefore, neither the prosecution nor Counsel were in possession of any such records. Counsel investigated all of the disclosed discovery materials and performed an investigation. Applicant did not give Counsel any leads or witnesses to investigate that Counsel did not investigate. Accordingly, Applicant has failed to show Counsel was deficient.

Moreover, Applicant has failed to meet his burden as to prejudice, requiring him to show that but for this alleged deficiency, he would have taken his case to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant has failed to show that records were actually obtained and that these records would have helped his case such that he would have taken his case to trial if Counsel investigated the records. Rather, the evidence shows Applicant accepted the guilty plea to receive the extremely favorable benefit to his plea offer, particularly the elimination of the possibility of LWOP. Applicant has failed to meet his burden as to both deficiency and prejudice, and therefore, this Court denies and dismisses this allegation with prejudice.

Prosecutorial Misconduct/Malicious Prosecution

Applicant alleges Scott committed prosecutorial misconduct in the form of malicious prosecution and he is entitled to post-conviction relief on that basis. This Court disagrees and denies and dismisses the allegation with prejudice.

Courts have recognized that prosecutors have many powers within the criminal justice system. Included in this, is "discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain." *State v.*

Langford, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). Additionally, prosecutors can use "punishment of the offender" as a proper motivation behind their behaviors and punitive motivations do not render otherwise lawful activity unlawful. *State v. Blakely*, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (2013) (citing *State v. Fletcher*, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct.App.1996)).

However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that "the prosecutor acted with genuine animus toward the defendant" and "the defendant would not have been prosecuted but for that animus." *State v. Odon*, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting *United States v. Wilson*, 262 F.3d 305, 314 (2001)) (quotations omitted). Otherwise, a "prosecutor's charging decision is presumptively lawful." *Id.* at 263-64 (quoting *United States v. Goodwin*, 457 U.S. 368, 384 n. 19 (2015)). The case in which an applicant can overcome the presumptive validity of the prosecutor's actions is rare. *Id.* at 264 (quoting *Goodwin*, 457 U.S. at 384 n. 19).

Applicant testified he is alleging prosecutorial misconduct based on a meeting that involved Applicant, Verner and Scott, in which Scott allegedly cursed at Applicant. Scott testified Applicant filed a complaint against him with the Office of Disciplinary Counsel (ODC) on the basis that Scott had allegedly threatened Applicant; however, after reviewing the allegations ODC found the allegation was unfounded. Scott testified he could not specifically recall but might have used "colorful language" with Applicant.

This Court finds Scott's testimony credible, while also finding Applicant's testimony on this issue not credible. This Court finds Applicant has failed to show that any prosecution was conducted because of genuine animus towards Applicant, so that he would not have been prosecuted but for the animus. Applicant's prosecution was based upon evidence against

Applicant, including, but not limited to, statements from his co-defendant implicating him and photos from the crime scene. Based upon the standard above, this Court finds Applicant has failed to meet his burden as to malicious prosecution.

Denial of Preliminary Hearing

In his application, Applicant alleges Applicant was denied his right to a preliminary hearing. This Court disagrees and accordingly dismisses and denies this allegation with prejudice.

In South Carolina, there is no constitutionally protected right to a preliminary hearing. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP. Further, a preliminary hearing can be waived through "[p]lea negotiations and silence before the trial court regarding the desire for a preliminary hearing when entering a guilty plea. *O'Neil v. State*, 277 S.C. 230, 231, 285 S.E.2d 352, 353 (1981) (citing *Bonnettee v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981)).

This Court finds Applicant's allegation is without merit. Applicant is not constitutionally entitled to a preliminary hearing. Moreover, Applicant was true-bill indicted during the February 2012 term of the Newberry County grand jury. Accordingly, this Court finds Applicant has failed to meet his burden imposed upon him, and therefore, this Court denies and dismisses this allegation with prejudice.

Conclusion

Based on all the forgoing, this Court finds and concludes 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.

The Court notifies Applicant must file and serve a notice of appeal within thirty days from

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

IT IS THEREFORE ORDERED:

1. That the PCR application must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections.

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

_____
J. MARK HAYES, II.
Presiding Judge
Eighth Judicial Circuit

_____, South Carolina.